

Software License Agreement



Software License Agreement

This Software License Agreement (hereinafter the "Agreement") is made and entered into on the day hereinabove written by and between:

"Client" hereinafter referred to as "Licensee" which expression shall, unless it be repugnant to the context or meaning thereof, mean and include its successors and assigns) of the First Part;

And

Komposition Pty Ltd having its registered office at Level 2, 1 University Avenue, Canberra, ACT, 2601, Australia (hereinafter referred to as the "ISV" which expression shall, unless it be repugnant to the context or meaning thereof, mean and include its successors and permitted assigns) of the Second Part.

ISV and the Licensee may hereinafter individually be referred to as "Party" and collectively as "Parties".

Now therefore, in consideration of the foregoing premises and of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. General Terms

1.1 Priority - This Software License Agreement, which the Licensee has received in hardcopy or softcopy, and signed in connection with the Licensee's purchase of the ISV's Software, shall be the legally binding version.

1.2 Entire Agreement - This Software License Agreement (together with all Appendices) set forth the entire understanding between the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Software License Agreement.

1.3 Amendments - This Software License Agreement may not be amended, modified or superseded, unless expressly agreed to in writing by both parties.

1.4 Independent Contractors - The parties are independent contractors, and this Software License Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. No party has the power to bind the other or incur obligations on the other's behalf.

1.5 Execution in Counterparts - This Software License Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute but one and the same instrument.

1.6 Notices - All notices, requests or other communications required or permitted to be given hereunder shall be sent by registered mail, postage prepaid, facsimile, or electronic mail to the other party at its address set forth below or to such other address as may from time to time be notified by either party to the other. Notices shall be deemed received upon actual receipt.

2. Definitions

2.1 Affiliate: Shall mean any legal entity that a party hereto owns, that is owned by any party hereto, or that is owned by a legal entity that is under common ownership with any party hereto. As applied in this definition, ownership shall be construed to be legal possession of fifty percent (50%) or more of the shares, interest in, or voting rights in an entity.

2.2 Application Code: Shall mean the code to the application, i.e. the specific functions, forms, tables and reports which form a part of the ISV Software.

2.3 Database: Shall mean an electronic entity upon which the data of the ISV Software are stored.

2.4 Documentation: Shall mean all and any electronic and written aids and specifications developed by ISV in relation to the ISV Software, for which the Licensee has acquired the right of use from time to time, and any descriptions developed by ISV in relation to the ISV Software.

2.5 External Users: Shall mean all third parties for which the Licensee has acquired and paid for the right of use to limited functionality in the ISV Software. Such third parties are persons who or entities which are not Internal Users (such as, but not limited to, the Licensee's Licensees, suppliers and partners).

2.5 Internal Users: Shall mean employees or contractual workers working for the Licensee or the Licensee's Subsidiaries which have been authorized by the Licensee to use the ISV Software in their work for the Licensee or the Subsidiary, and for which the Licensee has acquired and paid for the right of use to the ISV Software.

2.7 License Files/Codes: Shall mean the files/codes which, like a key, open the ISV Software giving the Licensee access to use the ISV Software.

2.8 Software License Agreement: Shall mean this Software License Agreement issued by ISV.

2.9 Subsidiaries: Shall mean the companies controlled by the Licensee by ownership of 50% or more of the shares or the voting rights in such companies for which the Licensee has acquired and paid for the right of use to the ISV Software, and which have been listed in this Software License Agreement.

2.10 Reseller: Means the company that sells the ISV Software to the Licensee.

2.11 ISV Software: Shall mean those parts of the latest electronic unmodified standard version of ISV's computer software program and its consequent versions, including any Upgrades and external components and certified solutions which have been integrated and delivered by ISV as a part of ISV's computer software program, for which the Licensee has acquired and actually paid for the right of use from time to time, and any related Documentation.

2.12 Maintenance Plan: Shall mean new Major Versions, Minor Versions, Service Packs or Hot Fixes of the Software which ISV may release. New Major Versions, Minor Versions, Service Packs or Hot Fixes of the software will be delivered with release notes, documentation, upgrade software and upgrade documentation for an upgrade from the previous released Major Version, Minor Version, Service Pack or Hot Fix.

2.13 Support Plan: Shall mean technical support to Licensee's technical support inquiries. Dependent of the product and contract with Komposition this support will be provided by Komposition directly or via the Reseller.

2.14 Applicability of Defined Terms

2.14.1 Where the context so admits, any reference to the singular includes the plural, any reference to the plural includes the singular, and any reference to one gender includes all genders.

2.14.2 In this Software License Agreement, a reference to a Clause is a reference to a Clause in this Software License Agreement.

2.14.3 The Headings of this Software License Agreement are for convenience only and shall not constrain or affect its construction or interpretation in any way whatsoever.

2.15 Certain Additional Terms - the provision of Product/Program Maintenances and Technical Support is conditional on the following:

2.15.1 The Licensee shall provide ISV with access to its personnel and its equipment as reasonably requested. This access must include the ability to connect to the equipment on which the ISV Software is operating and to obtain the same access to the equipment as those of the Licensee's employ-ees having the highest privilege or clearance level. ISV will inform Licensee about the required VPN configuration and Licensee is responsible for implementation of the configuration;

2.15.2 The Licensee shall provide adequate supervision, control and management of the use of the ISV Software. In addition, the Licensee shall implement procedures for the protection of information and the implementation of backup facilities in the event of errors or malfunction of the ISV Software;

2.15.3 The Licensee shall maintain a current backup copy of all programs and data;

2.15.4 The Licensee personnel shall be properly trained in the use and application of the ISV Software;

2.15.5 The Licensee shall provide ISV access, at its expense, to the public internet and data;

2.15.6 The Licensee's personnel must be properly trained in the use of the ISV and the administration/management of the ISV

2.15.7 ISV is allowed to use the customer's logo for PR purposes, such as their website, presentations, and newsletters etc.

3.Scope of the License

3.1 License Grant

3.1.1 ISV hereby grants to the Licensee, a perpetual, non-assignable, non-transferable and non-exclusive right to use the ISV Software on only one instance at any one time.

3.1.2 The Licensee is granted the right to use the ISV Software for number of Workspaces specified on sales contract as follows: 1) All Internal Users, including Internal Users of the Subsidiaries, and 2) External Users, but only for the purpose of accessing and modifying the Licensee's data. Thus, the Licensee shall have no right whatsoever to allow such External Users to use the ISV Software for their own or other parties' data. Apart from the situations stated in this Clause 3.1.2, the Licensee shall have no right to grant access to the Licensee's or any third party's data by means of the ISV Software.

3.1.3 To the extent that the Licensee permits the Internal Users, including Users in Subsidiaries, as stated in Clause 3.1.2, to access and use the ISV Software as stated in Clause 3.1.2, it shall be the sole responsibility of the Licensee to ensure that the stated users do not violate the terms and conditions of this Software License Agreement, and that the Subsidiaries accept in a legally binding way to be bound by the terms and conditions stated in this Software License Agreement prior to granting the Subsidiaries access to the ISV Software. Where the Licensee fails to fulfill this obligation, it shall be deemed breach of this Software License Agreement, and such breach shall entitle ISV to terminate this Software License Agreement for cause, cf. Clause 12.2.1, and pursue all remedies available to it.

3.1.4 The Licensee's right to use the ISV Software (or any intellectual property of ISV or any of its affiliates associated therewith) does not include any license, right, power or authority to (a) create derivative works of the ISV Software in any manner that would cause the ISV Software or derivative work thereof, in whole or in part, to become subject to any of the terms of the Excluded License, or (b) distribute the ISV Software (or any intellectual property of ISV or any of its affiliates associated therewith) or derivative works thereof in any manner that would cause the ISV Software (or any intellectual property of ISV or any of its affiliates

associated therewith) or derivative work thereof to become subject to any of the terms of the Excluded License. "Excluded License" shall mean any license that requires as a condition of use, modification and/or distribution of software, subject to the Excluded License, that such software or other software combined and/or distributed with such software be (A) disclosed or distributed in source code form, (B) licensed for the purpose of making derivative works, or (C) redistributable at no charge.

3.2 Functions

3.2.1 The ISV Software is a standard product, and it shall be the responsibility of the Licensee alone to ensure that the functions in the ISV Software fulfill the Licensee's requirements.

3.2.2 The Licensee shall have the right to configure the ISV Software through the user interface to the extent that such adjustment or modification is required for the use of the ISV Software stipulated in this Software License Agreement; Licensee shall not have the right to configure adjust or otherwise modify the Application Code of the ISV Software in any way unless the work is conducted by an entity that is authorized by the ISV, and to the extent that the Licensee or the authorized entity has acquired and actually paid for the tools to perform such adjustment or modification.

3.3 Upgrades

3.3.1 The licensee can acquire Upgrades to the extent that Upgrades are issued by ISV

3.3.2 In connection with the implementation of updates, ISV shall not represent or warrant that the Licensee will be able to make full use of any adjustments or other modifications created as components in the Application Code of the ISV Software.

3.4 Permitted Copying

3.4.1 The Licensee shall have the right to make copies of the ISV Software for the following purposes only: 1) copies for archival or backup purposes, 2) one (1) copy for development and test purposes and 3) copies of the ISV Software where, and only to the extent that the right to make such copies is stipulated by mandatory, statutory legislation, and the Licensee shall comply with such legislation in all respects.

3.4.2 The use of the stated copies of the ISV Software is subject to the terms and conditions stated in this Software License Agreement.

3.5 License Granules and Validation

3.5.1 The ISV Software license consists of various granules that are dependent on the Licensee's requirements. The ISV Software license provided by the ISV will entail the purchased granules by Licensee. Should the Licensee's requirements of the ISV Software exceed the licensed amount, it is the Licensee's responsibility to inform the ISV in writing

and to purchase the required additional granules. The license provided by ISV requires online validation from time to time; it is important that the database server is connected to the internet at least once every two weeks to ensure that the license remains fully active.

4. Intellectual Property Rights/Copyrights

4.1 ISV or its licensors hold full copyright, title and all and any other rights to the ISV Software. The ISV Software is protected by copyright laws and international treaty provisions. Any disregard of ISV or its licensor's rights, including inappropriate access to the ISV Software which might render copying of License Files/Codes to the ISV Software possible for third parties, shall be deemed to be a material breach of this Software License Agreement and shall entitle ISV to terminate this Software License Agreement for cause, cf. Clause 12.2.1, and pursue all remedies available to it.

4.2 The Licensee shall not break or change any License Files/Codes. Nor shall the Licensee change or remove any marks and/or notices concerning copyright, trademarks or other rights, or references hereto stated in the ISV Software or on the medium upon which the ISV Software may have been delivered.

4.3 The Licensee shall not reverse engineer, disassemble or decompile the ISV Software, except where and only to the extent that such operations are permitted according to mandatory, statutory legislation and the Licensee shall comply with that legislation in all respects.

5. Maintenance and Support Plans

5.1 Maintenance and Support Plan(s) must be purchased from Reseller on an annual basis. The first year is mandatory. Maintenance and Support Plan(s) will be automatically renewed for additional one-year terms, unless Licensee has provided Reseller with a written notification of its election not to purchase either/both Maintenance and/or Support for the upcoming annual period not less than two months in advance of the commencement of the new annual coverage period. If Licensee elects not to renew Maintenance, Licensee shall not receive free of additional charge any new Major or Minor Versions licenses and Service Packs and Hot Fixes thereafter developed by ISV. When Licensee decides to renew Maintenance again, Licensee has to purchase this at the cumulative amount of fees not paid during the period Maintenance was allowed to lapse plus a penalty fee. If Licensee elects not to renew Support, Licensee shall not receive technical support services on the Products/Programs licensed by Licensee from ISV. When Licensee decides to renew Support again, Licensee has to pay then current price plus a penalty fee.

6. Infringement of Third Party Rights

6.1 ISV shall be entitled, but not obligated, to defend the Infringement Claim on ISV Software at its expense, and upon notifying the Licensee that it intends to do so, ISV shall be irrevocably authorized by the Licensee, to the extent legally possible, to assume the defense of the legal suit or proceedings brought forward against the Licensee and may institute proceedings or enter into

settlements concerning the Infringement Claim. The Licensee shall provide ISV with appropriate information or assistance for such defense or settlement.

6.2 In the event of an Infringement Claim, ISV shall be entitled to either: 1) obtain the continued right for the Licensee to use the ISV Software, 2) bring the infringement to an end by modifying the ISV Software or replacing the ISV Software with other software which, essentially, possesses the same functions as the affected ISV Software, or 3) terminate this Software License Agreement with written notice and pay to the Licensee an amount equal to the license fee actually received for the license by the ISV. ISV shall only be obliged to pay the stated amount to the Licensee if the Infringement Claim is actually raised against the Licensee within a period of Two (2) years following the date of the Licensee's signature of this Software License Agreement. If an Infringement Claim is raised against the Licensee after the stated period has expired, ISV shall be entitled to terminate this Software License Agreement without payment of any amount to the Licensee. The performance of ISV's obligations under this Clause 6.2 shall be ISV's total aggregate liability and ISV's entire obligation to the Licensee as a consequence of all and any Infringement Claims, and the Licensee shall have no other claims against ISV as a result of such Infringement Claim. Upon termination of this Software License Agreement, the Licensee shall promptly cease using the ISV Software and fulfill the terms and conditions connected to termination as stated in Clause 12.1.1.

6.3 The limited warranty stated in Clause 7.1 and 7.2 is void if the Infringement Claim has resulted from accident, abuse or misapplication. Any modification of the ISV Software by anyone other than ISV voids the foregoing warranty on any portion of the ISV Software modified or affected by such modification.

7. Limited Warranty

7.1 Where the Licensee is fully up to date on their annual maintenance payments, following the Licensee's signature of this Software License Agreement provides written documentation demonstrating that the ISV Software does not perform substantially in accordance with its electronic user documentation, and that there is a significant error in the ISV Software, (i.e. an error characterized by the fact that one or more of the Licensee's vital business functions cannot be carried into effect owing to the fact that the error renders the ISV Software inoperable), ISV shall either 1) deliver, free of charge, a new version of the ISV Software without the error, 2) correct the error free of charge. The performance of ISV's obligations under this Clause 7.1 shall be ISV's total maximum liability and ISV's entire obligation to the Licensee as a consequence of all and any errors in the ISV Software, and the Licensee shall have no other claims against ISV as a result of such errors. Error correction may also take the form of a statement of procedures or manners of application ("work arounds") whereby the error will have no significant effect on the Licensee's use of the ISV Software. This limited warranty is void if failure of the ISV Software has resulted from accident, abuse or misapplication. Any modification of the ISV Software by anyone other than ISV voids the foregoing warranty on any portion of the ISV Software modified or affected by such modification.

7.2 Other than as provided in Clause 7.1, license is granted to the ISV Software "AS-IS" with no other warranties, representations, obligations of remedy or rights other than those described above.

Accordingly, the Licensee shall have no right to raise claims against ISV if the ISV Software contains errors and inconveniences not covered by Clause 7.1.

8. Limitation of liability

8.1 in no event and no matter the circumstances shall isv be liable for any loss of anticipated profit, loss of data, damage to records or data or any indirect, special, incidental or consequential damages or loss (collectively "losses") (which for purposes of this agreement shall be deemed to include, but not be limited to the loss of goodwill, or loss as a consequence of any kind of business interruption or fines of any kind) arising out of or in connection with this software license agreement or the use or performance of the isv software or services connected thereto even if isv were advised of the possibility of such losses and regardless of whether the cause of action is in contract or tort. Accordingly, the licensee cannot claim, demand or seek recovery from isv for any of the foregoing losses and isv will not indemnify the licensee for such claims.

8.2 to the maximum extent permitted by applicable law, isv disclaims any product liability as a consequence of loss or damage to property which, in view of its nature, is normally intended for commercial use.

8.3 in all and any event, no matter the circumstances, isv's total aggregate liability for loss or damage arising out of or in connection with this software license agreement or the use or performance of the isv software or services connected thereto shall not exceed the amount of the license fee actually paid by the licensee for the license to the isv software.

8.4 isv shall have no responsibility or liability for any adjustments or other modifications in the isv software or any service and support of the isv software performed by the licensee itself or provided by third parties or partners of isv. Further, isv shall have no responsibility or liability for any defects which are a consequence of external factors, including other programs, or a consequence of the integration of or interaction between the isv software and the licensee's own hardware and software environments.

9. Exclusion of liability

9.1 where any liability has been limited in this software license agreement, such limitation shall have effect to the maximum extent permitted by applicable law. In some jurisdictions, mandatory, statutory legislation does not allow such exclusion or limitation of liability which may entail that the limitations stated herein do not apply to the licensee, either in whole or in part.

9.2 except as provided in clause 5, isv makes no warranties with respect to the isv software, any components thereof, or other goods or services provided by isv, express, implied or statutory, oral or written, including but not limited to, the implied warranties of merchantability, against infringement, quiet enjoyment, accuracy of data, system integration, or fitness for a particular purpose.

10. Force Majeure

10.1 Neither party shall be held liable for any damage sustained by the other party as a direct or indirect consequence of the non-performing party being delayed, prevented or hindered in the performance of its obligations under this Software License Agreement as a result of a force majeure situation. Force majeure situations include war and mobilization, catastrophes of nature, strikes, lock-out, fire, damage to production plant, import and export regulations and other unforeseeable circumstances beyond the control of the party concerned.

11. Transfer

11.1 By the Licensee

11.1.1 The Licensee shall have no right to sell/rent out/lend or in any other way transfer or assign the right to use the ISV Software or any right or obligation under this Software License Agreement to any third party without the expressed written consent of ISV.

11.1.2 ISV only makes ISV Software available for resale to qualified Resellers. The ISV Software also contains a lot of intellectual property, know-how, and techniques as referenced in section 4 in this Agreement. Licensee shall have no right to grant access to the ISV Software or Database to any other service provider. Licensee can only grant access to the database and/or transfer the right of support of the ISV Software to a party other than Reseller with the expressed written consent of ISV.

11.2 By ISV

11.2.1 ISV reserves the right to transfer its rights and obligations under this Software License Agreement in whole or in part to another company within the ISV Holding or a third party.

12. Termination

12.1 By the Licensee

12.1.1 The Licensee shall have the right to terminate this Software License Agreement with prior written notice of one (1) month to ISV. The Licensee shall not be entitled to a refund of the paid license fee upon such termination. Upon such termination, the Licensee shall promptly cease using the ISV Software and promptly delete and erase and destroy the ISV Software, including all and any copies thereof, unless otherwise stipulated by mandatory, statutory legislation, and the Licensee shall comply with such legislation in all respects.

12.2 By ISV

12.2.1 In the event of the Licensee's material breach of this Software License Agreement or the Licensee's breach of Clause 3.1.4, ISV shall have the right to terminate this Software License Agreement immediately with written notice and shall have all remedies available at law or in equity available to it. In such case, the Licensee shall immediately cease using the ISV Software and promptly delete, erase and destroy the ISV Software, including all and any copies hereof as stated in Clause 12.1.1. In the event of termination under this Clause, ISV shall have no obligation to refund any paid license fees whatsoever.

13. Validity and Severability

13.1 If any provision of this Software License Agreement is held to be illegal, invalid or unenforceable, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, so as to reflect the original intent of the parties, and such provision shall not affect the legality and validity of the other provisions.

14. Survival Clause

14.1 Any terms of this Software License Agreement which, by their nature, extend beyond the day this Software License Agreement comes to an end shall remain in effect and thus bind the parties.

15. Waiver

15.1 If either party does not exercise, or delays exercising, a right or remedy provided by this Software License Agreement or by law, that failure or delay will not amount to a waiver of that right or remedy by that party. The fact that a party does exercise a right or remedy provided by this Software License Agreement or by law does not prevent that party from exercising that right or remedy again or exercising another right or remedy.

16. Applicable Law and Jurisdiction

16.1 This Agreement will be interpreted and construed in accordance with the laws of the Australia and except as stated in Clause 16.2 any dispute, controversy or claim arising out of or in connection with this Agreement or the breach, termination, or invalidity thereof, shall be submitted to the courts and/or arbitrators in the relevant Australian state/territory and they shall have exclusive jurisdiction over this Agreement and all matters arising therefrom or thereunder. Each party waives all defences of lack of personal jurisdiction and forum non-convenience. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

16.2 Clause 16.1 does not prevent ISV from seeking or obtaining injunctive relief or other extraordinary relief in any courts with jurisdiction. To the extent permitted by applicable law, ISV may take concurrent proceedings for injunctive relief in any number of jurisdictions.

16.3 The language of official communication between Parties shall be English.

17.Acceptance

17.1 By signing this Software License Agreement, the Licensee hereby expressly accepts that any Licensee-specific information received by ISV on the basis of the contractual relationship regulated by this Software License Agreement, i.e. concerning the ISV Software, including Serial No., Name of Licensee, ABN/ACN, Address, Tel. No., Fax No., E-mail Address, URL, Contact Name and the name of the Licensee's supplier, may be used internally within the ISV only for the purpose of internal administration of the license to the ISV Software.