



LICENCE AGREEMENT

PARTIES

UNIVERSITY OF WOLLONGONG (ABN 61 060 567 686) of Northfields Avenue, Wollongong NSW 2522 ('**University**')
AND THE LICENSEE NAMED IN ITEM 1 OF THE SCHEDULE ('**Licensee**')

RECITALS

- A. The University has developed Software that the Licensee wishes to use.
- B. The University has agreed to grant a license to the Licensee to use the Software pursuant to the terms of this agreement.

TERMS OF AGREEMENT

1. DEFINITIONS

- 1.1. In this agreement, unless the contrary intention appears:

"Commencement Date" means the commencement date set out in Item 7 of the Schedule;

"Delivery Date" means the date set out in Item 6 of the Schedule;

"Intellectual Property Rights" means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with:

- (a) any confidential information;
- (b) copyright (including future copyright and rights in the nature of or analogous to copyright);
- (c) inventions (including patents);
- (d) trade marks, service marks; and
- (e) designs, circuit layouts,

whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions;

"Licence Fee" means the fee payable by the Licensee to the University, as specified in Item 10 of the Schedule.

"Specified Purpose" means the purpose set out in Item 4 of the Schedule.

"Software" means the program titled "RRR Online" dealing with equity, diversity and racial issues for students at universities, as described in Item 3 of the Schedule.

"Territory" means the territory set out in Item 8 of the Schedule;

"Term" means the Term set out in Item 7 of the Schedule;

"User" means those permitted to use the Software as specified in Item 5 of the Schedule.

2. LICENCE

- 1.2. Subject to receipt of the Licence Fee, the University grants to the Licensee for the Term a non-exclusive, Territory wide, licence to use the Software for the Specified Purpose on the terms set out in this agreement.

- 1.3. The licence in Clause 1.2 has the scope set out in Item 9 of the Schedule and may only be used by the Users.

3. SOFTWARE

- 1.4. The University will deliver to the Licensee by the Delivery Date the Software in the format set out in Item 3(b) of the Schedule.

- 1.5. The Licensee acknowledges that the Licence does not include provision of any training, software support, maintenance or enhancement work to the Licensee in relation to the Software.

4. FEES

- 1.6. Upon execution of this agreement, the University will provide to the Licensee an invoice for the Licence Fee.

- 1.7. The Licensee must pay the Licence Fee under Clause 1.6 to the University within 30 days of the date of the invoice.

- 1.8. The University acknowledges that other than the Licence Fee, the Licensee will not be required to pay any additional fees during the Term of this agreement.

5. LICENSEE'S OBLIGATIONS

- 1.9. The Licensee must:
- (a) not reverse engineer, decompile or disassemble the Software;
 - (b) other than as permitted under this agreement, not rent lease or hire out the Software or make it available to any third party; or



(c) not use the Software other than as expressly permitted by this agreement.

1.10. The Licensee may only customise and modify the Software to the extent of customising and modifying the:

- (a) introductory text;
- (b) database interface; and
- (c) footer links.

6. INTELLECTUAL PROPERTY

1.11. All Intellectual Property Rights in the Software, except those specified in Clause 1.12, belong to the University.

1.12. The Intellectual Property Rights in any modifications made pursuant to Clause 1.10 will vest in the Licensee on creation.

7. TRANSFER OF LICENCE

1.13. This licence is personal to the Licensee and the Licensee must not transfer or assign this licence.

1.14. The Licensee is not permitted to grant any sub-licences to the Software.

8. WARRANTIES AND EXCLUSIONS

1.15. General Warranties

Each party warrants that:

- (a) it has authority to enter and to perform its obligations under this agreement;
- (b) it has the ability to perform its obligations under this agreement; and
- (c) it is authorised by all necessary government and other agencies and authorities to perform its obligations under this agreement and will continue to be authorised to perform this agreement.

1.16. Third Party Intellectual Property Rights

(a) The University warrants to the best of its knowledge at the time of entering this agreement that the Software will not infringe the Intellectual Property Rights of any third party.

(b) The University's liability for breach of the warranty in Clause 1.16(a) is limited, at the option of the University, to:

- (i) modifying the Software to remove any infringement;
- (ii) obtaining a licence from the third party for the Licensee to continue using the software; or
- (iii) refunding the licence fee.

1.17. No Further Warranties

Each party acknowledges that:

- (a) To the extent permitted by law, except as otherwise set out in this agreement, the University makes no warranties in relation to the Software;
- (b) The University has not made nor has any person on behalf of the University made any term, warranty, undertaking or understanding that is not expressly set out in this agreement.

1.18. Exclusions

Subject to clauses 8.2 and 8.5, each party acknowledges that the University's liability, whether in breach of contract, negligence or otherwise, in any way connected with this agreement or the Software, is:

- (a) excluded, insofar as liability for loss of profits, loss of revenue, loss of goodwill and for special, indirect, consequential and punitive damages are concerned; and
- (b) limited for all claims in aggregate to the Licence Fee paid.

1.19. Legislative Restrictions

Where legislation implies into this agreement any condition or warranty, and that legislation prohibits a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this agreement. The liability of the University for any breach of any such condition or warranty shall be limited to the replacement of the Software.

9. INDEMNITY

1.20. The Licensee acknowledges that it uses the Software and any results of the Software at its own risk.

1.21. The Licensee will at all times indemnify and keep indemnified the University its officers, employees and agents (in this Clause referred to as "those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of, in connection with or in respect of:

- (a) any use of the Software by the Licensee; and
- (b) any breach of this agreement by the Licensee.

10. NO UNAUTHORISED COPYING

1.22. The Licensee may copy the Software for internal purposes but only as necessary to achieve the Specified Purpose.

1.23. The Licensee will not copy the Software except to the extent allowed in Clause 1.22.



11. SOFTWARE UPDATES

The Licensee is not entitled to any Software improvements or updates by the University under this agreement but may enter into further negotiations with the University to obtain the improvements.

12. RESPONSIBILITY FOR EMPLOYEES, AGENTS ETC

The Licensee must ensure that its employees, agents, contractors and Users comply with the terms of this agreement.

13. TERM AND TERMINATION

1.24. This agreement will commence on the Commencement Date and will continue for the Term unless terminated in accordance with this agreement.

1.25. If the Licensee is in breach of this agreement, the University may give the Licensee a notice:

- (a) specifying the breach; and
- (b) requiring that party to rectify the breach within 10 Business Days of the date the party received the notice.

1.26. The University may terminate the agreement if, after the expiry of the notice referred to in Clause 1.25, the Licensee has not rectified the breach specified in the notice.

14. EFFECT OF TERMINATION

1.27. The parties agree that upon termination of this agreement, the Licensee:

- (a) is no longer licensed to use the Software;
- (b) will not use, and will ensure that its Users do not use, the Software;
- (c) must return the Software to the University;
- (d) must remove all copies of the Software from the Licensee's systems.

15. GENERAL

1.28. **Accrued Rights** - The termination of this agreement is without prejudice to any rights which have accrued to a party before the date of termination.

1.29. **Relationship of the Parties** - This agreement does not create any partnership, joint venture or agency relationship between the parties. The Licensee may not enter into any agreements or incur any liabilities on behalf of the University and may not represent to any person that it has any authority to do so.

1.30. Notices

- (a) A notice under this agreement will be in writing and sent to that party's address as specified in the Schedule, or

as notified to the other party from time to time.

(b) A notice may be served by giving it to the other party personally, by posting it by security post or by faxing it.

(c) Service shall be effective:

(i) if given personally, when the notice is received by the receiving party;

(ii) if posted, three days after the notice was placed in the post;

(iii) if faxed, when the fax was received by the receiving party.

1.31. **Enforceability** - Any clause or part of a clause of this agreement which is ineffective in any jurisdiction is ineffective only to that extent in that jurisdiction.

1.32. **Severance of Ineffective Parts** - Where any clause or part of that clause is ineffective it may be severed without affecting any other part of this agreement.

1.33. **Waiver** - No right under this agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right. A waiver by one party under this clause 15.6 does not prejudice its rights in respect of any subsequent breach of this agreement by the other party. A party does not waive its rights under this agreement because it grants an extension or forbearance to the other party.

1.34. **Variation** - A variation of this agreement must be in writing and signed by the parties.

1.35. **Assignment** - The Licensee may not assign its rights or obligations under this agreement.

1.36. **Any Further Steps** - Each party will do all things and execute all further documents necessary to give full effect to this agreement.

1.37. **Entire agreements** - This agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

1.38. **Counterparts** - This agreement may be executed in any number of counterparts.

1.39. **Survival** - The rights and obligations under clauses 5 (Licensee Obligations), 7 (Transfer of Licence), 1.14 (Warranties), 1.19 (Indemnity), 10, (No Unauthorised Copying), 12 (Responsibility for Employees, Agents etc), 14 (Effect of Termination) and 15 (General) survive termination of this agreement.

1.40. **Legal Advice** - Each party acknowledges that in relation to this agreement it has received legal advice or has had the opportunity of obtaining legal advice.

1.41. **Costs, Stamp Duty and Other Taxes** - Each party will bear its own costs and expenses in



relation to the negotiation, preparation, execution, delivery and completion of this agreement and any other related documentation. The Licensee will pay all stamp duty, taxes and other governmental charges payable or assessed on this agreement and any other

related documentation.

1.42. Governing Law and Jurisdiction - This agreement is governed by the laws of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the New South Wales.

Executed as an agreement by the parties

Signed for and on behalf of the **University of Wollongong** by

.....
Name

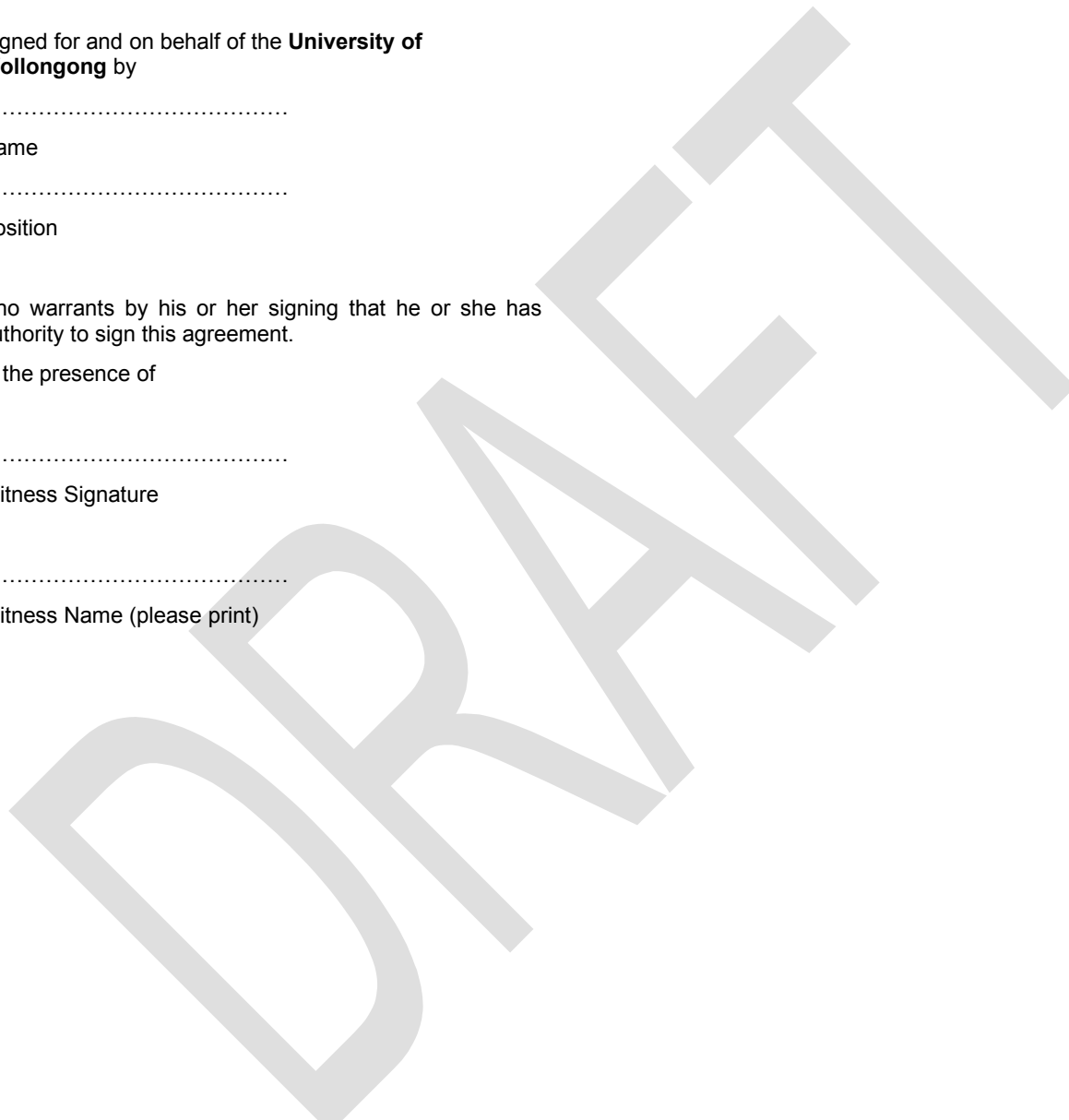
.....
Position

who warrants by his or her signing that he or she has authority to sign this agreement.

in the presence of

.....
Witness Signature

.....
Witness Name (please print)





Signed for and on behalf of the **Licensee** by

.....

Name

.....

Position

who warrants by his or her signing that he or she has authority to sign this agreement.

in the presence of

.....

Witness Signature

.....

Witness Name (please print)

DRAFT

SCHEDULE

1. Licensee Details

- (a) Name of Licensee: [INSERT LEGAL NAME OF LICENSEE]
- (b) ABN of Licensee: [INSERT ABN OF LICENSEE]
- (c) Address of Licensee: [INSERT STREET ADDRESS OF LICENSEE]
- (d) Contact Details of Licensee: [INSERT PERSON TO CONTACT AT LICENSEE, INCLUDING NAME, POSITION, PHONE, FAX]

2. University Contact

- (e) [name]
- (f) [position]
- (g) phone number
- (h) fax number

3. Software

- (a) Description: [INSERT DESCRIPTION OF PROGRAM]
- (b) Format for delivery: [INSERT FORMAT OF DELIVERY ie. disk]

4. Specified Purpose

[INSERT DESCRIPTION OF PROGRAM] (eg - Teaching students about issues relating to equity, diversity and race on campus)

5. Users

Only enrolled students at the Licensee's Australian campuses may use the Software.

6. Delivery Date

[INSERT DATE OF DELIVERY]

7. Term

Commencement Date: Date of Last Signature of this agreement

Completion Date: 20 years from the Commencement Date

8. Territory

Australia only.

9. Type of licence - Non-Exclusive

The Licensee acknowledges and accepts that the rights granted under this agreement are non-exclusive and do not prevent the University or any other third party from licensing the Software in the Territory during the currency of this agreement for any purpose in any format.

10. Licence Fees

AU\$10,000 plus GST