

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

In these Terms, unless the context otherwise requires:

**ACL** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Agreement** means any agreement between 3S and the Customer for the supply, procurement, subscription, resale, implementation, installation, support or maintenance of Software or Services and includes any quotation, proposal, purchase order, invoice, order confirmation, renewal notice, statement of work and these Terms.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia.

**Claim** means any claim, demand, action, proceeding, liability, loss, damage, cost, charge or expense of any kind.

**Confidential Information** means all information disclosed by one party to the other party that is confidential in nature, including commercial, financial, technical, operational and customer information, but excluding information that:

- (a) is publicly available other than through breach of confidence;
- (b) was lawfully known prior to disclosure; or
- (c) is independently developed without use of confidential information.

**Customer** means the person or entity acquiring Software or Services from 3S.

**Customer Data** means any data, information, records or content uploaded to, processed by, generated through or stored within the Software by the Customer or its users.

**Developer** means the third-party software owner, licensor or developer of the Software.

**Developer Terms** means any licence terms, end user licence agreement, subscription terms, SaaS terms, acceptable use policy or other terms imposed by the Developer in respect of the Software.

**Excluded Loss** means:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of anticipated savings;
- (d) loss of opportunity;
- (e) loss of goodwill or reputation;
- (f) loss of production;
- (g) loss of use;
- (h) loss or corruption of data;
- (i) business interruption;
- (j) indirect loss;
- (k) consequential loss;
- (l) special or exemplary damages; and
- (m) any remote or unforeseeable loss,

whether arising in contract, tort (including negligence), under statute, in equity or otherwise.

**Fees** means all fees, charges and amounts payable by the Customer to 3S.

**Force Majeure Event** means any event, circumstance or cause beyond the reasonable control of a party, whether occurring directly or indirectly, including acts of God, natural disasters, fire, flood, storm, earthquake, pandemic, epidemic, cyberattack, ransomware event, utility failure, internet outage, telecommunications failure, cloud or hosting service interruption, labour dispute, war, armed conflict, terrorism, civil unrest, governmental action, sanctions, embargoes, travel restrictions, transport disruptions, supply chain interruption, failure or delay by a third-party supplier, Developer, subcontractor, cloud provider, telecommunications provider, hosting provider or other dependency, and any resulting inability, delay or interruption affecting the performance of obligations under the Agreement.

**GST** has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means all intellectual property rights including copyright, patents, trademarks, designs, trade secrets, know-how and confidential information.

**Services** means any installation, configuration, implementation, integration, training, maintenance, support, consulting, remote access, troubleshooting or related services supplied by 3S.

**Software** means any software, subscription, SaaS platform, cloud application, licence, update, upgrade, module or related documentation supplied, procured or resold by 3S.

**Subscription Term** means the subscription period specified in the quotation, proposal, invoice or renewal notice.

**Terms** means these Software Licensing, Subscription and Support Terms & Conditions.

**3S** means 3S Consultancy Pty Ltd, ABN 33 686 480 633

### 1.2. Interpretation

Unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes a corporation, partnership, trust or other entity;
- (d) a reference to legislation includes amendments and replacements;
- (e) the words "including", "such as" and similar expressions are not words of limitation.

## 2. APPLICATION OF TERMS

### 2.1. Application

These Terms apply to all Software and related Services supplied or procured by 3S unless otherwise agreed in writing.

### 2.2. Acceptance

The Customer is deemed to have accepted these Terms if the Customer:

- (a) signs or accepts a quotation or proposal;
- (b) issues a purchase order;
- (c) requests or authorises the supply of Software or Services;
- (d) pays an invoice;
- (e) renews a subscription;
- (f) accesses, installs, activates or uses the Software;
- (g) permits users to access or use the Software; or
- (h) otherwise accepts the benefit of the Software or Services.

### 2.3. Customer Terms Excluded

Any terms or conditions issued by the Customer, including under any purchase order or procurement portal, are excluded and do not apply unless expressly accepted by 3S in writing.

### 2.4. Variation

3S may amend these Terms from time to time. Updated Terms apply to any renewal Subscription Term and any new Software or Services supplied after publication or notification of the updated Terms.

## 3. ROLE OF 3S

### 3.1. Reseller Only

The Customer acknowledges and agrees that:

- (a) 3S is a reseller, distributor or procurement intermediary only;
- (b) 3S is not the developer or owner of the Software unless expressly stated otherwise;
- (c) all Intellectual Property Rights in the Software remain vested in the relevant Developer;
- (d) Software may be subject to separate Developer Terms;
- (e) 3S does not control the ongoing development, modification, availability or discontinuation of the Software.

### 3.2. Developer Terms

Where applicable, the Customer agrees to comply with all Developer Terms.

If there is any inconsistency between these Terms and mandatory Developer Terms, the mandatory Developer Terms prevail to the extent of the inconsistency.

## 4. SOFTWARE LICENSING

### 4.1. Licence Rights

Subject to payment of the Fees and compliance with these Terms, the Customer is granted a non-exclusive, non-transferable, revocable right to access and use the Software during the Subscription Term solely for the Customer's internal business operations.

### 4.2. Restrictions

Unless expressly permitted in writing, the Customer must not:

- (a) sublicense, resell, distribute or commercialise the Software;
- (b) reverse engineer, decompile or disassemble the Software;
- (c) modify or create derivative works;
- (d) permit unauthorised third-party access;
- (e) circumvent licensing or security mechanisms;
- (f) use the Software unlawfully;
- (g) use the Software to develop competing products.

- 4.3. Suspension Rights**  
 3S may suspend access to Software or Services immediately if:
- Fees remain unpaid after the due date;
  - the Customer breaches these Terms or Developer Terms;
  - the Customer uses the Software unlawfully or improperly;
  - suspension is required by the Developer; or
  - suspension is necessary to protect systems, data or security.
- 4.4. Termination**  
 3S may terminate the Agreement immediately by written notice if:
- the Customer commits a material breach incapable of remedy;
  - the Customer fails to remedy a breach within fourteen (14) days after notice;
  - the Customer becomes insolvent or subject to external administration;
  - the Developer terminates or withdraws the Software.
- Termination does not affect accrued rights or liabilities.
- 5. SUBSCRIPTION TERM AND RENEWALS**
- 5.1. Subscription Basis**  
 Software subscriptions are supplied for the applicable Subscription Term and are not perpetual unless expressly stated otherwise.
- 5.2. Automatic Renewal**  
 Unless otherwise agreed in writing, subscriptions automatically renew for successive periods equal to the original Subscription Term.
- 5.3. Renewal Fees**  
 Renewal Fees are payable annually in advance at the then prevailing rates notified by 3S.
- 5.4. Fee Changes**  
 3S may adjust Fees upon renewal including due to:
- Developer pricing changes;
  - exchange rate movements;
  - increased support or infrastructure costs;
  - changes in licensing models.
- 6. FEES AND PAYMENT**
- 6.1. Payment Terms**  
 Unless otherwise stated in writing:
- invoices are payable within seven (7) days;
  - all Fees are non-refundable;
  - subscription Fees are payable annually in advance.
- 6.2. GST**  
 Unless otherwise stated, all Fees are exclusive of GST.
- 6.3. Late Payment**  
 If payment is overdue, 3S may:
- charge interest at 10% per annum calculated daily;
  - suspend Software or Services;
  - recover collection costs;
  - terminate the Agreement.
- 7. INSTALLATION, IMPLEMENTATION AND SUPPORT**
- 7.1. Scope**  
 3S may provide installation, implementation, configuration, integration, maintenance, support or training Services where agreed.
- 7.2. Best Endeavours Only**  
 Unless expressly agreed otherwise in writing:
- Services are supplied on a best endeavours basis only;
  - 3S does not guarantee uninterrupted or error-free operation;
  - 3S does not guarantee response or resolution times.
- 7.3. Third-Party Dependencies**  
 3S is not responsible for delays, failures or defects caused by:
- the Developer;
  - internet outages;
  - cloud hosting providers;
  - third-party hardware or software;
  - customer infrastructure;
  - cybersecurity incidents.
- 7.4. Customer Responsibilities**  
 The Customer is responsible for:
- maintaining suitable hardware, infrastructure and internet connectivity;
  - maintaining antivirus and cybersecurity protections;
  - backing up Customer Data;
  - ensuring authorised access only;
  - complying with Developer requirements.
- 8. REMOTE ACCESS AND SECURITY**
- 8.1. Remote Access**  
 The Customer authorises 3S and, where necessary, the Developer, to remotely access systems and environments for support, maintenance and troubleshooting purposes.
- 8.2. Customer Risk**  
 The Customer acknowledges that remote access involves inherent cybersecurity and operational risks.
- 8.3. No Liability for Data Loss**  
 To the maximum extent permitted by law, 3S is not liable for:
- corruption of Customer Data;
  - cybersecurity incidents;
  - unauthorised access;
  - system outages;
  - ransomware or malware events,
- except to the extent caused directly by the wilful misconduct of 3S.
- 8.4. Customer Backups**  
 The Customer must maintain complete and current backups at all times.
- 9. CUSTOMER DATA**
- 9.1. Ownership**  
 The Customer retains ownership of Customer Data.
- 9.2. Limited Access**  
 3S does not intentionally access or use Customer Data except where reasonably necessary to provide Services.
- 9.3. No Responsibility for Data**  
 3S is not responsible for:
- the accuracy or legality of Customer Data;
  - data loss or corruption;
  - data retention obligations;
  - regulatory compliance relating to Customer Data.
- 10. INTELLECTUAL PROPERTY**
- 10.1. Ownership**  
 All Intellectual Property Rights in the Software remain the property of the relevant Developer.
- 10.2. Reservation of Rights**  
 No ownership rights are transferred to the Customer.
- 10.3. Feedback**  
 The Customer grants 3S and the Developer a perpetual royalty-free licence to use suggestions, feedback and enhancement requests.
- 11. CONFIDENTIALITY**  
 Each party must:
- keep Confidential Information confidential;
  - use Confidential Information only for purposes connected with the Agreement;
  - not disclose Confidential Information except to employees, contractors or advisers who require access.
- This clause survives termination.
- 12. WARRANTIES AND DISCLAIMERS**
- 12.1. Limited Warranty**  
 3S warrants only that it is authorised to resell or procure the Software.
- 12.2. Disclaimer**  
 Except as expressly stated in these Terms and to the maximum extent permitted by law:
- all Software and Services are supplied "as is";
  - all implied warranties are excluded;
  - 3S does not warrant uninterrupted, secure or error-free operation;
  - 3S does not warrant compatibility with third-party systems;
  - 3S does not warrant that Software will meet all Customer requirements.
- 12.3. Developer Defects**  
 3S is not responsible for software bugs, coding errors or defects originating from the Developer.
- 13. AUSTRALIAN CONSUMER LAW**
- 13.1. Non-Excludable Rights**  
 Nothing in these Terms excludes rights that cannot lawfully be excluded.

**13.2. Limitation of Remedies**

Where permitted by law, 3S limits its liability for breach of any non-excludable guarantee to:

- (a) resupplying the Software or Services; or
- (b) paying the cost of having the Software or Services supplied again,  
at 3S's option.

**14. LIMITATION OF LIABILITY****14.1. Excluded Loss**

To the maximum extent permitted by law, 3S excludes all liability for Excluded Loss.

**14.2. Liability Cap**

To the maximum extent permitted by law, the aggregate liability of 3S arising from or connected with the Agreement, whether in contract, tort, under statute or otherwise, is limited to the Fees paid by the Customer to 3S during the twelve (12) months preceding the event giving rise to the Claim.

**14.3. Basis of Bargain**

The Customer acknowledges that the limitations of liability in these Terms are fair and reasonable and form an essential basis of the commercial bargain.

**15. INDEMNITIES**

The Customer indemnifies and holds harmless 3S and its officers, employees and contractors against any Claim arising from:

- (a) misuse of the Software;
- (b) breach of these Terms or Developer Terms;
- (c) unauthorised access caused by the Customer;
- (d) infringement caused by Customer modifications or integrations;
- (e) unlawful or improper use of Customer Data.

**16. FORCE MAJEURE****16.1. Relief from Performance**

A party is not liable for any delay, interruption, failure or inability to perform its obligations under the Agreement to the extent caused directly or indirectly by a Force Majeure Event.

**16.2. Suspension of Obligations**

The obligations of the affected party are suspended for the duration of the Force Majeure Event to the extent affected by the Force Majeure Event.

**16.3. Third-Party and Flow-On Effects**

A Force Majeure Event includes direct and indirect impacts affecting a party's ability to perform the Agreement, including disruptions affecting Developers, suppliers, cloud providers, telecommunications providers, transport providers, hosting providers, utilities, internet infrastructure or other third-party dependencies.

**16.4. No Breach**

A delay, interruption or failure to perform caused by a Force Majeure Event does not constitute a breach of the Agreement.

**16.5. Extended Force Majeure**

If a Force Majeure Event continues for more than ninety (90) consecutive days and materially affects the performance of the Agreement, either party may terminate the affected Software or Services by written notice without liability for that termination, except for rights and obligations accrued prior to termination.

**17. GENERAL PROVISIONS****17.1. Governing Law**

These Terms are governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

**17.2. Entire Agreement**

The Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior discussions, negotiations and representations relating to that subject matter, unless otherwise agreed in writing.

**17.3. Severability**

If any provision is unenforceable, the remaining provisions remain in effect.

**17.4. Waiver**

Failure to exercise a right is not a waiver of that right.

**17.5. Assignment**

The Customer must not assign or transfer rights without prior written consent of 3S.

**17.6. Electronic Communications**

The parties consent to electronic communications, notices and acceptance.

**17.7. Survival**

Clauses relating to confidentiality, intellectual property, liability, indemnities and accrued rights survive termination.

**18. CONTACT DETAILS****Markus Maderthaner, Managing Director**

3S Consultancy Pty Ltd

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