# MY DISPENSE (ACADEMIC) LICENCE TERMS AND CONDITIONS

These are the terms and conditions of Monash University (ABN 12 377 614 012) (**Monash**) applicable to all transactions between it and licensees of the **MyDispense** online pharmacy simulation tool (**Product**) developed by Monash to which these terms and conditions relate. The Product can only be used upon the condition that the entity named in the Schedule as the Partner Institution (**Partner Institution**) accepts and complies with all the terms and conditions contained herein (**Agreement**).

## 1. LICENCE

In consideration of the obligations of the Partner Institution set out in this Agreement, Monash hereby grants to the Partner Institution a free, non-exclusive, non-transferable licence to use the Product solely for academic and teaching purposes only (**Licence**). Should the Product be used for commercial purposes, Monash will suspend access to the Product. Monash reserves all rights not expressly granted to the Licensee under this Agreement.

## 2. LIMITATION ON USE AND COPYING

2.1 The Licence provided under this Agreement is for a single instance user licence.

2.2 The Partner Institution shall protect the Product at all times from unauthorised access or use.

2.3 The Partner Institution shall not modify, adapt, disassemble, reverse engineer, decompile, translate or otherwise attempt to discover the source code of the Product or knowingly permit any of these to happen.

## 3. PRODUCT MATERIALS

3.1 Monash will provide the Partner Institution with a detailed user guide and instructional videos (**Product Materials**) to support the Licence provided under this Agreement.

## 4. OWNERSHIP

4.1 Monash shall remain the owner of the Product and the Product Materials and the copyright and other intellectual property in the Product and the Product Materials.

4.2 The Partner Institution is permitted to modify and adapt the detailed user guides as needed to suit their own requirements.

## 5. MONASH RESPONSIBILITIES

5.1 Monash will be responsible for procuring hosting services required in connection with the Product.

5.2 Monash will be responsible for configuring the authentication of the Partner Institution's instance of the Product as set out in the Schedule.

5.3 Monash will perform customisation work on the Partner Institution's instance of the Product as set out in the Schedule.

5.4 Monash Authorised Personnel (as set out in the Schedule) will provide technical support, upgrades and bug fixes (**Support Services**).

## 6. PARTNER INSTITUTION RESPONSIBILITIES

6.1 The Partner Institution will be responsible for all of its content and user data, including personal information, in its instance of the Product (**Partner Institution Content**) and will comply with any acceptable use policies in relation to the Partner Institution Content in the Product as notified by Monash from time to time. All right, title and interest in Partner Institution Content shall remain with the Partner Institution or end users, as applicable. Monash shall keep all Partner Institution Content disclosed to Monash confidential and not divulge or make such Partner Institution Content available to any individual or organization without the prior written approval of the Partner Institution.

6.2 The Partner Institution's Authorised Personnel (as set out in the Schedule) will be responsible for managing the Partner Institution's content and user data in the Product.

6.3 The Partner Institution agrees to provide the Monash Authorised Personnel access to the Partner Institution Content in order for Monash to provide the Support Services. Monash may not access and/or duplicate the Partner Institution Content for any reasons other than those stated herein without the prior written consent of the Partner Institution.

6.4 The Partner Institution agrees to provide Monash with de-identified data metrics in relation to the Product as set out in the Schedule.

## 7. PRIVACY

7.1 The Partner Institution is responsible for preparing any required privacy policies and disclosures and otherwise ensuring the collection of personal information by the Product complies with applicable privacy laws.

7.2 In respect of any personal information the Partner Institution provides to Monash, the Partner Institution warrants that it has provided the appropriate notifications and procured the necessary consents to allow Monash to access that personal information to perform this Agreement.

7.3 Monash shall safeguard and protect Partner Institution Content in accordance with all applicable laws and regulations and consistent with ISO/IEC 27000 series information security best practices.

7.4 *FERPA Acknowledgement*. If the responsibilities of Monash under this Agreement involve the hosting or accessing of student education records, Monash acknowledges and agrees that (i) the Partner Institution has outsourced to Monash the performance of institutional services or functions for which the Partner Institution would otherwise use its own employees, (ii) Monash is considered to be a "school official" with "legitimate educational interests" in "personally identifiable information" from "education records" of Partner Institution students, as those terms have been defined under FERPA (34 CFR 99), (iii) Monash is under the direct control of the Partner Institution with respect to Monash's use and maintenance of data in the education records, and (iv) Monash will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Monash will use such data only for the purpose of fulfilling its duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the Partner Institution. This clause 7.4 applies only when the Partner Institution is based in the USA.

7.5 Monash warrants that in the case of Partner Institutions based in the EU;

(a) personal information provided to Monash by the Partner Institution for the purpose of this Agreement will during the Term, be kept on an Amazon Web Services server contracted to Monash and located in the country advised in writing to the Partner Institution before this Agreement is entered into;

(b) Monash and AWS will only access the personal information on the AWS server to the extent necessary for Monash to perform its obligations under this Agreement (or as required by law);

(c) whilst Monash will comply with the provisions of this Agreement relating to information security and confidentiality, Monash engages AWS to undertake the technical and organisational measures required to meet the GDPR requirements on its behalf. Monash will use reasonable endeavours to ensure that AWS complies with the terms and conditions set out in the AWS Data Processing Addendum found at https://aws.amazon.com/blogs/security/aws-gdpr-data-processing-addendum; and

(d) when accessing the personal information, Monash does not load the data onto any Monash computers outside of the EU and therefore expects that the data export provisions of the GDPR do not apply. If the Partner Institution demonstrates that these provisions do apply, Monash will upon the Partner Institution's request, sign an Addendum containing the standard GDPR clauses for data export, as provided to Monash by the Partner Institution.

## 8. INFORMATION SECURITY COMPLIANCE AND CERTIFICATIONS

At all times during the term of this Agreement, Monash shall (1) use information security best practices for transmitting and storing potentially sensitive information; (2) employ information security best practices with respect to network security techniques, including, but not limited to, firewalls, intrusion detection, and authentication protocols; (3) comply with all applicable laws and regulations regarding privacy and data security to maintain database security on records belonging to the Partner Institution that contain sensitive and confidential information; and (4) maintain ISO/IEC 27000 series information security best practices. The Partner Institution reserves the right to conduct or request Monash to have an independent third-party security audit performed.

## 9. DESTRUCTION OF PARTNER INSTITUTION CONTENT

Upon the expiration or termination of this Agreement, Monash shall promptly destroy all Partner Institution Content it possesses in any form and provide the Partner Institution a written attestation to the destruction of the Partner Institution Content, specifying when it was destroyed and by what methods under NIST SP800-88 or other previously agreed upon destruction method.

## 10. WARRANTIES

10.1 The Partner Institution acknowledges that Monash gives no warranties and makes no representations whatsoever that the Product will be suitable or fit for any particular purposes or for use in any specific conditions, notwithstanding that such purposes or conditions may be known or made known to Monash. Except for the warranties provided by Monash

in this clause 10, all statutory or other guarantees, warranties, conditions, descriptions or representations are, to the full extent permitted by law, expressly excluded.

10.2 Monash represents and warrants to the Partner Institution that, to the best of its knowledge: (1) the Product and the Product Materials do not infringe any intellectual property rights of any third party; and (2) there are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

10.3 Monash represents and warrants to the Partner Institution that the Product and the Product Materials meet the accessibility requirements (to the extent applicable) outlined in Section 508 of the Rehabilitation Act of 1973, as amended (http://section508.gov/), and the best practices outlined in the W3C Web Accessibility Initiative reference: http://www.w3.org/WAI/. This clause 10.3 applies only when the Partner Institution is based in the USA.

## 11. INDEMNIFICATION

11.1 Monash shall indemnify, defend and hold harmless the Partner Institution from and against any claim asserted against the Partner Institution alleging that the Product or the use of the Product by the Partner Institution constitutes a misappropriation of any proprietary or trade secret information or an infringement of any patent, copyright, trademark or other intellectual property right to the extent Monash has breached clause 10.2(1).

11.2 In the event of any claim or action for infringement or alleged infringement of any third party's intellectual property right, Monash may in writing direct the Partner Institution to cease or limit the use of the affected Product. The Partner Institution shall upon its receipt comply with the direction.

11.3 To the extent permitted by law, the Partner Institution shall release and indemnify and at all times hereafter hold Monash and its officers, employees, agents and subcontractors fully and effectively released and indemnified from and against all losses, claims, proceedings, damages, costs and expenses directly or indirectly arising from, or in relation to, the use of, or reliance on, the Product by the Partner Institution or any other person in connection with or arising from the Partner Institution's use of the Product (whether in original form or as copied or modified) or from the Partner Institution's breach of this Agreement, except to the extent caused by Monash's breach of this Agreement or negligence.

## 12. LIABILITY

12.1 Monash shall not be liable in respect of any failure of the Product and shall not be liable for any loss damage or injury howsoever arising in connection with the use of the Product, except to the extent caused by Monash's breach of this Agreement or negligence.

12.2 Notwithstanding any other clause in these terms and conditions and to the fullest extent permitted by law, Monash's liability arising from or in connection with the performance or non-performance of any or all of its obligations under these terms and conditions or in any other manner related to these terms and conditions (and whether in tort, breach of statute or otherwise) will not in the aggregate exceed $1. The foregoing limitation on liability does not apply to breaches of confidentiality, data protection and intellectual property obligations or indemnification obligations under this Agreement, to the extent caused by Monash's fraud or wilful misconduct.

12.3 To the fullest extent permitted by law, Monash's liability under any guarantee, warranty, condition, description or representation which cannot legally be excluded is limited, at the option of Monash to:
   (a)    the replacement of the goods/services or the supply of equivalent goods/services; or
   (b)    the payment of the cost of replacing the goods/services or of acquiring equivalent goods/services.

12.4 The Partner Institution will not provide the Product to any third parties. For the avoidance of doubt, end users shall not be considered third parties.

## 13. TERM AND RENEWAL

13.1 The term of the Licence granted is as specified in the Schedule (**Term**).

13.2 The Partner Institution's Licence will be automatically renewed by Monash for a further Term (**Renewal Term**) unless any of the circumstances in clause 14, Termination apply.

## 14. TERMINATION

14.1 Either party may terminate this Agreement at any time by giving thirty (30) days prior notice in writing to the other party.

14.2 Either party may terminate this Agreement for any material breach of this Agreement by the other party.

14.3 Monash may terminate this Agreement under any of the following circumstances:
   (a)    where the Partner Institution has not accessed its instance of the Product at all for the Term;

(b) where the hosting service period for the Partner Institution's instance of the Product is about to expire and the Partner Institution has not accessed the Product in the last year of the hosting service period and has not responded to Monash regarding the Renewal Term.

## 15. ASSIGNMENT

The Partner Institution shall not assign, whether in whole or part, the benefit of these terms and conditions or any rights or obligations hereunder, without prior written consent of Monash.

## 16. GENERAL

16.1 This Agreement shall be governed by the laws of Victoria, Australia. Each Party submits to the exclusive jurisdiction of the courts of that place.

16.2 Each Party shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to its operations, including those of federal, state, and local agencies having jurisdiction and/or authority.

16.3 This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

16.4 Each Party may communicate its execution of this Agreement by successfully transmitting an executed copy of this Agreement by facsimile or email to the other Parties.

16.5 The signatories to this Agreement warrant that they have the authority to enter into this agreement on behalf of the party they are stated to represent.

| Signed for and on behalf of MONASH UNIVERSITY by authorised Representative: | Signed for and on behalf of Partner Institution by its duly its duly authorised Representative: |
| --- | --- |
| Name: | Name: |
| Name: | Signature: |
| Title: | Title: Category Manager |
| Date: | Date: |

**SCHEDULE**

| Item | Subject | Description |
|------|---------|-------------|
| 1 | Name of Partner Institution | |
| 2 | Address of Partner Institution | |
| 3 | Term | 3 years |
| 4 | Product instance | |
| 5 | Location of hosting service | TBC |
| 6 | Authentication process | [Internal authentication] OR<br>[Single Sign-O ] TBC |
| 7 | Customisation | 1. Patient and prescriber names and addresses will be altered to reflect local norms of the UK<br><br>2. Dispensing labels will be customised in accordance with local requirements of the UK<br>3. Links to reference sources will be customised to the requirements of the Partner Institution. |
| 8 | Data metrics for reporting purposes | [TBC] |
| 9 | Monash Authorised Personnel | Senior Learning Technologies Project Manager<br>Learning Technologies Developer |
| 10 | Partner Institution Authorised Personnel | [##] |