

# Smartsoftware Service Terms

This document details the standard terms of the “Agreement” between Smartsoftware (“Provider”) and the Customer for all work performed detailed on any agreed Statement of Work (SOW), unless otherwise detailed in the applicable SOW.

For each Service the applicable SOW shall specify: (i) the Description of Services, (ii) the Contract Term and the total fees.

## 1. CONFIDENTIALITY

1.1 Provider and Customer shall maintain the confidentiality of all information of the other which at the time of first disclosure to Provider or Customer is clearly identified as confidential to the same extent that the other keeps confidential such information relating to their own business. Each must take reasonable steps to ensure that it's, employees, agents and sub-contractors do not make public or disclose the other's Confidential Information. Provider and Customer shall not be required to keep as Confidential Information which is, or becomes, publicly known, is already within their possession or knowledge, is independently developed by Provider or Customer outside the scope hereof, is rightfully obtained from third parties, or after five (5) years from the completion of the engagement for which the information was disclosed.

## 2. RIGHTS TO PROGRAM

2.1 Provider shall retain all right and title to any computer programs developed hereunder and shall have the right to incorporate such programs in work for other customers and in its programs generally. The Provider shall grant the Customer a non-exclusive and non-transferable licence to use such programs. Nothing in this Agreement shall be construed as restraining Provider, its employees, agents, or subcontractors in the use of the techniques and skills of computer programming and design which may be acquired in the course of performance of this Agreement.

## 3. LIMITATION AND LIABILITY

3.1 In no event shall Provider be liable to the Customer for incidental, special, or consequential damages arising out of, resulting from, or in any way connected with, the performance or breach of this Agreement (regardless of the form of action) even if Provider has been advised of the possibility of such damages. Provider' liability to Customer for any cause whatsoever, and regardless of the form of action (including negligence), arising out of, resulting from, or in any way connected with, the performance or breach of this Agreement shall in no event exceed the amount actually paid for the portion of the services involved.

3.2 Customer shall at all times indemnify and hold harmless Provider and its officers, employees and agents (“those indemnified”) from and against any loss, including legal costs and expenses, or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such a loss was caused by either a breach by Customer of its obligations under this Agreement or any wilful, unlawful or negligent act or omission of the Customer. Provider shall not be liable for any loss or damage or be deemed to be in breach of this Agreement, to the extent that performance of such Party's obligations under this Agreement are delayed or prevented as a result of any event or circumstance beyond its reasonable control, including without limitation, war, invasion, act of foreign enemy, hostilities, civil war or rebellion (whether war be declared or not), strike, lockout or other industrial dispute, or act of God; provided, that for the duration of such Force Majeure the Party claiming such force majeure must continue to use all reasonable efforts to overcome such Force Majeure.

## 4. SCOPE AND CONDUCT

The following assumptions are made with respect to scope and conduct of Provider's activities during the service period:

4.1 Provider's Service Levels are dependent upon, and assume, that the Customer will assign personnel comprising of key management, user, and technical personnel to interact with the

Provider.

4.2 Customer will ensure that specialised expertise outside the scope of the environment supported by the Provider under this Agreement (e.g. the hardware platform, network administration, and communications facilities) is available, on an as needed basis, to support Provider during the period of the Agreement.

4.3 Specific Provider activities require the input, review, or participation of Customer staff. These typically include (but are not limited to) requirements gathering, scope definition, user acceptance testing and day-to-day interaction. The success of Provider's deliverables is dependent upon Customer interaction. The Customer will therefore make time available, and provide the Provider's consultants access to key users and technical personnel within their organisation for this purpose.

4.4 Customer will provide suitable, secure and safe work space for Provider consultants on-site. Resources should include desk, chair, telephone and workstation (with access to the technical environment and internet connectivity) for each Provider consultant. The workstations should have network access to a printer. This helps Provider consultants work efficiently to complete their assigned tasks

4.5 Where Provider is required to work with any EAS Customer certifies that it has a current EAS software license and, support and maintenance agreement.

4.6 Customer will have, and maintain, an operational network with at least the minimum hardware and software required for installation and operation of the EAS licensed products.

4.7 Where Provider is required to work with any relational database or third party software tools, Customer certifies that the relational database and other third party software tools are each the subject of a current software license and maintenance support agreement.

4.8 Customer will be responsible for the installation, configuration, maintenance, and operation of any and all hardware and non EAS required to support the delivery of the services.

4.9 System, server, and workstation backups are the responsibility of the Customer based upon Customer's disaster recovery policies and procedures. This includes the development and running of the system backups and recovery programs.

4.10 Customer will provide data-quality communications facilities to access the EAS manufacturer's electronic support service. This will be used by Customer's staff and Provider, as the need should arise.

4.11 Customer should consult the standard documentation for information regarding the enterprise EAS manufacturer's product processes, features, functions, and requirements prior to raising a support issue with the Provider.

4.12 Any condition or warranty which would otherwise be implied in the Agreement is hereby excluded except where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibit provisions in 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. However, the liability of Provider for any breach of such condition or warranty shall be limited, at the option of Provider, to one or more of the following:

a) if breach relates to goods:

- i. the replacement of the goods or the supply of equivalent goods;
- ii. the repair of such goods;
- iii. 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 supply of the services again; or
- ii. the payment of the cost of having the services supplied again.

## **5. TERMINATION**

5.1. Either Party may, at its option, terminate this Agreement, at any time by written notice to the other if:

(a) the other commits a material breach of contract which (if remediable) it has failed to remedy within thirty (30) days of receiving written notice from the terminating Party requiring it to do so; or

(b) the other becomes insolvent, has a receiver or manager appointed of the whole or any part of its assets or business or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction).

5.2. On termination of this Agreement, Customer and its Affiliates shall certify in writing to Provider that all copies (in any form or media) of Documentation provided under this service, whether or not modified or incorporated into other materials, have been destroyed or returned to Provider.

5.3. Termination of this Agreement executed hereunder shall not relieve Customer's obligation to pay all fees incurred prior to such termination and shall not limit either Party from pursuing any other remedies available to it. Each Party's obligations under Section 1 hereof shall survive termination of this Agreement.

5.4. All notices relating to termination or default under this Agreement shall be in writing and delivered by overnight delivery service or certified mail return receipt requested to the address of such Party specified above or such other address as may be notified in writing by such Party to the other.

## **6. GENERAL**

6.1 This Agreement may not be assigned (whether by operation of law or otherwise) by Customer without Provider's prior written consent. Provider may consent to the assignment of this Agreement by the Customer subject to such conditions as Provider chooses to impose.

6.2 From time to time, Provider may request Customer to provide a certification to the effect that actual use of Documentation is in compliance with the terms of this Agreement. In addition, Provider may, upon reasonable notice, perform an audit to determine compliance with the terms of this Agreement.

6.3 Customer shall pay charges at the rate stated in the Schedule of Commercial Terms. All invoices shall be paid within thirty (30) days after the invoice date. Customer shall pay (i) all applicable shipping charges and (ii) taxes, duties or other assessments, whether withholding or otherwise, present or future based on or arising out of this Agreement, excluding taxes based on Provider's net income. Customer will reimburse Provider for all reasonable costs incurred (including reasonable legal fees) in collecting past due amounts owed by Customer.

6.4 This Agreement is subject to any governmental laws, orders or other restrictions on the export of Programs and related information and Documentation that may be imposed by governmental authorities. Customer agrees that it will comply in all respects with any governmental laws, orders or other restrictions on the export of Programs (and any related information and Documentation) which may be imposed from time to time by the governments of the manufacturer's home country and any country to which any Program is shipped by Customer.

6.5 This Agreement shall be governed by and construed in accordance with the laws of the State of Western Australia.

6.6 If any of the provisions of this Agreement are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

6.7 This Agreement together with the exhibits and addenda hereto issued hereunder, constitutes the entire agreement of the parties and supersedes all previous and contemporaneous communications, representations, understandings or agreements related to the subject matter hereof. This Agreement may be modified only in a writing signed by both parties.

6.8 Neither Party shall be liable for any delay or failure to perform the obligations pursuant to this Agreement if such a delay is due to Force Majeure.

6.9 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party. A waiver made by the Provider, will not prejudice Provider's rights with respect to any subsequent breach of the Agreement by the Customer. Any failure by the Provider to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Provider to the Customer, will not be construed as a waiver of the Provider's rights under this Agreement.

6.10 Provider may sub-contract for the performance of this Agreement or any part of this Agreement upon obtaining the consent of the Customer. The Customer shall not unreasonably withhold consent for the use of a sub-contractor.

6.11 Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the parties or their representatives shall be submitted for arbitration in accordance with the Rules for the Conduct of Commercial Arbitration for the time being of the Institute of Arbitrators Australia. During such arbitration both Parties may be legally represented. Prior to referring the matter to arbitration, the parties shall in good faith explore the prospect of mediation. Nothing in this clause shall prevent any Party from seeking urgent equitable relief before an appropriate court.

6.12 Notices under this Agreement may be delivered by hand or registered mail to the addresses specified above. Notice shall be deemed to be given; upon written acknowledgement of receipt by an officer or duly represented employee, agent or representative of the receiving Party.

6.13 In this Agreement unless the context otherwise appears, words in the singular include the plural and vice versa; where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

6.14 In the event of there being any conflict between the terms and conditions herein, the applicable SOW shall have precedence.

## **7. DEFINITIONS**

In this Agreement, unless the contrary intention appears:

“Confidential Information” means the confidential information of a Party which relates to the subject matter of this Agreement and includes but not limited to:

- (a) confidential information relating to Customer or Customer’s clientele;
- (b) information relating to the personnel, policies, procedures, fee structure or business strategies of the Provider; and
- (c) information relating to the terms of this Agreement;

“Force Majeure” means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightening strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes.

“Party” means either Customer or Provider as the context dictates.

“EAS” means the enterprise applications software for which the provider is contracted to supply the services.

“Documentation” means any confidential information or intellectual property of the Provider.

This document is effective from 1 March 2016.