

# End User Licence Agreement

TMMR Pty Ltd ACN ACN 616 198 755

**Articles to assist you with the implementation of this agreement:**

[Bespoke end user licence agreements for the iStore](#) – by Dundas Lawyers

[Legal risks inherent in the In-App purchase business model](#) – by Dundas Lawyers

**Guides by Dundas Lawyers**

*Including a Privacy Policy in your App*

*Guide to placing terms and conditions on a website to be binding*

**Guides by others**

[A guide to apps & in-app purchases](#) – by the Australian Competition and Consumer Commission

[App Store Review Guidelines](#) – by Apple

[Apple Developer Program Licence Agreement](#) – by Apple

[Instructions for minimum terms of Developer's End-User Licence Agreement](#) – by Apple

[Guidelines for using Apple Trademarks and Copyrights](#) – by Apple

[Usage Rules in the App Store Terms of Service](#) – by Apple

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Liability limited by a Scheme Approved under Professional Standards Legislation

## End User Licence Agreement

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### Warning

Permission to use this App is conditional upon You agreeing to the terms set out below. This Busy Shift is offered to You on the condition that You read and accept all the terms of this licence and wish to become a licensee of the App. Acceptance will bind You to the terms of the licence, as well as the terms of any other documents referred to herein, including Our Privacy Policy. By installing and using this App, You will be deemed to have accepted the following terms. If You do not wish to accept the terms, You must immediately cancel the installation of the App.

This End User Licence Agreement is a legally binding agreement between You and Us despite it being written in plain English. You should ensure that You read it, and any other document referred to within it, carefully before installing the App.

### 1. Definitions

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In this Agreement:

**Agreement** means the terms and conditions contained in this End User Licence Agreement and any annexures.

**Device** means a smart phone or tablet which is capable of operating the App.

**EULA** means the terms and conditions contained in this End User Licence Agreement that governs the right to use the App.

**Licensed Application (App)** means the Busy Shift app.

**In-App Purchases** mean anything which is purchased through or via the App.

**Smart Device** means any device on which the App is used.

**We, Us and Our** (and similar terms) are a reference to TMMR Pty Ltd ACN 616 198 755; and

**You, Your, User (and similar terms)** means you, the licensed user of the App.

### 2. Terms of licence

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#### 2.1 Grant of licence

Subject to Your compliance at all times with the terms of this Agreement, and making any required payment to licence the App, We grant You a non-exclusive, non-transferrable licence to use the App on the terms set out in this Agreement.

#### 2.2 Licence to use the App

(a) We grant You a:

- (i) non-transferrable; and
- (ii) perpetual;

right to use the App on the terms and conditions contained in this Agreement.

(b) Your acquisition of the licence to use the App, and any required payment, may also be subject to the terms and conditions applicable to the platform on which You acquire the App, or the “app store” through which you acquire the App.

### **2.3 No reproduction**

You may not reproduce or adapt the App except to the extent expressly permitted by ss 47B(3), 47C, 47D, 47E and 47F of the *Copyright Act 1968* (Cth).

### **2.4 Multiple devices**

You may install and use the App on multiple devices, if allowed by the platform or app store through which You acquired the App.

### **2.5 Termination of licence**

This licence is granted in perpetuity, but may be terminated by Us in the following circumstances:

- (a) if You are in breach of any term of this Agreement;
- (b) if You become the subject of any bankruptcy or insolvency proceedings; or
- (c) if You seek a refund of the licence fee paid to acquire the App.

### **2.6 Deletion of the App upon termination**

Upon termination, You must permanently delete all copies of the App.

### **2.7 Survival of rights**

Termination pursuant to this clause will not affect any rights or remedies which We may have otherwise under this Agreement or at law.

### **2.8 Responsibility for others**

You are responsible for the actions of any other person who use Your copy of the App.

### **2.9 Patches and updates**

We may deploy or provide patches, updates and modifications to the App that must be installed in order for you to continue to use it. We may update the App remotely and you hereby grant us Your consent to deploy and apply such patches, updates and modifications as we determine are required to for the App to operate.

## **3. Your general obligations**

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You must:

- (a) not copy, reproduce, translate, adapt, vary or modify the App without Our express written consent, except as expressly authorised by this agreement or Pt III Div 4A of the *Copyright Act 1968* (Cth);
- (b) not do anything which would infringe our copyright in the App; and
- (c) consent to Us sending You electronic communications including emails, sms messages and push notifications from within the App as reasonably necessary to provide You with the service.

## **4. User generated content**

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### **4.1 Content uploaded to the App**

- (a) We do not claim ownership of any content that You submit to or make available using the App.
- (b) Content that you add to the App is not stored anywhere except for your Smart Device.

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## 5. In App Purchases

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### 5.1 In App Purchases

- (a) The App may offer Content, services or functionality for use within it that are available in exchange for the payment of an amount of money.
- (b) In-App Purchases that are consumed during the use of the App cannot be transferred among devices and can only be downloaded once.
- (c) You must authenticate your account before making In-App Purchases, separate from any authentication to obtain other Content.

### 5.2 Refund policy

All In App Purchases are final and, subject to all applicable Australian laws, non-refundable.

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## 6. Privacy and personal information

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By installing the App You acknowledge that You may provide Us with, or We may otherwise obtain, personal information about You. You further agree that Our use of Your personal information will be done in accordance with the terms of Our Privacy Policy.

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## 7. Liability

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### 7.1 Disclaimer of warranties

You expressly acknowledge and agree that, to the maximum extent permitted by law:

- (a) Your use of App is at Your sole risk. The App is provided on an "as is" and "as available" basis. We and Our officers, employees and agents expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement;
- (b) You are solely responsible for the information you input into the App;
- (c) You are solely responsible for any patient observations, interventions and any other duties in relation to Your patients;
- (d) We make no warranty that:
  - (i) the App will meet Your requirements or expectations;
  - (ii) Your access to, and use of, the App will be uninterrupted, timely, secure or error-free; and
  - (iii) any features of the App which require services provided by third parties (such as integration with Dropbox or Youtube) will be available on an ongoing basis; and
- (e) no advice or information, whether oral or written, obtained by You from Us through or from the App or Our website creates any warranty not expressly stated herein.

### 7.2 Limitation of liability

- (a) Except for certain consumer guarantees which may apply under the Australian Consumer Law (**ACL**), We do not provide any guarantee or warranty or make any representation of any kind, either express or implied, in relation to the App.
- (b) Subject to any claims available under the ACL, We and Our officers, employees and agents are not liable for any loss or damage, including, but not limited to, direct, indirect or consequential losses including any form of consequential loss such as any third party loss, loss of profits, loss

of revenue, loss of opportunity, loss of anticipated savings, pure economic loss and an increased operating cost, personal injury or death, however suffered or sustained in connection with:

- (i) any inaccurate or incorrect information provided on the App;
  - (ii) Your use of the App;
  - (iii) Your failure to observe Your duties in relation to patients;
  - (iv) any failure or delay including, but not limited to, the use or inability to use the App;
  - (v) any interference with or damage to Your computer systems which occurs in connection with use of the App; or
  - (vi) the cost of procurement of substitute goods and services to the App.
- (c) For claims that cannot be excluded or restricted under the ACL, Our liability for such a claim will (at Our option and to the extent permitted by law) be limited to:
- (i) in the case of goods:
    - I. repairing or replacing those goods; or
    - II. paying the cost of having those goods repaired or replaced; and
  - (ii) if the breach relates to services:
    - I. resupplying those or equivalent services; or
    - II. paying the cost of having those services resupplied.

## 8. Indemnity

- (a) You must indemnify, defend and hold harmless Us and Our officers, employees, authorised representatives and agents (**Indemnified Parties**) against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including reasonable legal costs on a solicitor and own client basis) that the Indemnified Parties may incur or suffer as a direct or indirect result of:
- (i) Your breach of this Agreement;
  - (ii) any content You create or disseminate using the App;
  - (iii) Your negligent acts or omissions;
  - (iv) Your actual or alleged breach of any law, legislation, regulation, by-law or code of conduct; or
  - (v) any claims brought by or on behalf of a third party relating to any act or omission by You, including infringement of a third party's copyright or trade mark.

## 9. Apple iOS platform

### 9.1 Application

This section 9 applies if You have obtained the App through the Apple App Store™. In the event of a conflict between a provision of this section 9 and any other provision of this Agreement, the provision of section 9 will prevail.

## 9.2 Acknowledgement

You and We acknowledge that this Agreement is between You and Us, and not with Apple, and We, not Apple, are responsible for the App and the content of the App.

## 9.3 Scope of licence

Your licence to use the App is limited to a non-transferable licence to use the App on any iPhone, iPod Touch or other Apple iOS device that You own or control, and as permitted by the Usage Rules set forth in the App Store Terms of Service (**App Store TOS**). If any provision of this Agreement provides for usage rules for the App which are less restrictive than the Usage Rules for Licensed Applications contained in the App Store TOS, or are otherwise in conflict with the App Store TOS, the App Store TOS prevails.

## 9.4 Support

We are solely responsible for maintenance and support services for the App, if required by applicable law. You and We acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.

## 9.5 Warranty

We and not Apple are responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed by this Agreement. In the event of any failure of the App to conform to any applicable warranty, You may notify Apple, and Apple will refund the purchase price to the App. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App.

## 9.6 Product claims

You and We acknowledge that We, not Apple, are responsible for addressing any claims of You or any third party relating to the App or the end-user's possession and/or use of that App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

## 9.7 IP rights

You and We acknowledge that, in the event of any third party claim that the App or Your possession and use of the App infringes that third party's intellectual property rights, We, not Apple, will be solely responsible for the investigation, defence, settlement and discharge of any such intellectual property infringement claim.

## 9.8 Legal Compliance

You represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.

## 9.9 Third Party Beneficiary

You and We acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement, and that, upon Your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement against You as a third party beneficiary thereof.

## 10. General provisions

- (a) **Costs** - The Parties to this Agreement must pay their own costs of negotiating and executing any instrument or document executed to give effect to it.
- (b) **Entire agreement** - This document contains the entire Agreement between the Parties in connection with its subject matter and supersedes all previous agreements and understandings except as otherwise provided herein.
- (c) **Governing law and jurisdiction** – The laws of Queensland and Australia govern this Agreement. The Parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland and the Federal Court of Australia.
- (d) **No merger** - The rights and or obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.
- (e) **No partnership** - This Agreement does not create or evidence a partnership, joint venture or a fiduciary relationship or the relationship of principal and agent between the Parties.
- (f) **Notices** - A notice, approval, consent or other communication in connection with this agreement must be in writing sent to the address of the receiving Party appearing in this agreement or such other address as may be communicated by the receiving Party, marked for the attention of any person nominated for that purpose by the receiving Party (and who in the absence of any such nomination is the signatory to this agreement on behalf of the Party), and may be sent by prepaid post (air mail if international), courier, facsimile transmission or electronic mail. A notice, approval, consent or other communication is taken to have been received:
  - (i) two (2) business days after sending if sent by post (five (5) business days if sent to or from a location in another country);
  - (ii) if sent by courier, at the time indicated by the records of the courier;
  - (iii) if sent by facsimile, upon production of an entry created for the purposes of a transmission report by the machine from which the facsimile was sent, which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; or
  - (iv) if sent by electronic mail, on receipt by the sender of an acknowledgment indicating that the mail item was received by the recipient.
- (g) **Severance** - If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in full force and effect.
- (h) **Survival** - Any clause which is expressed to survive, or which by its nature is intended to survive termination of this Agreement, survives termination.
- (i) **Variation** - An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.
- (j) **Waiver** - A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not effective unless it is in writing and signed by the Party giving it.

- (k) **Warranties regarding capacity** - Each Party represents to each other that as at the date of this Agreement:
- (i) it has taken all necessary action to authorise its entry into and performance of this Agreement;
  - (ii) it has the power to enter into and perform its obligations under this Agreement; and
  - (iii) its obligations under this Agreement are valid and binding and enforceable against it in accordance with its terms.

## 11. Contact details

You may contact Us using the following details:

TMMR Pty Ltd ACN 616 198 755  
Stephen Bartlett  
PO Box 6305  
UPPER MOUNT GRAVATT QLD 4122  
Email address: [info@tmmr.com](mailto:info@tmmr.com)

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