

CostOut License Agreement (Private Institution/individual)

BY CHECKING THE ACCEPTANCE BOX OR USING ALL OR ANY PORTION OF COSTOUT, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND TEACHERS COLLEGE, COLUMBIA UNIVERSITY. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT USE COSTOUT. IF YOU ARE USING COSTOUT AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF AN ORGANIZATION SUCH AS A COLLEGE, UNIVERSITY, NON-PROFIT ENTITY, CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT.

This Agreement is made between TEACHERS COLLEGE, COLUMBIA UNIVERSITY, a non-profit educational institution of the State of New York, having its principal place of business at 525 West 120<sup>th</sup> Street, New York, NY 10027 ("Licensor") and registered user.

**RECITALS:**

- A. Licensor owns and is the proprietor of a certain cost tool kit entitled, CostOut and accompanying documentation and other material, referred to collectively as "Tool Kit;" and
- B. Licensee desires to obtain from Licensor a non-exclusive License to use the Tool Kit;

**TERMS**

In consideration of the mutual covenants and promises in this Agreement, Licensor and Licensee agree as follows:

1.0 License Granted; Delivery and Installation.

1.1 Licensor grants, and Licensee accepts, a non-transferable, nonexclusive license ("License") to use the Tool Kit for the sole purpose of determining costs and/or cost-effectiveness of educational or other programs for the purposes of administration, research, training, or resource allocation decisions internal to Licensee's organization, under the terms and conditions set forth herein.

1.2 Promptly upon execution of this Agreement Licensor shall grant Licensee online access to the Tool Kit for operation on Licensee's computer systems. Under this Agreement, Licensee is entitled access to the Tool Kit by only one registered user of the Tool Kit. Additional users may register and execute further License Agreements without additional cost to Licensee.

1.3 Such Tool Kit and documentation shall be available online as is and Licensor shall

not be required to load or otherwise install the Tool Kit on Licensee's machinery.

## 2.0 Term.

The term of this Agreement shall be for two (2) years to commence at the time of registration and will terminate without further notice two years later unless sooner terminated as set forth in this Agreement.

## 3.0 Consideration.

The parties agree that no money or other thing of value shall change hands in connection with and in consideration of the license granted to the Licensee hereunder, it being understood and acknowledged that the sole consideration being provided the Licensor is that in all use the appropriate credit is given to the Licensor, as follows, including in each instance in which the results obtained using the Tool Kit are reported and/or published:

*Hollands, F.M., Hanisch-Cerda, B., Levin, H. M., Belfield, C.R., Menon, A., Shand, R., Pan, Y., Bakir, I., & Cheng, H. (2015-19). CostOut®. Teachers College, Columbia University.*

The sufficiency of the aforementioned consideration is hereby acknowledged by the College.

## 4.0 Warranties, Representations, and Undertakings.

4.1 Licensor warrants and represents that it has full title and ownership of the Tool Kit, that the Tool Kit is original and owned by Licensor, or that Licensor has acquired legally valid rights, title or interests for purposes of this Agreement and that this Agreement does not violate any right, title, or interest of any third person or entity.

4.2 Licensor warrants and represents that to the best of its knowledge and belief it is not currently bound by any other agreements, restrictions or obligations, nor will Licensor assume any such obligations or restrictions which do or would in any way interfere or be inconsistent with this Agreement.

4.3 Licensee agrees to accept Tool Kit "as-is" and agrees that Licensor has no liability to provide support services for Tool Kit.

4.3.1 Licensee must notify Licensor in writing to [fmh7@tc.columbia.edu](mailto:fmh7@tc.columbia.edu), within 14 days of being granted access to the Tool Kit, of any known deficiency/defect in the Tool Kit.

4.3.2 If the Tool Kit is found deficient or defective by Licensor, Licensor is under no obligation to cure such defect.

4.4 Except as provided in this clause, Licensor makes no warranties, either express or implied, as to any matter, including without limitation, the condition of the Tool Kit, its merchantability or its fitness for any particular purpose, except that the Tool Kit is intended to be used to conduct cost and cost-effectiveness analyses.

4.5 Licensor shall not be liable for, and Licensee agrees to indemnify, defend, and hold

harmless and will release and forever discharge Licensor, its agents, officers, assistants and employees thereof either in their individual capacities or by reason of their relationship to Licensor and its successors, in respect to any expense, claim, liability, loss or damage (including any incidental, special, or consequential damage) either direct or indirect, whether incurred, made or suffered by Licensee or by third parties, in connection with or in any way arising out of the furnishing, performance or use of the Tool Kit.

4.6 Data that you enter in CostOut will be stored on servers maintained by an external contractor on behalf of Teachers College, Columbia University. Teachers College, Columbia University will gather a limited amount of data on users including information entered on the registration page such as user name, name of organization, and position. We will also collect meta-data such as the frequency of use of the CostOut, and the frequency of analysis type chosen (cost analysis vs. cost-effectiveness analysis). We will use these data to understand the audience for the tool and how it is being used.

Data that you enter about programs, effectiveness, ingredients, prices, distribution of costs, transfers/subsidies/fees and cost information will not be accessed by Teachers College, Columbia University without your express permission. While the servers on which the data will be stored will be secure, Teachers College, Columbia University is not responsible for any loss of data, inability to access the web site at any time, or failure of security mechanisms.

## 5.0 Restrictions on Use.

5.1 Licensee agrees that the Tool Kit shall be held in confidence, that such licensed material is provided for the exclusive use of Licensee on its computer systems or other electronic devices.

5.2 The Tool Kit shall not be duplicated.

5.3 Licensee shall not disclose the Tool Kit to others in whole or in part without the express written permission of Licensor. Such prohibitions on disclosure shall not apply to disclosure by Licensee to its employees and consultants to the extent that such disclosure is reasonably necessary to Licensee's use of the Tool Kit and provided that Licensee shall take all reasonable steps (including, but not limited to, all steps that Licensee takes with respect to information, data, and other tangible and intangible property of its own that it regards as confidential or proprietary) to ensure that the Tool Kit is not disclosed or duplicated in contravention of the provisions of the Agreement by such employees or consultants.

## 6.0 Copyright and Trademark Protection.

6.1 All ownership rights in the Tool Kit, including but not limited to copyright and trademark rights in the Tool Kit and any associated documentation furnished hereunder are retained by Licensor. Licensee shall not reproduce any copies of the Tool Kit code, documentation or improvements nor any portion thereof without the express written consent of Licensor and without including Licensor's copyright notice thereon.

6.2 Should Licensee fail to follow this condition, it shall be responsible for indemnifying Licensor for any loss of royalties, cost of copyright enforcement, and other damages or losses sustained by Licensor.

#### 7.0 Proprietary Information.

7.1 Licensee understands that the Tool Kit contains confidential proprietary material and covenants not to disclose this material.

7.2 Licensee warrants that all those individuals having access to the Tool Kit shall be informed of the confidentiality of the Tool Kit.

#### 8.0 Title; Reservation of Rights.

8.1 Licensee agrees that the Tool Kit is, and shall at all times remain, the property of Licensor. Licensee shall have no right, title or interest in the Tool Kit, except for the license outlined in this Agreement.

8.2 Licensor reserves the right to grant any rights to the Tool Kit to other persons or entities upon such terms and conditions as Licensor shall accept.

#### 9.0 Inspection.

Once per year, Licensor, in its sole discretion shall have the right upon 48 hours notice to inspect the premises of Licensee, subject to Licensee's security rules then in effect, in order to determine and verify Licensee's compliance with this Agreement.

#### 10.0 Alterations and Modifications.

Licensee, for Licensee's own internal purposes, may make any alterations, variations, modifications, additions or improvements to the Tool Kit, and merge it into other program material to form an updated or derivative work at its own risk and expense provided that such changes are reported to Teachers College, Columbia University (Contact: fmh7@tc.columbia.edu) with an explanation of the motivation for the change and the consequences this change has for the cost or cost-effectiveness analysis. Both parties agree that any alterations, variations, modifications, additions or improvements will be considered "derivative work" as that term is defined in the U.S. Copyright Act (17 U.S.C. 101, et seq.). In addition, upon discontinuance of this License for such use of the Tool Kit, the licensed material supplied by Licensor will be completely removed from the updated work and destroyed. Any portion of the Tool Kit included in an updated work shall be used only on the Licensee's computer equipment or other electronic devices and shall remain subject to all other terms of this Agreement.

#### 11.0 Limitations of Remedies and Loss.

Should this Agreement be terminated by Licensee, pursuant to this clause concerning Licensor default, Licensee shall refrain from using the Tool Kit.

12.0 Termination.

12.1 Upon termination of the license, all Tool Kit, modifications of the Tool Kit, and any portions or copies thereof, shall be destroyed.

12.2 Licensee shall promptly, upon request by Licensor, certify in writing that all other copies in Licensee's possession, whether made in whole or in part, and in any form, have been erased or destroyed.

12.3 Termination or expiration of the license period shall not be construed to release either party from any right or obligation which matured prior to the date of such termination or expiration.

13.0 Non-Use of Names.

Neither party shall use the other party's name without the written consent of Licensor, in each instance prior to such use, except to give credit to Licensor for development of the Tool Kit as described in 3.0 above.

14.0 Notice.

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified, or express mail, or other overnight mail service, or hand delivered, when addressed as follows:

To Licensor:  
Teachers College, Columbia University,  
525 West 120<sup>th</sup> Street  
New York, NY 10027  
Attention: Fiona Hollands

To Licensee: As per registration details

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

15.0 Governing Law.

This Agreement shall be governed by and construed under the laws of the State of New York which shall be the forum for any lawsuits arising under or incident to this Agreement.

16.0 Dispute Resolution.

The parties shall work with their senior management to resolve all disputes. Any controversy, claim, or dispute arising out of or relating to this Agreement or the breach thereof, that the parties cannot amicably resolve shall be submitted to arbitration in the City of New York, State of New York, in accordance with the rules of the American Arbitration Association then in effect and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The provision shall not impair or be in lieu of the rights of either party hereto to seek injunctive relief in a court of competent jurisdiction in the State of New York.

17.0 Non-Waiver.

The delay or failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

18.0 Severability.

The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

19.0 Paragraph Headings.

The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.

20.0 Entire Agreement; Modification.

This Agreement (and its attachments, if any) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto. This Agreement may be amended at any time only upon mutual agreement in a writing signed by the parties.