



## **Activity DataBase End User Licence Agreement (rev 2020)**

### **Property of Licensor**

Activity Database (ADB) was developed by the Secretary of State for Health acting through the Department of Health. ADB consists of software and an integral database.

You may obtain the use of a copy of ADB by downloading it from the Talon Solutions website.

The copyright, database rights and any other intellectual property rights in ADB that constitute this product are and remain the property of the Integra/Talon ("the Licensor"). You are licensed to use ADB only if you accept all of the terms and conditions set out below and have paid the relevant licence fee.

### **Licence Acceptance**

By accepting this Licence Agreement you indicate acceptance of the limited warranty and limitation of liability set out in this Agreement. Such acceptance is either on your own behalf or on behalf of any corporate entity which employs you or which you represent ('Corporate Licensee'). In this Licence Agreement, 'you' includes both the reader and any Corporate Licensee.

### **Licence Rejection**

If you do not accept these terms and conditions, you should immediately delete ADB from your computer and destroy all copies of ADB in any form and all other items which form part of ADB. Any money you paid to the Licensor for this licence may be refunded on production of your dated proof of payment of licence fees.

### **Other Agreements**

If you were a licensee to any previous version of ADB your licence to use that previous version is hereby revoked and is replaced by the terms of this licence which applies to your use of the current version of ADB.

## **Restrictions and Audit**

Your attention is drawn in particular to clause 2 of the Licence Agreement. Please note that this licence relates to only the number of users for whom payment has been made in accordance with Schedule 1. Clause 7 includes a limitation of the Licensor's liability to you.

## **Licence agreement and limited warranty**

### **1 Ownership of ADB**

All copyright, database rights, trademarks and any other intellectual property rights in ADB and all related documentation are the exclusive property of the Licensor. For the avoidance of doubt the Licensor shall retain such ownership and no transfer of ownership shall occur pursuant to the terms of this licence.

### **2 ADB Licence**

In consideration of and subject to you paying the applicable licence fees set out in Schedule 1, the Licensor grants to you a limited, revocable and non-exclusive licence to:

- 2.1 use ADB on any computer owned, leased and/or controlled by you or any member of your corporate group, PROVIDED THAT ADB may only be used by the number of users for whom licence fees have been paid in accordance with Schedule 1;
- 2.2 make copies of ADB solely for back-up, archival or other security purposes;
- 2.3 make use of the Support Service detailed in Schedule 2.

Where one licence is held, this may be installed only as a stand-alone licence on one machine. Where a licence holder holds two or more licences, the licences may be set up in a networked installation.

### **3 Licence restrictions**

3.1 You may not, nor may you permit others to:

- 3.1.1 use, copy, modify or transfer the whole or any part of ADB and any related documentation including any print-out, except as expressly provided for in this Licence;
- 3.1.2 translate, reverse engineer, decompile, disassemble, modify or create derivative works based on ADB, except as expressly permitted by this Agreement; or
- 3.1.3 vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in ADB.

3.2 You may not load ADB into more computers than the number of users licensed in accordance with clause 2 above at the same time. If you wish to transfer or access ADB onto or from an additional computer, you must either

erase ADB from the first hard drive before you install it onto a second hard drive or purchase an additional licence.

#### **4 No transfer**

4.1 The use of ADB is licensed only to you. You may not rent, lease, sub-license, sell, assign, pledge, transfer, allow access to or otherwise dispose of ADB to any other party, on a temporary or permanent basis, without the prior written consent of the Licensor. ADB data may not be used in the software of any third-party vendor without the prior written consent of the Licensor.

4.2 If you transfer possession of any copy of ADB to another party or allow another party improper access to ADB your licence is automatically terminated.

#### **5 Undertakings**

You undertake:

5.1 to ensure that, prior to use of ADB by your employees or agents, all such parties are notified of the terms of the licence as recorded in this Agreement;

5.2 to hold ADB, all datasheets, drawings, specifications, data and all other related information relating to ADB strictly confidential and not at any time, during this Licence or after its expiry, to disclose the same, whether directly or indirectly, to any other party without the Licensor's prior written consent;

5.3 to pay all licence fees due to the Licensor on or before the due date of payment. Failure to pay by the due date automatically revokes your licence agreement.

5.4 to refrain from including in any project involving the use of ADB any restriction on the version of ADB that should be used in connection with such project.

#### **6 Limited warranty**

6.1 The Licensor warrants that ADB will perform substantially in accordance with its accompanying documentation provided that ADB is properly used with the computer and the operating system for which it was designed and that the documentation correctly describes the operation of ADB in all material respects.

6.2 The Licensor confirms that reasonable care has been taken to ensure that all information contained in ADB is accurate. However, the accuracy of such data cannot be guaranteed and the Licensor will not be liable for any costs, claims, actions or demands arising from any loss or damage caused as a result of any inaccuracy of the data.

6.3 The Licensor does not warrant that the use of ADB will be uninterrupted or error-free.

6.4 You accept responsibility for the selection of ADB to achieve its intended results and acknowledge that ADB has not been developed to meet your individual requirements.

6.5 The Licensor shall not be liable under the warranty provided under clause 6.1 above if ADB

fails to operate in accordance with the said warranty after any modification, variation or addition to ADB not performed by the Licensor or relation to any abuse, corruption or incorrect use of ADB, including use of ADB with equipment or other software with which it is incompatible.

## **7 Limitation and Exclusion of liability**

### 7.1 Except to the extent set out in 7.2

(a) the Licensor shall not in any circumstances have any liability for any losses or damages which may be suffered by You (or any person claiming under or through You), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage, even if the Supplier was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill;
- (vi) loss or corruption of data,

(b) the total liability of the Licensor, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the licence fee You paid as set out in Schedule 1; and

(c) You agree that, in entering into this licence, either you did not rely on any representations (whether written or oral) of any kind or of any person other

that those expressly set out in this licence or that You shall have no remedy in respect of such representations and (in either case) the Licensor shall have no liability in any circumstances otherwise than in accordance with the express terms of this licence.

7.2 The exclusions in [clause 7.1](#) shall apply to the fullest extent permissible at law, but the Licensor does not exclude liability for:

- (a) death or personal injury caused by the negligence of the Licensor, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which may not be excluded by law.

## **8 Waiver**

**No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.**

## **9 Your statutory rights**

This licence gives you specific legal rights and you may also have other rights that vary from country to country. Some jurisdictions do not allow the exclusion of implied warranties, or certain kinds of limitations or exclusions of liability, so the above limitations and exclusions may not apply to you. Other jurisdictions allow limitations and exclusions subject to certain conditions. In such a case the above limitations and exclusions shall apply to the fullest extent permitted by the laws of such applicable jurisdictions. If any part of the above limitations or exclusions is held to be void or unenforceable, such part shall be deemed to be deleted from this Agreement and the remainder of the limitation or exclusion shall continue in full force and effect. Any rights that you may have as a consumer (i.e. a purchaser for private as opposed to business, academic or government use) are not affected.

## **10 Term**

The licence granted by this Agreement is effective for a term of twelve (12) months and is thereafter renewable for such further term(s) as may be mutually agreed in writing. After expiry you may terminate the licence (subject to your obligations under any renewed term) by deleting any copies of ADB installed or made under the terms of clause 2.2 above together with all copies in any other form.

## 11 Export

You will comply with all applicable laws, rules, and regulations governing export of goods and information, including the laws of the countries in which ADB was created. In particular, you will not export or re-export, directly or indirectly, separately or as a part of a system, ADB or other information relating thereto to any country for which an export licence or other approval is required, without first obtaining such licence or other approval.

## 12 General

**12.1 Right of Audit:** you agree that the Licensor or an agent nominated by the Licensor shall have the right, after supplying undertakings as to confidentiality, to audit any computer system on which ADB is installed in order to verify compliance with this licence. The costs of such audit shall be borne by the Licensor except where the audit identifies that you have been using ADB other than in accordance with the licences granted to you. In such case the costs of the audit shall be payable by you and the Licensor may take such further action in respect of the misuse as it deems appropriate.

12.2 This Agreement shall be interpreted in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

12.3 This Agreement constitutes the complete and exclusive statement of the Agreement between the Licensor and you with respect to the subject matter of this Agreement and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between us relating to that subject matter.

12.4 Any clause in this Agreement that is found to be invalid or unenforceable shall be deemed deleted and the remainder of this Agreement shall not be affected by that deletion.

12.5 Failure or neglect by either party to exercise any of its rights or remedies under this Agreement will not be construed as a waiver of that party's rights nor in any way affect the validity of the whole or part of this Agreement nor prejudice that party's right to take subsequent action.

12.6 This Agreement is personal to the licence holder and the licence holder may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the Licensor's prior written consent.

## **Schedule 1**

### **Entitlements**

A licence holder may be offered the following:

- ADB, including updates issued during the period of the licence
- support in accordance with the terms set out in the licence agreement (see Schedule 2 for the essential provisions)

New user or bespoke training may be arranged by emailing [support@talonsolutions.co.uk](mailto:support@talonsolutions.co.uk). New users are required to undertake initial training within 30 days of activating a new licence for the first time.

## **Schedule 2**

### **Support for ADB**

1. The Support Service runs for the period of your Licence Agreement.
2. The Support Service will be provided to new Licensees for the first 30 days after taking out a licence. After the first 30 days a Support Service will not be provided to Licensees unless they have received training.
3. The Support Service will be provided between the hours of 10.00 and 16.00 hours, Monday to Friday, excluding public holidays in England. The Licensor is not obliged to do any work outside of these times but, if it does so at the Licensee's request, it will be entitled to charge the Licensee at the Licensor's prevailing charges for special service hours.
4. The Support Service will comprise the Licensor's reasonable efforts to correct any errors in ADB notified to it by the Licensee which prevent ADB functioning in accordance with the user guide included in the documentation. The Licensor cannot guarantee that corrections will be provided within any specific timescale but where the Licensor estimates that any correction will take more than 3 working days it will arrange, where reasonably practicable, a workaround or patch.
5. Notification of errors will be made by the Licensee by:
  - i. Electronic mail; or
  - ii. Telephone.
6. The Licensee will promptly provide the Licensor with all information required by it for the purpose of investigating diagnosing or correcting of any reported error. The Licensor will not be liable for failure to provide, or any delay or error in providing, the Support Service resulting from the Licensee's failure or delay in complying with this provision.
7. The Support Service includes advice on day-to-day enquiries in respect of understanding and operating ADB to the extent that these are not covered in the documentation. Support will only be given in this way where it can be provided by means of a telephone call of reasonable duration and in any case not normally exceeding 20 minutes.
8. The Licensor will notify the Licensee of any new release of ADB as and when generally available.
9. No Support Service of any description will be provided in respect of any error or problem:
  - i. resulting from any modifications to ADB by any person other than the Licensor;
  - ii. in or attributable to the equipment or other equipment and programs used in conjunction with ADB or to any other reason external to ADB;
  - iii. in any previous release of ADB being operated by the Licensee for longer than 3 months following the offer of the latest release. In cases where the previous release of ADB is still in use the Support Service will be provided for the period remaining of the licence for the previous version, or to the time of transfer for the new version, whichever is the shorter.
  - iv. to the extent that the Licensor provides any service when it is not obliged to do so by this Agreement, it may charge for all costs and expenses incurred in so doing at its standard charges for the time being in force.