

NON- EXCLUSIVE LICENSE AGREEMENT

between the

Grampians Health

ABN 39 089 854 391

and

[Health Service/Jurisdictional Health Department- ABN]

**FOR THE NON-COMMERCIAL USE OF THE
Dementia Care in Hospitals Program including the Cognitive Impairment
Identifier**

NON-EXCLUSIVE LICENSE AGREEMENT

BETWEEN:

Grampian Health (ABN 39 089 584 391) (formally Ballarat Health Services), a public health service incorporated under the *Health Services Act 1988* (Vic) of Drummond Street Ballarat, Victoria 3350 (**'Licensor'**)

AND:

..... *[insert name]* of *[insert address]* ABN
[insert ABN] (**'Licensee'**)

RECITALS

- A. Grampians Health owns the Intellectual Property Rights in the Licensed Material and has allowed the Licensee access to, and certain rights to use, the Licensed Material.
- B. Grampians Health Services has agreed to provide the Licensee with access to, and certain rights to use, the Licensed Material on the terms and conditions set out in this Agreement.
- C. The Licensee agrees to access and use the Licensed Material only in accordance with the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

Adapted Material means Material that is:

- (a) derived from or based upon the Licensed Material;
- (b) translated or adapted from the Licensed Material; or
- (c) any alteration, enhancement, improvement, arrangement, transformation or other modification of the Licensed Material,

Additional Service Organisation means an entity approved as an additional service organisation under clause 5;

Agreement means the terms and conditions set out in this document, including its schedules;

'Intellectual Property' means all rights in relation to copyright (excluding Moral Rights), inventions (including patent rights), registered and unregistered designs, circuit layouts, plant varieties, registered and unregistered trademarks (including service marks and goodwill associated with trademarks), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Material means any matter or thing which contains Intellectual Property Rights, including data, extracts of data and any other information reduced in writing;

Moral Rights has the same meaning as given to it in the *Copyright Act 1968* (Cth);

Non-Commercial means not intended for, or directed towards, commercial advantage, financial benefit (including profit-making and cost recovery) or monetary compensation;

Parties means the Licensor and the Licensee, and **Party** means any one of them;

Results means the Material obtained as a direct result from using the Licensed Material;

Service Organisation means the entities that are listed in Schedule A; and

Licensed Material means the 'Dementia Care in Hospitals Program including the Cognitive Impairment Identifier' as set out in Schedule B.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and vice versa;
- (c) clause headings are inserted for ease of reference only and are not an aid to interpretation;
- (d) a reference to legislation or a legislative provision (whether primary or sub-ordinate) includes a reference to any amendment, substitution or re-enactment of that legislation or provision;
- (e) where any word or phrase is given a defined meaning or is to be interpreted or construed in accordance with this clause 1.2, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning, interpretation or construction;
- (f) the word 'includes' is not to be construed or interpreted as a word of limitation;
- (g) any uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision;
- (h) a reference to 'Licensee', 'Service Organisation' and 'Additional Service Organisation' includes its officers and employees; and

- (i) a reference to 'BHS' or the 'Dementia Care In Hospitals Program' or the 'Cognitive Impairment Identifier' relates to Grampians Health who is responsible for the granting of the non-exclusive licence under this Agreement.

2. TERM OF THIS AGREEMENT

- 2.1 This Agreement will commence on the date on which the last Party signs this Agreement and, will terminate upon Grampians Health ceasing to support the Dementia Care in Hospitals Program.

3. LICENCES

Scope

- 3.1 The Licensee must not use the copyright subsisting in the Licensed Material (whether in whole or in part), except as expressly permitted by this Agreement. For the avoidance of doubt, this Agreement does not grant any implied licence of any kind.

Grant of licence

- 3.2 Subject to the terms and conditions of this Agreement, the Licensor grants the Licensee a royalty-free, licence fee-free, Jurisdictionally specific and non-exclusive licence:
 - (a) to use the copyright in the Licensed Material for the purpose of health service care by the Service Organisations and Additional Service Organisations;
 - (b) to produce results for the purpose of internal or external reporting and publication; and
 - (c) to make changes to the Licensed Material as permitted under clause 4.1 of this Agreement.

Acknowledgment

- 3.3 The Licensee acknowledges and agrees that the Intellectual Property Rights in the Licensed Material are owned by Grampians Health and that the Intellectual Property Rights in any permitted changes to the Licensed Material made by the Licensee will be owned by Grampians Health .

4. CONDITIONS

- 4.1 The Licensee must exercise its rights under clause 3.2 subject to the following conditions:
 - (a) the Licensee may either use the Licensed Material in its existing form layout (as set out in Schedule B) or place it within a different form created by the Licensee, but only if no changes are made to:

- (i) the wording of individual items;
 - (ii) the name of the material, in particular the heading 'Dementia Care in Hospitals Program and/or Cognitive Impairment Identifier' must be retained;
 - (iii) the ordering of items;
 - (iv) the Style Guide (schedule B)
- (b) the Licensee may also make the following changes to the Licensed Material:
- (i) add a local or jurisdictional logo or other form of identification;
- (c) the Licensee must include an acknowledgment with the Licensed Material by adding the following words to each instance of use of the Licensed Material:
- “© 2018 Ballarat Health Services”
- (d) the Licensee agrees:
- (i) to maintain communication; and
 - (ii) to share its experiences regarding its use of the Licensed Material, with the Licensor. The Licensee agrees to promptly provide the Licensor with copies of any published reports prepared from use of the Licensed Material;
- (e) the Licensee must use the Licensed Material for Non-Commercial purposes only;
- (f) the Licensee will ensure that its officers and employees, who will be using the Licensed Material, are made aware of this Agreement and its contents; and
- (g) the Licensee has no rights to further license the Licensed Material to a third party, but may give copyright permission to any Service Organisation and Additional Service Organisation:
- (i) to make copies of; and
 - (ii) to reproduce and download;
- the Licensed Material.

5. ADDITIONAL SERVICE ORGANISATIONS

- 5.1 If the Licensee wishes to include a third party as a service organisation, and that third party is not listed as a Service Organisation under Schedule A, the Licensee may request the Licensor to give approval for that service organisation to become an Additional Service Organisation.
- 5.2 Following receipt of a request for approval under clause 5.1, the Licensor may decide to give, or refuse to give (without having to provide reasons), its approval for a third party to be an Additional Service Organisation.

- 5.3 If the Licensor has given its approval, the Licensor will notify the Licensee in writing that the third party has been approved as an Additional Service Organisation. Following receipt of approval, the Licensee may give copyright permission to the Additional Service Provider in accordance with clause 4.1(g).

6. RESTRICTIONS

- 6.1 This Agreement is a licence in respect of copyright in the Licensed Material only. All other Intellectual Property Rights are expressly reserved and excluded from this Agreement.
- 6.2 All commercial rights in the Licensed Material are expressly reserved and excluded from this Agreement.
- 6.3 This Agreement grants no rights of sub-licence to a third party except for a limited right of use given to a Service Organisation and Additional Service Organisation under clause 4.1(g).
- 6.4 This Agreement grants no rights to create Adapted Material.

7. RISK

No risk to Grampians Health

- 7.1 The Licensee agrees to accept the Licensed Material on an 'as-is' basis, without requiring the Licensor:
- (a) to make any improvements, enhancements or modifications to it;
 - (b) to provide support services or updates in relation to it; or
 - (c) to remove errors or defects from it.

- 7.2 The Licensee accepts all risk and consequences resulting from its use of the Licensed Material.

No Liability to Grampians Health

- 7.3 The Licensee acknowledges and accepts that the Licensor is the owner of the Intellectual Property Rights in the Licensed Material and is making it available to the Licensee for free.
- 7.4 In consideration for making it available for free, the Licensee agrees to release (and on execution of this Agreement does release) the Licensor from any and all liability incurred by the Licensee as a result of its use of the Licensed Material, including any costs, expenses, losses or damages suffered or incurred by the Licensee, a Service Organisation or an Additional Service Organisation as a result of the corruption or loss of results and/or data.

No warranty or representation by Grampians Health unless expressly stated

- 7.5 The Licensee acknowledges that it has not relied on any warranty or representation made by Grampians Health, other than those which are expressly stated in clause 7.7.

- 7.6 To the extent permitted by law, the Licensee acknowledges that the Licensor does not give any warranty (whether express, implied or statutory) or representation in respect of the Licensed Material, including representations and warranties as to:
- (a) fitness for a particular purpose;
 - (b) non-infringement of copyright or Moral Rights;
 - (c) the absence of latent or other defects;
 - (d) its performance or accuracy; or
 - (e) the presence or absence of errors, whether or not known or discoverable.

Mutual representation

- 7.7 Each Party represents to the other Party that:
- (a) the person signing this Agreement on its behalf is fully authorised to enter into this Agreement; and
 - (b) this Agreement will be legally binding on and from the date on which the last Party signs this Agreement.

8. TERMINATION

Termination by notice

- 8.1 If a Party breaches a term or condition of this Agreement, and either:
- (a) indicates in writing that it is not able, or willing, to remedy the breach; or
 - (b) after receiving a notice to remedy the breach, fails to remedy the breach within thirty (30) days (or such other longer period stipulated in the notice),

then the other Party may give the Party in breach a notice terminating this Agreement with immediate effect on and from the date on which the notice is given.

- 8.2 If Grampians Health ceases to support the Dementia Care in Hospitals Program, the licence under this Agreement will be terminated with immediate effect on and from the date on which the notice is given.

Return or destruction of Software and Documentation

- 8.3 If this Agreement has expired or is terminated by a Party, the Licensee must:
- (a) immediately stop exercising its rights granted under this Agreement;

- (b) must advise each Service Organisation and Additional Service Organisation (who have been given copyright permission under clause 4.1(g)) that they no longer have any copyright permission and must stop using the Licensed Material;
- (c) within thirty (30) days after this Agreement has ended, either:
 - (i) deliver up and return the Licensed Material in its possession, custody or control to the Licensor; or
 - (ii) destroy or otherwise deal with the Licensed Material in its possession, custody or control as directed by the Licensor.

9. DISPUTE RESOLUTION

Procedure for dispute resolution

- 9.1 In the event of a dispute, the Parties agree to follow the procedures set out in this clause 9 in order to resolve the dispute

Direct negotiation

- 9.2 If a Party wishes to resolve a dispute, it must give notice to the other Party of the existence of a dispute. The Parties must meet, in person or via teleconference, as soon as possible (but in any event no later than thirty (30) days after the receiving Party has received a dispute notice) to endeavour, in good faith, to resolve the dispute by direct negotiation.
- 9.3 If the Parties cannot resolve the dispute under clause 9.2, the Parties must, within fourteen (14) days, refer the dispute to their principal executive officers (or equivalent) who will endeavour, in good faith, to resolve the dispute by direct negotiation within a further thirty (30) days, or such other longer period as they may agree in writing between themselves.

Costs

- 9.4 Each Party will bear its own costs and expenses of complying with this clause 9.

10. NOTICES

How addressed and sent

- 10.1 Any notice given under this Agreement is only effective if it is in writing, and:
- (a) if given by the Licensee to the Licensor, addressed in accordance with:
 - (i) the Licensor's address details found on page 1; or
 - (ii) the details as notified to the Licensee by the Licensor from time to time;or
 - (b) if given by the Licensor to the Licensee, addressed in accordance with:
 - (i) the Licensee's address details found on page 1; or

- (ii) in accordance with the details as notified to the Licensor by the Licensee from time to time.

10.2 A notice must be signed by the person giving the notice and must be:

- (a) delivered by hand;
- (b) sent by pre-paid post;
- (c) transmitted electronically by facsimile transmission; or
- (d) transmitted electronically via email.

When deemed to be received

10.3 A notice is deemed to be received:

- (a) if delivered by hand – upon delivery at the relevant address;
- (b) if sent by post – upon delivery to the relevant address;
- (c) if transmitted electronically by facsimile – upon successful transmission to the addressee; or
- (d) if transmitted electronically via email – upon successful receipt by the addressee of the email.

10.4 A notice delivered, sent or transmitted:

- (a) after 5.00 pm on a business day; or
- (b) on a day that is not a business day,

is deemed to be received on the next business day.

11 GENERAL PROVISIONS

Variation

11.1 No variation of this Agreement is legally binding unless it is in writing and signed by both Parties.

Essential Terms

11.2 Clauses 3.3, 4.1, 6, 7 and 8.2 are essential terms without which the Licensor would not have entered into this Agreement.

Assignment and novation

11.3 The Licensee must not:

- (a) assign its rights under this Agreement; or
- (b) novate its rights and obligations under this Agreement,

without obtaining the prior written approval of the Licensor to do so.

Costs and expenses

11.4 Each Party must pay its own costs and expenses of negotiating, preparing, reviewing and executing this Agreement.

Counterparts

11.5 This Agreement may be executed in counterparts.

Entire agreement

10.6 This Agreement constitutes the entire agreement, and supersedes all previous agreements or understandings, between the Parties in connection with its subject matter.

Further action

11.7 Each Party must at its own cost and expense do everything reasonably necessary or desirable to give full effect to this Agreement and any transaction contemplated by it, including executing documents.

Severability

11.8 A term or condition, or part of a term or condition of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms and conditions, or parts of the terms and conditions of this Agreement shall continue in force.

Waiver

11.9 Waiver of any provision of, or right under, this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

Relationship

11.10 The Parties must not represent themselves, and must ensure that their employees, and officers do not represent themselves, as being an officer, employee or agent of the other Party, or as otherwise able to bind or represent the other Party.

11.11 This Agreement does not create a relationship of employment, an agency, a joint venture or a partnership between the Parties.

Governing law and jurisdiction

11.12 This Agreement is governed by the laws of Victoria, and each Party agrees to submit to the non-exclusive jurisdiction of the courts of Victoria.

Survival

11.13 The expiry or termination of this Agreement will not affect the continued operation of:

- (a) any accrued rights of a Party accrued prior to the date on which this Agreement ended; and
- (b) any provisions which by their nature survive this Agreement, and all clauses required to give effect to those clauses, including clause 7, 8 and 9.

SCHEDULE A

LIST OF SERVICE ORGANISATIONS

NAME	PHYSICAL ADDRESS

Style Guide

The Cognitive Impairment Identifier

Guidelines for Usage

Colour Palette



Pantone Cyan 100%



Pantone 2747

Size and Orientation

- The CII bedside alert required dimensions 120mm x 120mm
- Orientation - Dark blue (Pantone 2747) circle to be oriented at the top left when CII in place
- Thickness of plastic must be at least 1.7mm and of high-grade white plastic to allow cleaning and prevent deterioration of the image
- The Key Communication Points should be printed on the back of the CII
Font: Futura Bold Condensed Size: 14 point Colour: Black

Points to remember

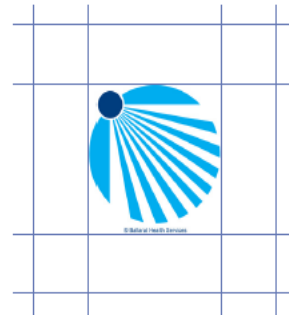
To protect the clarity and visual integrity of the logo, it has an exclusion zone. This must be a minimum of 33% of the overall width of the logo.

It must always appear on a white background.

No drop shadows or other embellishments.



© Ballarat Health Services



CII Location:

The CII (plastic identifier sign) must always be placed above the patient's bed in full view of all hospital staff. Positioning the CII at the bedside allows staff to modify their approach to communication and carer engagement.

Promotional Material:

The Registered Trademark symbol ® and the words Ballarat Health Services should be used on full form usage of the logo. On smaller applications it is acceptable to use the version with just the ® symbol.

Whilst it is preferred to always use the logo in its coloured form, for those occasions when the printed material can only be produced in black and white, the breakdown should be:



35% Black



100% Black

In conjunction with other logos:

Wherever possible, the CII logo should be given equal prominence with other logos.

Formats:

The CII logo is available in a number of digital file formats best suited for its intended use. This includes low resolution jpeg files suitable for emails, high resolution jpeg files for desktop publishing applications, and Adobe Illustrator files suitable for high quality signage and large format usage.

For further details: Cognition Clinical Nurse Consultant
Ballarat Health Services
Phone (03) 5320 3652
PO Box 577
Drummond Street North
Ballarat 3353



SIGNING PAGE

This Agreement is **SIGNED** as an agreement.

SIGNED for and on behalf of)
Grampians Health (39 089 584 391))
)
)

_____)
Date)

by:)
)

_____)
Name of signatory)

_____)
Signature)

)
)

_____)
Position of signatory)

in the presence of:)
)

)
)

_____)
Name of witness)

_____)
Signature of witness)

SIGNED for and on behalf of)
[INSERT NAME] ABN [INSERT ABN])
on:)
)

_____)
Date)

by:)
)

_____)
Name of signatory)

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Signature)

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Position of signatory)

in the presence of:)
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Name of witness)

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Signature of witness)