

HLQ LICENCE AGREEMENT

Information Schedule			
Parties			
Swinburne	SWINBURNE UNIVERSITY OF TECHNOLOGY (ABN: 13 628 586 699) a body politic and corporate established under the Swinburne University of Technology Act 2010 (Vic) of John Street, Hawthorn in the State of Victoria, Australia		
Licensee	The Party identified in Item 1 below		
Background			
<p>A. Swinburne is the owner of the Intellectual Property Rights in the Licensed Material.</p> <p>B. The Licensee seeks a licence of the Licensed Material.</p> <p>C. Swinburne has agreed to grant the licence sought on the basis set out in this Agreement.</p>			
Date			
Date of Agreement	means the date on which the last of the parties signs this Agreement		
Details			
Item No	Identifier	Detail	
1	Licensee	Name:	_____
		Address, including institution:	_____
		Authorised Officer (signatory)	_____
		Email:	_____
		Phone:	_____
	License number	L2405	
2	Licensed Material	means any and all statutory and other proprietary rights in respect of the Questionnaire recognised at common law, or laws relating to Intellectual Property Rights.	
3	Commencement Date	means 14 days following the Date of Agreement.	
4	Term	means the duration identified in Item 4 of the Schedule	

5	Licence Fee	Means, where applicable, the fee identified in Item 2 of the Schedule and payable by the Licensee during the Term.
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Execution

Swinburne	<p>SIGNED for and on behalf of) SWINBURNE UNIVERSITY OF) TECHNOLOGY)</p> <p>Date signed:/...../.....)</p>	<p>..... Name of signatory</p> <p>..... Title of signatory</p>
Licensee	<p>SIGNED for and on behalf of) LICENSEE)</p> <p>Date signed:/...../.....)</p>	<p>..... Name of signatory</p> <p>..... Title of signatory</p>

General Terms

This section of the Agreement sets out the General Terms applicable to this Questionnaire Licence Agreement. The signed Information Schedule constitutes an acceptance by the Parties of these General Terms and all other parts of this Agreement.

- 1. Grant of Licence**

Subject to the limitations set forth in this Agreement and in consideration of mutual promises set out herein, Swinburne hereby grants to Licensee a non- exclusive licence (**Licence**), to use the Licensed Materials for the Purpose in the Territory during the Term to the extent permitted by law.

Copyright Rights and associated technology for the same purposes as clause 2.1.1.
- 2. Reserved Rights**
 - 2.1** Swinburne expressly reserves the right to:
 - 2.1.1** use Swinburne Intellectual Property Rights and associated technology for educational and research purposes, clinical research, and research sponsored by commercial entities, and
 - 2.1.2** allow other non-profit research institutions to use Swinburne
 - 2.2** Except as set forth in this Agreement, Licensee shall not:
 - 2.2.1** remove any copyright or other proprietary notices on or in any copies of the Licensed Materials; or
 - 2.2.2** modify, adapt, or translate the Licensed Materials.
- 3. Sub-Licence**

The Licensee may not sub-license any rights granted under this Agreement without the prior written consent of Swinburne.
- 4. Permitted Reproduction and Adaptations**

- 4.1** The Licensee is permitted to reproduce, copy, or communicate the Questionnaire online, provided The Licensee ensures that such online access to the Questionnaire is a password protected online survey instrument. Furthermore, if indicated in **Item 6** of the **Schedule**, Swinburne grants to the Licensee the right to use the Questionnaire to prepare and produce a cultural adaptation and/or translation of the Questionnaire into the language identified in **Item 6** of the **Schedule (Translation)** subject to the following conditions:
- 4.1.1** Licensee must undertake the cultural adaptation and/or translation of the Questionnaire only in accordance with the Translation Integrity Procedure attached as **Annexure B**;
 - 4.1.2** Licensee must provide a copy of the forward and backward translations to Swinburne for approval at least 60 days before Licensee proposes to administer the Questionnaire (**Administration Date**) to allow sufficient time for review of documents by Swinburne, preparation of the final translation and local validation of the Questionnaire, and finalisation as described in **Annexure B**.
 - 4.1.3** Swinburne will own all Intellectual Property rights in the Translation and the Licensee assigns such rights to Swinburne upon their creation.
 - 4.1.4** If with Swinburne’s prior written consent, the Licensee engages a third party to prepare the Translation, the Licensee must ensure that such third party assign to Swinburne in writing all Intellectual Property rights in the Translation. Swinburne is entitled to approve the contents of the agreement between the Licensee and third party translator as a condition of providing its consent pursuant to this **clause 4.1.4**.
- 4.2** The Licensee acknowledges that it may not disclose, use, reproduce, communicate or exploit or permit such disclosure, use, reproduction, communication or exploitation of the Questionnaire in any way other than for the Purpose, or in any jurisdiction other than the Territory, unless otherwise agreed in writing with Swinburne. Notwithstanding the foregoing, the Licensee may publicly disclose research results. The publicly disclosed research results should include information on whether the Ophelia process (attached as **Annexure A**) was used in its entirety or not.
- 4.3** The Licensee agrees that if any adaptations or modifications are made to the Questionnaire by or on behalf of the Licensee or as a consequence of the Licensee’s use of the Questionnaire (including cultural adaptations and/or translations as set out in **clause 4.1**), all Intellectual Property in such modifications must be assigned to Swinburne, and the Licensee will do all things reasonably necessary (including the execution of documentation) to effect such assignment upon request by Swinburne.
- 5. Licence Fee**
- 5.1** The Licensee will pay to Swinburne the Licence Fee at the times and in the manner set out in **Item 2** of the **Schedule** during the Term.
 - 5.2** Except as set forth in **clause 5.3**, any Licence Fee specified in **Item 2** of the **Schedule** is payable upfront in a single payment, which must be made on or before the Commencement Date.
 - 5.3** By agreement with Swinburne, the Licensee may pay the Licence Fee payable for each year of the Term annually in advance in each year of the Term. The first payment must be paid on or before the Commencement Date, and thereafter must be paid on or before each anniversary date of the Commencement Date during the Term.
 - 5.4** The Licence Fee is exclusive of GST. If the Licensee is an Australian entity, then GST is imposed on any supply made under this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on the taxable supply. Subject to the recipient receiving a tax invoice of the supply, payment of the GST must be made at the same time as payment for the taxable supply.
 - 5.5** Swinburne reserves the right to revise the Licence Fee for:
 - 5.5.1** any use of the Questionnaire in excess of the Number of Authorised Implementations specified under **Item 3** (Approved Purpose) in the **Schedule**; or
 - 5.5.2** any subsequent extension of this Agreement.
- 6. Obligations of Licensee**

- 6.1 The Licensee undertakes to use the Licensed Materials only in accordance with the License.
- 6.2 The Licensee must ensure that the Questionnaire is only used for the Purpose, and unless permission is granted in **Item 6** of the **Schedule**, not modify or translate the Questionnaire, without the express written approval of Swinburne.
- 6.3 The Licensee will itself administer the Questionnaire. The Licensee acknowledges and agrees that it must implement the Questionnaire in a manner that ensures Swinburne may readily review the monitoring, calculation and reporting by the Licensee of usage of the Questionnaire.
- 6.4 Other than as provided in clause 4.1, the Licensee must not, and must not allow or cause any other person to:
 - 6.4.1 reproduce, communicate or copy the Questionnaire by any means or in any form;
 - 6.4.2 give, license, sub-license, lease, assign, transfer, distribute, disseminate, disclose, or publish the Questionnaire in any form to any other person or attempt to do any of these acts without the written authority of Swinburne;
 - 6.4.3 reverse engineer the Questionnaire; or
 - 6.4.4 alter, change, remove or obscure any notices or other indications (including but not limited to copyright notices) as to ownership of the Questionnaire.
- 6.5 The Questionnaire consists of separate individual scales that measure separate aspects of health literacy. The Licensee may use the individual scales as long as the Licensee ensures that each selected scale contains all the questions within that scale and the questions are in the exact order as in the Questionnaire. The Licensee must ensure the scales are scored as prescribed to ensure interpretations of the data are consistent with the development and psychometric studies. The Licensee undertakes to ensure that it will not reveal or disclose the individual questionnaire items in any publications made by the Licensee.
- 6.6 Except as required by applicable laws, government directives and/or trade agreements, the Licensee undertakes to keep

secret and protect the confidential nature of all information and documentation provided to it, learnt by it or to which it has or has had access, arising out of or in connection with any aspect of the negotiation or performance of this Agreement including, without limitation, the terms of this Agreement, the Licence Fee, and the Questionnaire (“Confidential Information”). To this end the Licensee must not use, disclose or in any way communicate to any other person the details of any Confidential Information without the prior written consent of Swinburne.

7. Warranties and Limitation of Liability

- 7.1 The Licensee agrees that, to the extent permitted by Australian law, all warranties (including implied warranties), other than express warranties given in this Agreement, in respect of the subject matter of this Agreement are excluded and of no effect. Where the exclusion of a given implied warranty would be void or unenforceable, the Licensee agrees that Swinburne's liability for a breach of such warranty will be limited, at Swinburne's discretion to the re-supply of the Questionnaire or the payment of the cost of the re-supply of the Questionnaire.
- 7.2 For the avoidance of doubt, the Licensee agrees that it uses the Questionnaire entirely at its own risk, and Swinburne does not warrant that the Questionnaire is suitable for any particular purpose, or that the Questionnaire will function or perform in a particular manner, or that the Licensee will derive any particular result or outcome from its use of the Questionnaire.
- 7.3 The Licensee agrees that Swinburne's aggregate liability for all causes of action against the Licensee, whether contractual, tortious or otherwise, will not exceed the aggregate of Licence Fees paid by the Licensee as at the date on which the first such cause of action arose. Neither Party will be liable to the Licensee for any indirect or consequential losses, damages, costs and/or expenses incurred or sustained by the other Party under, or as a result of exercising rights in, this Agreement (including as a result of any negligence by such Party), and in particular will not be liable for any loss of revenue or profits, loss of data, loss of goodwill or failure to realise an anticipated saving or benefit.
- 7.4 The Licensee agrees to indemnify Swinburne from and against liability and all loss and damage of any kind whatsoever caused by any claim or action against Swinburne to the extent arising directly out of any breach by the

Licensee of the terms and conditions of this Agreement.

8. Termination by Swinburne

- 8.1** If Licensee violates or fails to perform any material term of this Agreement, then Swinburne may give written notice of the default (**Notice of Default**) to Licensee. If Licensee does not remedy the default within thirty (30) days after the effective date of the Notice of Default (**Period to Cure**), then Swinburne may terminate this Agreement and the Licence by a second written notice (**Notice of Termination**) to Licensee.
- 8.2** If Swinburne sends a Notice of Termination to Licensee, then this Agreement automatically terminates on the date specified in the Notice of Termination.
- 8.3** Termination does not relieve Licensee of its obligation to pay any monies (if any) owed at the time of the date of termination and does not impair any accrued right of Swinburne.
- 8.4** Upon termination of this Agreement, all licenses granted under this Agreement will terminate, and the Licensee must immediately cease all use of the Questionnaire.

9. Termination By Licensee

- 9.1** Licensee has the right at any time to terminate this Agreement by giving sixty (60) days written notice to Swinburne.
- 9.2** Any termination in accordance with clause 9.1 does not:
- 9.2.1** relieve the Licensee of any obligation or liability accrued prior to termination.
 - 9.2.2** rescind anything done by Licensee or any payments made to Swinburne prior to the date of termination.
 - 9.2.3** Termination does not affect in any manner any rights of Swinburne arising under this Agreement prior to termination.

10. General

10.1 Interpretation

The following rules apply unless the context requires otherwise:

- 10.1.1** words denoting the singular include the plural and vice versa;
- 10.1.2** words denoting natural persons include corporations and vice versa;
- 10.1.3** words denoting any gender include all genders;

10.1.4 headings are for convenience only and do not affect interpretation;

10.1.5 reference to any Party to this Agreement or any other relevant agreement or document includes that Party's successors and permitted assigns;

10.1.6 reference to any document or agreement is deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;

10.1.7 references to any legislation or to any provision of any legislation include any modification or re-enactment of such legislation or any legislative provisions substituted for, and all legislation and statutory instruments issued under, such legislation; and

10.1.8 any reference to "GST", "recipient", "supplier", "supply", "tax invoice" and "taxable supply" has the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

10.2 No partnerships: This Agreement does not create a partnership, agency, fiduciary or other relationship, except the relationship of contracting parties. No Party is liable for the acts or omission of any other Party, save as set out in this Agreement.

10.3 Assignment: The Licensee must not assign, sub-contract, or transfer any of its rights or obligations under this Agreement to any person without the prior written consent of Swinburne. Such consent must not be unreasonably withheld.

10.4 Severability: If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected and all other provisions will remain in full force and effect.

10.5 Governing Law: This Agreement shall be governed by the laws of Victoria, Australia. Each Party submits to the non-exclusive jurisdiction of the courts of that place.

10.6 Several Obligations: Each Party's obligations and liabilities under this Agreement are several and not joint or joint and several.

10.7 No Waiver: Any failure by a Party to compel performance by the other Party of any of the terms and conditions of this Agreement will not constitute a waiver of those terms or conditions or diminish the rights arising from their breach.

10.8 Counterparts: This Agreement may be executed in any number of counterparts; each counterpart is an original but the counterparts together are one and the same agreement. This Agreement is binding on the Parties on the exchange of counterparts. A copy of a counterpart sent by electronic transmission –

10.8.1 must be treated as an original counterpart;

10.8.2 is sufficient evidence of the execution of the original; and

10.8.3 may be produced in evidence for all purposes in place of the original.

10.9 Signatories: 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.

10.10 Variation: This Agreement may only be varied in writing, signed by all Parties.

10.11 No representation: A Party shall not represent that another Party or any of their staff in any way endorse, support or approve of, any products, services, Intellectual Property or business of the representing party unless that other Party has given its express written consent to such representation.

10.12 Entire Understanding: This Agreement-

10.12.1 is the entire understanding between the Parties on everything connected with the subject matter of this Agreement; and

10.12.2 supersedes any prior agreement or understanding on anything connected with that subject matter.

10.13 Contra Proferentem: This Agreement or any part of this Agreement is not to be construed

10.14 against a Party merely because that Party was responsible for preparing it.

10.15 Execution: This Agreement is null and void unless it is executed by all parties.

11.2 must be delivered to the intended recipient by post or by hand or fax or email to the address or fax number or email address set out in the Information Schedule;

11.3 will be taken to be duly given or made:

11.3.1 in the case of delivery in person, when delivered;

11.3.2 in the case of delivery by post, five Business Days after the date of posting unless it has been received earlier;

11.3.3 in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine; and

11.3.4 if transmitted electronically, upon actual receipt by the addressee provided that the sender does not receive notification of invalid email delivery address or other transmission error. In the case where the sender receives a transmission error report, the sender must re-send the notice by one of the other means by hand, post or fax;

but if the result is that a notice would be taken to be given or made on a day which is not a Business Day or is later than 4.00pm (local time), it will be taken to have been duly given or made on the next Business Day.

12. Extension and renewal of licence

12.1 Term of the Licence may only be extended by written request to ghe-licences@swin.edu.au, within 10 Business Days before expiry of the licence Term

12.2 Licensee must provide a written summary of the project including but not limited to information on progress of the project and reasons for extension and any other information requested by Swinburne

12.3 Upon approval, the licensee will receive a letter of confirmation of extension.

12.4 Request for extension exceeding two years will require a new licence that will incur additional administration and services charge(s).

11. Notices

Any notice given under this Agreement:

11.1 must be in writing and signed by a person authorised by the sender;

Glossary

Agreement	means this agreement including this Glossary, the Information Schedule, the General Terms, all Schedules and Annexures to this agreement, and any amendment to it in writing.
Annexure	means an annexure to this Agreement.
Business Day	means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
General Terms	means the general terms described as such in this Agreement.
Glossary	means this glossary.
Information Schedule	means the Schedule at the start of this Agreement that details the key information relevant to this Agreement.
Intellectual Property Rights	means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, design rights, circuit layouts and plant varieties, know-how and all rights and interests of a like nature, together with any and all documentation relating to such rights and interests for the intellectual property specified in Item 3 of the Information Schedule.
Item	means an item in the Information Schedule.
Licence	has the meaning set forth in clause 1 of this Agreement.
Parties	means the parties to this Agreement and their respective successors and permitted assigns, and “Party” means any one of them.
Purpose	means the manner of use permitted under this License specified in Item 3 of the Schedule.
Questionnaire	means the Health Literacy Questionnaire as specified in Item 1 of the Schedule.
Schedule	means a schedule to this Agreement.
Territory	means the territorial limits of this Licence specified in Item 5 of the Schedule.

Schedule

Licence Number:

Item 1 – The Questionnaire	HLQ – the Health Literacy Questionnaire developed by Richard Osborne, Rachelle Buchbinder, Gerald Elsworth and Roy Batterham and more fully described in “The grounded psychometric development and initial validation of the Health Literacy Questionnaire (HLQ)” <i>BMC Public Health</i> 2013, 13:658.
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Item 2 – Licence Fee	
	Not applicable

Item 3 – Approved Purpose	
Purpose	Use of the HLQ in the English language for the project “insert name of project”
Number of administrations of HLQ	“insert number”

Item 4 – Duration of Licence	
Term	3 years from Commencement Date

Item 5 – Territory	
Territory	Insert the country(ies) where the questionnaire will be administered

Item 6 – Cultural Adaptation and/or Translation Rights	
	<i>The Licensee does not have a right to adapt the Questionnaire</i>
Language of HLQ required	Insert languages required