

Clinician Terms of Use

1 Licence

1.1 Subject to any third party rights, the Licensor grants the Licensee, a non-exclusive, non-transferable licence for the Term to use the Software and Documentation:

(a) to the extent necessary to, and for the purposes of accessing data and information shared in the Software and updating data and information stored in the Software; and

(b) for or in relation to using the Web Browser or equivalent technology,

1.2 where such use is necessary for the Permitted Purpose.

1.3 The Licensee must not permit any third party to use the Software or the Licensee's Software identification login details without the Licensor's prior written consent.

1.4 For clarity, the licence under clause 1.1 does not include the right to sublicense to third parties.

1.5 The Licensee acknowledges that other than the licence under clause 1.1, nothing in this agreement is intended to give the Licensee any Intellectual Property Rights or other rights in the Software or any other material.

1.6 The Licensee acknowledges and agrees that the Software is not error free, and that the Software may contain errors that cause it to malfunction or not operate in the manner described in any documentation made available in connection with the Software.

1.7 The Licensor may, but is not obliged to, make updates to the Software or new versions of the Software available from time to time (Update).

2 Reverse engineering

2.1 Although copyright in the Software is not infringed in the circumstances contemplated by sections 47D, 47E and 47F of the *Copyright Act 1968* (Cth), the Licensee agrees not to:

(a) decompile, disassemble or reverse engineer the whole or any part of the Software;

(b) make any modification to the Software;

(c) make copies of the Software; or

(d) merge all or any part of the Software with any other software.

3 Term and termination

3.1 This agreement commences on the date the Licensee accepts this agreement and first accesses the Software and continues until terminated under this clause 3.

3.2 If the Licensee breaches this agreement then the Licensor may terminate this agreement by notice to the Licensee which is effective from the date specified in the notice or, if no date is specified, immediately.

3.3 The Licensor may withdraw the Product from the market, or stop supporting the Product, and in either case the Licensor may terminate this agreement.

3.4 The Licensee expressly waives any rights it may have to terminate this agreement.

3.5 The Licensee acknowledges that the Licensor may terminate this agreement under this clause 3 without considering the impact of the termination on the Licensee.

3.6 On termination of this agreement:

(a) the licence granted to the Licensee under clause 1.1 ceases; and

(b) accrued rights or remedies of a party are not affected.

3.7 The Licensee must not use the Software following the termination of this agreement.

3.8 Clause 3 survives termination of this agreement.

4 Liability and indemnity

4.1 Subject to clauses 4.4 and 4.6, any liability of the Licensor for any loss or damage, however caused (including, without limitation, by the negligence of the Licensor), suffered by the Licensee in connection with this agreement is limited to \$100.

4.2 The limitation set out in clause 4.1 is an aggregate limit for all claims, whenever made.

4.3 For clarity, and without limiting clause 4.1, the parties agree that clause 4.1 is to apply in connection with a breach of this agreement, anticipated breach of this agreement or other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

4.4 Subject to clause 4.5 and 4.6, the Licensor is not liable for any Consequential Loss however caused (including, without limitation, by the negligence of the Licensor) suffered or incurred by the Licensee in connection with this agreement.

4.5 Except as contemplated by clause 4.6, nothing in this agreement is intended to limit any rights of the Licensee under the *Competition and Consumer Act 2010* (Cth).

4.6 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Licensor in connection with **this agreement and the Licensor's liability** for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 4.1, 4.3 and 4.4 do not apply to that liability and instead the **Licensor's liability for such failure is limited to (at the Licensor's election):**

(a) in the case of a supply of goods, the Licensor replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or

(b) in the case of a supply of services, the Licensor supplying the services again or paying the cost of having the services supplied again.

4.7 The Licensee is liable for, and indemnifies the Licensor from and against, all loss or damage (including, without limitation, legal costs) however caused suffered or incurred by the Licensor in connection with:

(a) any breach of this agreement by the Licensee;

(b) any act or omission of the Licensee, including, without limitation, any illegal or negligent act or omission of the Licensee;

(c) any claim or threatened claim by a third party against the Licensor in connection with the use by the Licensee of the Software;

(d) **any exercise of the Licensee's rights under this agreement; or**

(e) any act or omission of the Licensee or any person acting or purporting to act on behalf of the Licensee.

4.8 Each indemnity contained in this agreement is a continuing obligation notwithstanding:

(a) any settlement of account; or

(b) the occurrence of any other thing,

4.9 and it is not necessary for the Licensor to incur expense or make payment before enforcing or making a claim under an indemnity.

5 Privacy

5.1 The Licensor collects, uses and discloses information **about the Licensee's** patients, including Personal Information and Sensitive Information in **accordance with the Licensor's privacy policy.**

5.2 The Licensee must:

- (a) comply with all applicable privacy laws (including the Privacy Act, whether or not the Licensee is an organisation bound by the Privacy Act);
- (b) collect, store, use, disclose or otherwise deal with Personal Information and Sensitive Information in accordance with the Privacy Act and as directed by the Licensor;
- (c) provide all assistance required by the Licensor to deal with its obligations under the Privacy Act;
- (d) **only access and use patient information, including a patient's Personal Information and Sensitive Information for the Permitted Purpose;**
- (e) not disclose any Personal Information or Sensitive Information outside **Australia without the Licensor's prior written consent; and**
- (f) immediately notify the Licensor of any actual or suspected breach of this clause or any privacy law, or of any other event which may compromise the **security of patients' Personal Information** or Sensitive Information.

6 Authorised use

- 6.1 The Licensee must comply with all applicable laws and ensure that its employees, agents and independent contractors comply with all applicable laws when using the Software.

7 Confidentiality

7.1 The Licensee agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information provided to or obtained by the Licensee prior to or after entry into this agreement.

7.2 The Licensee agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information relating **to the Licensee's patient, provided to or obtained by the Licensee prior to or after entry into this agreement.**

8 Costs, stamp duty and GST

8.1 Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this agreement.

8.2 The Licensee must pay all stamp duty (including, without limitation, penalties and interest) assessed or payable in connection with this agreement.

8.3 The Licensee is responsible for and must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.

8.4 If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this agreement for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

8.5 Capitalised terms used in this clause 8 that are not defined in this agreement have the meaning given in the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

9 General

9.1 This agreement is subject to the laws of Queensland, Australia.

9.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland.

9.3 In the interpretation of this document, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it.

9.4 **The Licensee must not assign, in whole or in part, or novate the Licensee's rights and obligations under this agreement without the prior written consent of the Licensor.**

9.5 **The Licensor may assign the Licensor's interest under this agreement.**

9.6 Each provision of this agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.

9.7 **This agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.**

9.8 Where this agreement contemplates that the Licensor may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, the Licensor may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably unless this agreement expressly requires otherwise.

10 Definitions

10.1 In this document:

Term	Definition
Confidential Information	means the confidential information of the Licensor or the Licensee's patient which is by its nature confidential and the Licensee knows or ought to know is confidential and which relates to the subject matter of this agreement and Intellectual Property Rights and includes information relating to: the design, specification, source code, configuration information, benchmark test results, application specific results and observations regarding the quality, performance and features and content of the Software; all information relating to the Licensee's patient, including, Personal Information (which could identify the patient) and Sensitive Information (including information about the patient's health); (b) the personnel, policies or business strategies of the Licensor; (c) the terms upon which the Software is being supplied and installed pursuant to this agreement; (d) any trade secrets, information relating to pricing and licence fees, rebates, negotiations preceding this agreement, but excludes information which: (a) is public knowledge (otherwise than as a result of breach of this agreement); or (b) the Licensee is required by law to disclose.
Consequential Loss	means loss of revenues, loss of reputation, consequential loss, loss of data, indirect loss, loss of profits, loss of actual or anticipated savings, lost opportunities, including, without limitation, opportunities to enter into arrangements with third parties and loss or damage in connection with claims against the Licensee by third parties.
Documentation	means operating manuals and other printed materials including users' manuals which are relevant to the Software, including any upgrade.
Intellectual Property Rights	means all industrial and intellectual property rights, both in Australia and throughout the world, including, without limitation, any copyright, trade or service marks, patents, registered and unregistered trade marks, registered designs, trade secrets, knowhow, moral rights, rights in relation to semiconductors and circuit layouts, formulations, components, concentrations, protocols, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights;
Licensor	means you.
Personal Information	means Analytica Ltd ACN 006 464 866.
Permitted Purpose	has the meaning given in the <i>Privacy Act 1988</i> (Cth).
Product	for or in relation to the provision of ongoing healthcare services and support to patients of the Licensee who have provided the Licensor with their express consent for the Licensee to access their information, including Personal Information and Sensitive Information in connection with the Product
Software	means the PeriCoach device sold or supplied by the Licensor.
Supplier	has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
Body Corporate	has the meaning given in the <i>Privacy Act 1988</i> (Cth).
Sensitive Information	means the PeriCoach software and any part thereof as the meaning requires, including any Update.
Update	means the entity making the Supply.

Term	Definition
Supply	has the meaning given in the <i>New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Term	means the term contemplated by clause 3.1.
Web Browser	means Microsoft Internet Explorer and Mozilla Firefox versions specified by the Licensor.