

---

# **SOFTWARE LICENCE AGREEMENT**

---

Between:

**eSYS Development Pty. Limited  
(ACN 082 429 070)**

And:

**THE PERSONS OR ENTITY IDENTIFIED  
IN ITEM 2 OF THE SCHEDULE**

---

**Parties**

Between:

**The person or entity identified in item 1 of the Schedule ("the Licensor")**

And:

**The persons or entity identified in item 2 of the Schedule ("the Licensee")**

---

**Introduction**

- A. The Licensee has assessed the Software and has without representation from the Licensor or any person on its behalf determined that the Software is suitable for its needs.
  - B. The Licensee has requested the Licensor to licence the Licensee the use of the Software.
  - C. The Licensor has agreed to give the Licensee a licence to use the Software subject to the terms and conditions contained in this licence agreement.
- 

**Operative provisions**

**1. Definitions**

1.1 **"Business Day"** means any day which is not a Saturday, Sunday or a public holiday in the state of New South Wales, Australia;

**"Commencement Date"** means the date of this Licence agreement;

**"Licence"** means the licence given by the Licensor to the Licensee to use the Software under this licence agreement;

**"Licence Fee"** means the amount specified in item 3 of the Schedule;

**"Manual"** means the documents relating to the use of the Software which forms part of the Software and which contains information relating to the Software;

**"Helpfile"** means the electronic documentation relating to the use of the Software which forms part of the Software and which contains information relating to the Software;

**"Core System"** means the fundamental code comprising the Software;

**"Schedule"** means the schedule to this agreement;

**"Software"** means the computer program and related documentation specified in item 4 of the Schedule;

**"Third Party Software"** means Software supplied by parties other than the Licensor Software;

**"Add-on Modules"** means additional special purpose programs which may be developed by the Licensor from time to time for use in conjunction with the Software;

**"Intellectual Property"** means copyright, present and future; inventions whether patentable or not; trade marks, whether registrable or not; designs whether registrable or not; ideas and discoveries; trade secrets; and know-how;

**"Confidential Information"** means the information, data, specifications, prototypes, processes, statements, writings, recordings, formulae, drawings, charts, forms, plans, graphic material and Software (and copies and extracts thereof) concerning:

- A. The operations and dealings of the Licensor;
- B. The customers, makers and suppliers of the Licensor Software;
- C. The products of the Licensor, including but not limited to the following matters:
  - (i) Product design;
  - (i i ) Product development;
  - (i i i ) Product marketing; and
- E. The Intellectual Property of the Licensor;

whether generated by a party, or an employee, agent or contractor of the Licensor, which is not in the public domain, except by the failure of a party to perform and observe its covenants and obligations under this agreement and which has

been obtained through or by being a member of the Licensor or however about the Licensor or the operations or activities of the Licensor.

---

## **2. Grant**

- 2.1 The Licensor grants to the Licensee and the Licensee accepts the grant of a non-exclusive non-transferable Licence to use the Software.
- 2.2 The Licensee shall have the right to use the Software under clause 2.1 above with a maximum number of users as specified in item 5 of the Schedule.

---

## **3. Duration**

- 3.1 This Licence Agreement commences on the Commencement Date.
- 3.2 Subject to the terms of this Licence Agreement, the Licence granted is for the term specified in item 7 of the Schedule, and is renewable for the period specified in item 8 of the Schedule.

---

## **4. Helpfile**

- 4.1 On or before the Commencement Date, the Licensor shall deliver copy of the Helpfile and/or Manual to the Licensee.
- 4.2 The Licensor warrants that the Helpfile and/or Manual will be adequate to enable the Licensee to reasonably operate the Software in the manner contemplated by the Licensor.
- 4.3 The Licensor undertakes to inform the Licensee from time to time of any amendments to the Helpfile and/or Manual which may become necessary or which the Licensor shall in its absolute discretion consider desirable.
- 4.4 The Licensee acknowledges the Licensor's proprietary interest in the Helpfile and/or Manual and the Software and will not copy the Helpfile and/or Manual or Software other than as permitted by this agreement or otherwise without the Licensor's prior written permission.

---

## **5. Freeware**

- 5.1 The Licensor grants the Licence to the Licensee free of charge.
- 5.2 the Licensee agrees that clause 5.1 shall not affect the operation clauses 23, 24, 25 and 26.
- 5.3 The Licensee is responsible for and shall pay any taxes, duties or other charges or surcharges relating to the Software and hereby indemnifies the Licensor in respect thereof.

---

## **6. Conditions of Licence**

- 6.1 The Licensor warrants that it has the authority to grant this Licence to the Licensee.
- 6.2 This Licence is non-transferable and non-exclusive to the Licensee.

---

## **7. Ownership**

- 7.1 The Licensor retains ownership of the Software whether in its original form or as modified by the Licensee during the term of this Licence and the Licensee acknowledges the Licensor's rights in the Software including copyright and all and any other Intellectual Property rights.
- 7.2 The Licensee assigns to the Licensor absolutely all of the copyright present and future around the world in and to any modifications to the Software or any other works  
created as a result of the use of Software by the Licensee.

---

## **8. Modifications**

- 8.1 The Licensee may not modify the whole or any part of the Software or combine or incorporate the whole or any part of the Software in any other program or system without the prior consent in writing of the Licensor, which consent the Licensor may give or refuse in its absolute discretion.

---

## **9. Risk**

- 9.1 Risk of loss or damage to the Software and the Helpfile and/or Manual shall pass to the Licensee upon delivery of the Software to the Licensee.

---

## 10. Copy

- 10.1 Subject to the following sub-clauses of this clause, the Licensee shall not copy the Software, in whole or in part.
- 10.2 The Licensee may make such number of copies of the Software as is necessary to serve its internal needs for system back up and security. All copies of the Software and the media in which the copies are contained shall be and remain the property of the Licensor. To the extent necessary the Licensee hereby assigns to the Licensor ownership of any such media.
- 10.3 The Licensee shall mark all copies of the Software and the media which the copies are contained with a notice of:
- (a) The Licensor's ownership of the Software and the media;
  - (b) The confidentiality of the Software; and
  - (c) Such other information as the Licensor may direct from time to time.
- 10.4 The Licensee shall maintain records of all copies of the Software made by it and the place at which those copies are situated. Such records shall be furnished to the Licensor upon request of the Licensee.

---

## 11. Obligations of the Licensee

- 11.1 During the term of this Licence, the Licensee shall:
- (a) Promptly advise the Licensor of any litigation or arbitration or threat of litigation or arbitration which may involve the Software;
  - (b) If requested by the Licensor, keep the Licensor advised of the progress of any litigation and arbitration involving the Software and in particular shall take into account and adhere to the views and directions of the Licensor in relation to the conduct or settlement of any such litigation or dispute;
  - (c) For the purposes of this clause, provide at the request of the Licensor copies of any documents or other material including legal advice relating to such litigation or arbitration.

the

- 11.2 The Licensee shall not:
- (a) Hold itself out or engage in any conduct or make any representation which may suggest to any person that the Licensee is for any purposes the agent of the Licensor;
  - (b) Sell or offer to sell or licence or offer to Licence the Software to any other person.

---

## **12. Indemnity**

- 12.1 Subject to sub-clause 13(2), the Licensor indemnifies and holds harmless the Licensee against any claim made against the Licensee by a Third Party alleging that the Software infringes the copyright or other Intellectual Property rights of that Third Party.
- 12.2 The Licensor shall not have any liability to indemnify the Licensee under sub-clauses 13(1) if:
- (a) The Licensee does not notify the Licensor of the other person's claim or of any infringement within seven (7) days after becoming aware of the claim;
  - (b) The Licensor's ability to defend the claim has been prejudiced by the Licensee's non-compliance with any of its obligations under this Licence;
  - (c) The Licensee does not give the Licensor reasonable assistance in defending the claim;
  - (d) The claim has arisen because of the use of the Software by the Licensee in combination with equipment, materials or computer programs not supplied or approved by the Licensor; or
  - (e) The Licensee does not permit the Licensor to have control of the defence of the claim and all related settlement negotiations.

---

## **13. Termination**

- 13.1 For the purpose of this Licence the following are terminating events:
- (a) The breach or threatened breach by the Licensee of any of its obligations under this agreement;

- (b) The appointment of any type of insolvency administrator in respect of the property or affairs of the Licensee;
- (c) The entry or proposed entry by the Licensee into any scheme, composition, administration or arrangement with any of its creditors;
- (d) The permanent discontinuance of use of the Software or any part of the Software by the Licensee;
- (e) Any event described in this Licence as a terminating event;
- (f) Failure of the Licensee to pay the Licensee fee or any other moneys under this agreement by the due date.

13.2 This Licence may be terminated immediately by the Licensor on the happening of a terminating event at the option of the Licensor.

13.3 Any termination of this Licence does not affect any accrued rights liabilities of either party, nor does it affect any provision of this agreement which is expressly or by implication to continue in force after such termination.

13.4 Upon termination of this Licence, the Licensee shall deliver up to the Licensor all discs, tapes or other media containing the Software or any copies thereof and the Licensee shall immediately cease any use of the Software.

---

#### **14. Limitation of liability**

14.1 Subject to clause 14.3 and except as expressly provided to the contrary in this Licence, the Licensor is not under any liability to the Licensee in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Licence granted pursuant to this Licence or the failure or omission on the part of the Licensor to comply with its obligations under this Licence or as a result of the use of the Software by the Licensee.

14.2 Subject to clause 14.3 and except as expressly provided to the contrary in this Licence, Agreement all warranties whether express, implied, statutory or otherwise relating in any way to the subject matter of this Licence or to this agreement generally, are excluded.

- 14.3 Where any act of Parliament implies in this Licence Agreement any term, and that act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such term, such term is deemed to be included in this Licence Agreement. However, the liability of the Licensor for any breach of such term is if permitted by that act limited, at the option of the Licensor, to any one or more of the following:
- (a) If the breach relates to goods:
    - (i) The replacement of the goods or the supply of equivalent goods;
    - (i i) The repair of such goods;
    - (i i i) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) The payment of the cost of having the goods repaired;and
  - (b) If the breach relates to services:
    - (i) The supplying of the services again; or
    - (i i) The payment of the cost of having the services supplied again.

---

## **15. Acknowledgement**

15. The Licensee acknowledges and warrants to the Licensor:
- 15.1 It has made its own assessment and relied on its own enquiries or to the suitability of the Software for its purposes.
  - 15.2 In entering this Licence Agreement it has not relied upon any representation made by the Licensor nor any person on its behalf.

---

## **16. Entire agreement**

- 16.1 This Licence Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Software.
- 16.2 No addition to or modification of any provision of this Licence Agreement is binding upon the parties unless made by written

instrument signed by a duly authorised representative of the party.

---

## **17. Notices**

17.1 All notices which are required to be given under this Licence Agreement must be in writing and sent to the address of the recipient in this Licence Agreement or such other address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by mail or facsimile. Any such notice is deemed to have been served when delivered (if delivered by hand) on two (2) Business Days after posting (if delivered by mail) or on completion of transmission by the sender (if sent by facsimile).

---

## **18. Assignment**

18.1 The Licensee may not assign, whether in whole or in part, the benefit of this Licence or any rights or obligations under this Licence Agreement, without the prior written consent of the Licensor, except in accordance with clause 29 below.

---

## **19. Law**

19.1 This Licence Agreement is governed by and construed in accordance with the laws for the time being in force in the state of New South Wales, Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that state.

---

## **20. Waiver**

20.1 No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement prejudices or restricts the rights of that party, nor does any waiver of those rights operate as a waiver of any subsequent breach.

---

## **21. Severability**

- 21.1 Should any part of this Licence Agreement be or become invalid, that part is severed from this Licence Agreement.
- 21.2 Such invalidity does not affect the validity of the remaining provisions of this Licence Agreement.
- 

## **22. Updates and upgrades**

22.1 Updates to the Software include updates, modifications and corrections to the licensed Software. Upgrades to the Software

include significant function and feature enhancements to the Software.

- 22.2 The Licensor will determine in its sole discretion whether or not commercial release constitutes an update or upgrade.
- 22.3 The Licensor will provide to the Licensee all commercially released updates without additional charge.
- 22.4 The Licensor may, in its sole discretion, provide to the Licensee any commercially released upgrade without additional charge.
- 22.5 The Licensor reserves the right to charge an additional fee for a commercially released upgrade.

---

### **23. Supplements**

- 23.1 From time to time, the Licensor may make available computer programs which are compatible with an supplement the Software but which
  - (i) Contain new features and/or programs not included in updates of the Software; and
  - (i i ) may be priced and offered separately as optional additions to the Software;("supplements")
- 23.2 The Licensor shall determine in its absolute discretion what constitutes a supplement
- 23.3 The Licensee agrees that supplements may include Licence and maintenance terms additional to those of this agreement.

---

### **24. Telephone and E-mail support**

- 24.1 The Licensor will provide telephone and email assistance to the Licensee, between the hours of 9.00am and 5.00pm on Business Days, during the duration of the Licence, at no additional cost to the Licensee subject to a limit of two calls or emails per annum for Licence, thereafter, the Licensee shall pay the Licensor for such services at the Licensor's standard charges for the provision of such services from time to time. In the event that the call or email results in the identification of a fault in the Software, no charge will be levied on the Licensee.

---

### **25. Items to be purchased separately**

- 25.1 This Licence Agreement does not relate to the following items,

which must be licensed or purchased separately by the Licensee:

- (a) Third party Software; and
- (b) Add-on modules.

---

## **26. Use of the Software**

- 26.1 The Software the subject of this Licence agreement is for the personal business use of the Licensee and may only be used for the management of information belonging to, owned by and residing on computers, computer networks, disks or other media wholly owned or leased by the Licensee.
- 26.2 The Software the subject of this Licence agreement is in no circumstances to be used on equipment which:
  - (a) Relates to the health and well-being of any person; or
  - (b) Relates to the life of any person.

---

## **27. Taxes**

- 27.1 In the event of the introduction on a goods and services tax, or similar indirect tax, the Licensee bears the responsibility for the payment of the tax.

---

## **28. Confidentiality**

- 28.1 The Licensee agrees that any use or disclosure of the Licensor's Confidential Information in a manner inconsistent with the provision of this agreement may cause the Licensor damage.
- 28.2 The Licensee shall not attempt to decompile, disassemble or reverse engineer the object code of the Software.
- 28.3 The obligations under this clause apply to any subcontractor or agent of the Licensee.

---

## **29. Sublicences**

- 29.1 The Licensee may supply a copy of the Software to any third party ("Sublicence") and strictly in accordance with the provisions of clause 29.2 below.

- 29.2 The terms of provision of any Sublicence must:
- (a) protect the Licensor's proprietary interests in the Software at least to the same degree as does this agreement;
  - (b) not make any representation or warranty on behalf of the Licensor;
  - (c) secure any third party's written acknowledgment of the warranties and indemnities of this agreement;
  - (d) be on the basis that clause 14 of this agreement applies in any Sublicence; and
  - (e) provide for the termination of the Sublicence if this agreement is terminated.
- 29.3 The Licensor excludes all liability to the Licensee for any damage (including but not limited to pecuniary loss) suffered by the Licensee, whether directly, indirectly or consequentially, and whether caused by the Licensor's negligence or otherwise relating to any third party's use of the Software under any sublicence.
- 29.4 If this Agreement is terminated, then the Licensee must terminate all Sublicences and inform all other parties to the Sublicences ("Sublicensees") that if any Sublicensee wishes to continue using the Software then licences for that use must be obtained from the Licensor subject to negotiations between the Licensor and the Sublicensee.

Executed as an agreement.

Signed for and on behalf of the Licensor )  
in the presence of: )

.....  
Witness

.....  
Authorised signatory

The person signing this agreement

.....  
Name of witness

Warrants that he/she is

Authorised By the Licensor to sign this  
agreement on its behalf

.....  
Address

Signed for and on behalf of the Licensee )  
In the presence of: )

.....  
Witness

.....  
Authorised signatory

The person signing this agreement

.....  
Name of witness

Warrants that he/she is

Authorised By the Licensor to sign this  
agreement on its behalf

.....  
Address

## **Schedule**

Item 1: (name and address of Licensor)

Item 2: (name and address of Licensee)

Item 3: (Licence Fee)

Item 4: (Software and related documentation)

Item 5: (maximum number of simultaneous users)

Item 6: (date for payment of Licence Fee)

Item 7: (duration of the Licence)

Item 8: (period for which Licence renewable)