

End User Licence Agreement

This end user licence agreement (referred to throughout this document as the “EULA”) is between you and the University of Tasmania (defined in clause 1.1 as **we, us**).

Your use of the Application is governed by the EULA. It is a legal agreement between you and us.

In consideration for Registering as a user of the Application you confirm acceptance of the EULA. The date you Register will be the effective date of the EULA (defined in clause 1.1 as the “**Effective Date**”). You may not make any use of the Application unless you have accepted the EULA. At a minimum, your agreement with us will always include the EULA.

1 DEFINITIONS

In the EULA, unless specified otherwise:

Application means the online, web-based applications, platforms or websites provided by us from time to time via the website; and includes but are not limited to:

- (a) any services that are arranged by you direct with us; and
- (b) any associated offline components but excluding Third Party Applications.

Automated Access means use of a process, script, webcrawler, software or other methodology that:

- (a) permits a user that is not a human user to access the Application as a user; or
- (b) monitors any activity in connection with the Application; and
- (c) regardless of whether we are aware of the nature of such access.

Confidential Information means all information disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes your personal information. Our Confidential Information includes that information concerning aspects of the Application not ordinarily available to the public. Confidential Information also includes the terms and conditions of the EULA, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by any party. However, Confidential Information does not include any information that:

- (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
- (a) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
- (b) is received from a third party without breach of any obligation owed to the Disclosing Party; or
- (c) was independently developed by the Receiving Party.

Consequential Loss means any consequential or indirect loss suffered or incurred under or in connection with this EULA (whether arising in contract or tort (including negligence), under an indemnity or otherwise) including but not limited to loss of anticipated savings, loss of profits, loss of data (including the costs of reconstruction of a loss of data), costs of internal resources or third parties utilised to address any breach by a party, additional amounts paid for alternative or replacement items, the costs of reworking defective work, and the costs of remedial measures such as engaging extra staff or purchasing additional equipment to address problems.

Effective Date means the date you Register for the Application.

Harmful Code means viruses, worms, time bombs, Trojan horses and other harmful software, files, scripts, agents or programs.

Intellectual Property Rights means intellectual property rights conferred on a party or recognised at Law in any territory throughout the world including any rights associated with copyright, trademark, business name, patent, innovation concept, semiconductor, formula, trade secret, method, circuit layout, invention and any other results of intellectual activity in any field of industry or endeavour, and includes:

- (a) any right to require that Confidential Information be kept confidential, and
- (b) any right to use an Intellectual Property Right owned by a third party where the terms of that right of use or licence permit a use of that Intellectual Property Right as contemplated under the EULA.

Law means, with reference to any applicable jurisdiction, any statute, regulation, bylaw or a provision of a statute, regulation, or bylaw and includes, without limitation, any statutory rule, or ruling by a statutory body.

Open Source Software Component means any software which may have been utilised within or in conjunction with the Application and which is otherwise freely available to the general public under licence terms which are different to this document.

Register means the act of registration as a user of the Application (including by means of Automated Access - whether in breach of this EULA or otherwise) and includes the act of registration on behalf of that person as a user, or the web-based confirmation of an act of acceptance of an invitation by any person to become a user. Without limiting clause 2.3(d) (Interpretation – General), in this EULA, **Registered, Registering** and other similar grammatical variances of this word have the corresponding meaning of this concept in the context they are used.

Third Party Applications means online, web-based applications and offline software products that are:

- (a) provided by third parties;
- (b) interoperate with the Application; and
- (c) may be either separate or con-joined with the Application, whether or not they are identified to you by us as applications that are provided by third parties.

we, us means the University of Tasmania.

you means any party who is Registered. Without prejudice to the requirements of our Registration policies, when:

- (a) there is more than one party involved in that instance of Registration, those parties are jointly and severally liable to us;
- (b) you are an individual, the expression includes your personal representatives, employees and agents, and if you are an employee, the expression includes your employer;
- (c) the Registered party is a corporation, the expression includes the employees, agents and successors of the corporation;
- (d) the Registered party is a partnership, the expression includes the partnership as it is constituted at the date of its Registration and each of its members and also the successors of the partnership whether comprising the same of a different name and each of the members of the partnership or its successors as it may be constituted from time to time; and
- (e) the Registered party is or becomes a trustee (whether or not that fact is disclosed to the us) the expression includes the party in its personal capacity as well as its capacity as a trustee.

Without limiting clause 2.3(d) (Interpretation – General), in this EULA, **your, yours** and other grammatical variances of these terms in the EULA have the corresponding meaning of this concept in the context they are used.

your Data means all electronic data or information submitted by you making use of the Application, whether that data or information is submitted by you or data that is intended by you to be processed, stored (temporarily or otherwise) or syndicated using the Application.

2 INTERPRETATION

2.1 References – People and Parties

In this document a reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

2.2 References – Statutes and currency

In this document a reference to a Law includes:

- (a) that Law as amended or re-enacted from time to time;
- (b) a statute, regulation or provision enacted in replacement of that Law; and
- (c) another regulation or other statutory instrument made or issued under that Law.

A reference to money is to Australian Dollars, unless otherwise stated.

2.3 Interpretation – General

In this document:

- (a) “including” and similar expressions are not words of limitation;
- (b) a reference to a clause or schedule is a reference to a clause of or a schedule to the EULA;
- (c) a reference to an agreement or document (including, without limitation, a reference to the EULA) is to the agreement or document as amended, novated or replaced;
- (d) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (e) headings are for convenience only and do not form part of this document or affect its interpretation;
- (f) a provision of the EULA must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the EULA; and
- (g) all references to time are to Australian Eastern Daylight Time.

3 SERVICES

3.1 Provision of the Application

We will make the Application available to you under the terms of the EULA. You acknowledge that the terms of this EULA do not constitute a sale of any aspect of the Application to you. You agree that your use of the Application is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by us regarding future functionality or features. You may access the Application on any device that has the relevant capabilities and any minimum system requirements that have been specified by us from time to time. However, you acknowledge that we do not warrant that any of the Application will be available by way of access from any particular device.

3.2 Future Access Subscriptions

Initial access to the Application is available to you free of charge. However, you acknowledge that we reserve the right to change this in the future. In some instances, the Application (or various components of the Application) could be made available to you for purchase as a subscription, or on a fixed price purchase arrangement.

3.3 Licence

We grant to you a personal, non-assignable, and non-exclusive license to use the Application in accordance with the EULA for the duration of the EULA. This license is granted for the sole purpose of enabling you to enjoy the features of the Application in the manner contemplated by the EULA and is not capable of sublicense without our prior written consent.

3.4 Open Source Software Components

The restrictions which this document places on the use of the Application do not in any way limit your access to, use of or obligations in respect of any Open Source Software Components.

3.5 Term

The term of this EULA will continue until it is terminated in one of the ways provided for in clause 9 (Termination). You will enter into a subscription with Us and your use of the Menzies MS Health Economics Simulation Model will be limited for that subscription period.

4 USE OF THE SERVICES

4.1 Your Responsibilities

You are entirely responsible for:

- (a) your access to the Application;
- (b) your use of the Application;
- (c) your compliance with the EULA;
- (d) the appropriateness, accuracy, quality, and legal integrity of your Data; and
- (e) the means by which you acquired your Data.

You acknowledge that you may be required to have and maintain an internet or data connection in order to access the Application. However, we will not be liable to you in any circumstances where our attempted failsafe procedures do not activate as we have designed or intended.

4.2 Prevention of Misuse

You must:

- (a) use commercially reasonable efforts to prevent unauthorised access to or use of the Application, and notify us promptly of any such unauthorised access or use;
- (b) not seek to circumvent our methods intended to control access to the Application;
- (c) not operate or develop patches, software or applied programming interfaces that are intended to augment or alter the Application in a manner that is not intended or not authorised by us; and
- (d) use the Application only in accordance with applicable Laws.

4.3 Use of the Application

You must not:

- (a) make the Application available to anyone else;
- (b) sell, resell, rent or lease access to the Application;
- (c) use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights;
- (d) use the Application to store or transmit Harmful Code;
- (e) interfere with or disrupt the integrity or performance of the Application or any Third Party Applications; or
- (f) attempt to gain unauthorised access to the Application or our related systems or networks.

You may not access the Application to monitor their availability, performance or functionality unless the reason for your doing so is to assess the Application for your own reference in circumstances where the details of your assessment are not to be published or provided to a third party.

4.4 Usage of Application

You acknowledge that use of the Application will not result or may not result in financial gain.

4.5 Usage Limitations

The Application may be subject to usage limitations, such as, for example, limits:

- (a) on storage space; and
- (b) on the number of calls you are permitted to make against our application programming interfaces.

You must comply with any usage limitations imposed by us.

4.6 Automated Access

All Automated Access is also subject to the EULA. No automated software or process may legally access the Application until the person who is responsible for the Automated Access has accepted the EULA. As such, any attempt to obtain Automated Access will be bound by the EULA. If you are responsible for any Automated Access, you must also comply with any directives we may make in respect of the Application using a Robots Exclusion Protocol, robots.txt file, Robots Exclusion Standard or any other directive concerning Automated Access prepared by us from time to time.

4.7 Access Information

You must keep your passwords and any confidential user identification that you use to access the Application secure. You are solely responsible to us for all activities that occur in respect of your user account for the Application, and if you become aware of unauthorised use of your user account for the Application, you agree that you will notify us immediately.

4.8 Software Versions and Application

You acknowledge that:

- (a) there are multiple instances of software supporting and underpinning the Application;
- (b) we will make that software available to you from time to time to assist your use of the Application;
- (c) that we will update that software from time to time.

As a condition of your use of the Application, you must use the latest versions of any of our software made available to you for that use. You also consent to us updating the Application automatically without notifying you.

4.9 Restricted Purposes

You must not use the Application for any purpose that is restricted by us in our sole discretion. This includes but is not limited to purposes that:

- (a) promote harmful activities or substances in breach of any Law;
- (b) infringe a third party's Intellectual Property Rights or violate a third party's rights of publicity or privacy; and
- (c) are fraudulent, false, misleading or deceptive.

5 THIRD PARTY ARRANGEMENTS

5.1 Acquisition of Third-Party Products and Services

You acknowledge that:

- (a) if you utilise any other products or services produced by other parties, including but not limited to Third Party Applications, including implementation, customisation and other consulting services, and any exchange of data between you and any third party provider, is solely between you and the applicable third party provider; and
- (b) we do not warrant or support any Third Party Applications or any other product or service that are not a part of the Application, whether or not they are designated as "certified" or otherwise.

5.2 Third Party Applications and your Data

If you install or enable Third Party Applications for use with the Application, you acknowledge that we may allow providers of those Third-Party Applications to access your Data as required for the interoperation of those Third Party Applications with the Application. We are not responsible for any disclosure, modification or deletion of your Data resulting from this type of access by Third Party Application providers.

5.3 Third Party Suppliers

You acknowledge that in order for us to provide the Application to users, we source data from other providers (**Other Providers**). This means that the Other Providers are beneficiaries to your obligations under this EULA, and how you use the Application may affect the Other Providers and our arrangements with them.

By Registering, you agree that

- (a) the Other Providers may use this EULA to enforce your obligations and to assert their rights as beneficiaries; and
- (b) that we may supply information about your obligations and use of the Application to the Other Providers for the sole purpose of enabling them to enforce those obligations where appropriate.

6 PROPRIETARY RIGHTS

6.1 Reservation of Rights

Subject to the rights granted to you in the EULA, we reserve all other rights, title and interest in and to the Application, including all Intellectual Property Rights in the Application. You acknowledge no Intellectual Property Rights are granted to you in the EULA other than the usage rights for the Application that are expressly described in the EULA.

6.2 Restrictions

You must not:

- (a) permit any third party to access the Application except as permitted in the EULA;
- (b) copy, modify, create derivative works of, reverse engineer, decompile or otherwise attempt to extract the source code of the software in respect of the Application;
- (c) copy, frame or mirror any part or content of the Application, other than copying or framing for your own personal reference;
- (d) reverse engineer any aspect of the Application;
- (e) access the Application in order to build a competitive product or service;
- (f) copy any features, functions or graphics of the Application; or
- (g) act in a manner that is otherwise inconsistent with our Intellectual Property Rights.

6.3 Use and Ownership of your Data

Subject to the licenses you have granted to us in respect of your Data in the EULA, we acknowledge that you own all rights, title, and interest in and to all of your Data.

6.4 Other Intellectual Property Rights

During your use of the Application, you must not utilise content in a way that infringes the Intellectual Property Rights of third parties. You must obtain the consent of the owner of the relevant Intellectual Property Rights in respect of the content you intend to use. You acknowledge that we are not liable to you or to any third party for your use of content in breach of this clause 6.4.

6.5 Information Rights and Publicity

Subject to the terms of our privacy policy (or any other reference point that we may provide to you from time to time), we and our related parties may retain and use, information collected about you during the course of your use of the Application.

We will not share information in respect of your activities with any third parties unless we:

- (a) have your consent;
- (b) are permitted to do so under relevant Laws relating to privacy; or
- (c) provide such information in certain limited circumstances to third parties to carry out tasks on our behalf (e.g., invoicing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by us.

When this is done, we must ensure it is subject to agreements that oblige those parties to process such information only on our instructions and in compliance with the EULA and appropriate confidentiality and security measures. By registering as a user of the Application, you also consent to the transfer of your personal information to a country outside of the country you reside in, provided that the transfer is conducted in accordance with applicable Laws.

6.6 Trade Marks

You acknowledge that you may not use our trade marks, logos, the name 'Menzie's MS Health Economics Simulation Model', or 'University of Tasmania' domain names or brands to promote you or your services (or in juxtaposition to them) except:

- (a) in any instance where we have otherwise authorised you to do so; or
- (b) any instance where our trade marks, logos, domain names or brands are to be used in association with functions that permit the Application to interoperate with other services.

6.7 Suggestions

You grant to us a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into the Application any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the operation of the Application.

7 CONFIDENTIALITY

7.1 Protection of Confidential Information

Unless authorised by the Disclosing Party in writing;

- (a) the Receiving Party must not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of the EULA; and
- (b) the Receiving Party must limit access to Confidential Information of the Disclosing Party to

those of its employees, contractors and agents who need the access for purposes that are consistent with the EULA and who have signed confidentiality agreements satisfactory to both parties.

7.2 Use and Protection of your personal information

We will collect personal information from individual users to create your account for the Application. Your personal information will only be accessible to staff of the University of Tasmania and its service provider, Intuit Technologies Pty Ltd, who require it for ensuring you have access to the Application. We will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of your personal information in accordance with [privacy policy](#) as modified by us from time to time.

We will not:

- (a) modify your personal information;
- (b) disclose your personal information, except where this EULA permits or requires that disclosure; or
- (c) access your personal information except to provide the Application or prevent or address service or technical problems, or at your request in connection with customer support matters.

You acknowledge that your personal information once disclosed through use of the Application may be stored outside of Tasmania but will remain within Australia.

7.3 Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by Law to make the disclosure, provided the Receiving Party gives the Disclosing Party prior notice of the scope of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by Law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8 ACKNOWLEDGEMENTS, WARRANTIES AND DISCLAIMERS

8.1 Acknowledgement

You acknowledge that unless agreed otherwise we do not accept liability for any particular outcomes affecting you as a result of the information provided through the Application. You acknowledge and agree that your use of the Application does not provide medical support, and you use the Application at your own risk.

8.2 Mutual Warranties

Each party represents and warrants that:

- (a) it has the legal power and capacity to enter into the EULA; and
- (b) it will not transmit to the other party any Harmful Code.

8.3 Disclaimer

Except as required by any Law or as set out in the EULA, neither party makes any other warranties of any kind, and each party specifically disclaims all implied warranties.

9 TERMINATION

9.1 Termination by us

We may terminate the EULA at any time in writing if:

- (a) you have not accessed your account for twelve (12) months;
- (b) you have breached any provision of the EULA;
- (c) you have acted in a way that indicates you do not intend to comply with a provision of the EULA;
- (d) we are required to terminate the EULA by Law, or the operation of the Application becomes unlawful; or

(e) we determine that the provision of the Application is no longer profitable or viable.

9.2 Termination by you

You may terminate the EULA without notice to us simply by:

- (a) deregistering as a user of the Application; and
- (b) ceasing to use all aspects of the Application (including those that interoperate with Third Party Applications).

9.3 Commercial Effect of Termination

Any termination by you does not secure any right to a refund or credit.

9.4 Survival of Terms

Any termination by either party will not affect any rights, obligations liabilities or licenses that are either expressed in the EULA to be continuous or are intended to continue indefinitely by implication.

10 GENERAL PROVISIONS

10.1 Export Compliance

You must comply with the export Laws and regulations of any relevant jurisdictions in using the Application. In particular:

- (a) you warrant that you are not named on any government list of persons or entities prohibited from receiving exports; and
- (b) you must not access or use the Application in violation of any export embargo, prohibition or restriction.

10.2 Relationship of the Parties

The parties are independent contractors. This EULA does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

10.3 Third Party Beneficiaries

You acknowledge that:

- (a) we have entered into licensing arrangements to enable the provision of the Application; and
- (b) the licensors of the enabling data or technologies could be third party beneficiaries to your obligations under the EULA.

10.4 Waiver and Cumulative Remedies

No failure or delay by either party in exercising any right under the EULA constitutes a waiver of that right. Other than as expressly stated in the EULA, the remedies set out in the EULA are in addition to, and not exclusive of, any other remedies of a party under any Law.

10.5 Severability

If any provision of the EULA is held by a court of competent jurisdiction to be contrary to any Law, the provision must be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by Law, and the remaining provisions of the EULA will remain in effect.

10.6 Assignment

You cannot assign your rights or obligations under the EULA without our prior written consent. We can novate or assign our rights or obligations under the EULA without restriction.

10.7 Liability

Subject to any Law applying to the EULA that expressly prevents this provision, our aggregate liability from any one claim by you (whether the claim arises under this EULA, or pursuant to any action in tort, negligence or otherwise) will not exceed the larger of:

- (a) the amount paid or payable by you to us for the Application; or
- (b) the cost of re-supplying the Application to you.

Subject to applicable Law, in no event will we be liable to you for Consequential Losses incurred as a result of a breach of this EULA.

10.8 Amendments

We may amend the EULA from time to time by either notifying you using the Application or providing details of the amendments on our website. We will act reasonably in making any amendments.

10.9 Governing Law and Disputes

The EULA is governed by the Laws of Tasmania and the Commonwealth of Australia and disputes must be resolved in the non-exclusive courts of that jurisdiction. You agree that you will not be involved in an action as a class member in a class action and that all disputes must be pursued in your own name only. Each of the parties waive respective rights to seek or be involved in any class action under this EULA or concerning any aspect of the Application.

10.10 Entire Agreement

The EULA constitutes the entire agreement between the parties and supersedes all prior understandings and agreements concerning its subject matter.