



SOFTWARE LICENCE AND SERVICES AGREEMENT

(Version 190828)

PARTIES

BETWEEN **RELIANSYS PTY LTD** ABN 85 094 676 641 of Suite 4, 1182 Burwood Highway, Upper Ferntree Gully, Victoria 3156, Australia ('RELIANSYS')

AND The 'Licensee'

AGREEMENT

RECITALS

- A. RELIANSYS has agreed to supply and provide access to the Software.
- B. In consideration of the Licence Fee, RELIANSYS grants the Licensee a non-transferable and non-exclusive licence to use the Software on the terms and conditions of this Agreement.

1. Definitions

1.1 In this Agreement the following definitions apply:

'**Additional Charge**' means a charge for services not covered by this agreement that may be agreed between the parties.

'**Agreement**' means this agreement and any annexure and schedules attached to it, and any subsequent amendments advised by RELIANSYS from time to time.

'**Business Day**' means Monday to Friday of each week except a day which is a public holiday in Melbourne Australia.

'**Business Hours**' means 9:00 am to 5:00pm Monday to Friday (EST), excluding public holidays in Melbourne, Australia.

'**Commencement Date**' means the date upon which the service is provided.

'**Confidential Information**' means

- (a) any information provided by RELIANSYS to the Licensee or otherwise obtained by the Licensee in connection with this Agreement, including, but not limited to source code, software, Documentation, customer lists, customer data, technical contacts, inventions, processes, designs, drawings, engineering or hardware configuration information, know-how, and trade secrets; and
- (b) information that is of such a nature that a reasonable person would believe it to be confidential or proprietary.

'**Customisation**' means any agreed enhancements, improvements, changes to or additional features of the Software required for or due to the specific circumstances of the Licensee.

'**Customisation Fee**' means the amount specified to be paid for the Customisation at the request of the Licensee, and agreed and provided by RELIANSYS in accordance with this Agreement.

'**Data**' means all content, records or other data entered or uploaded to the Software.

'**Documentation**' means any user documentation, manuals, help files, video recordings or other documentation, in either printed or electronic form provided by RELIANSYS to the Licensee.

'**Environment**' means the Hardware and Operating System on which the Licensee is licensed to use and operate the Software as described in the Licence Agreement or approved by RELIANSYS.

'**Error**' means:

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- (a) a failure of the Software to conform or operate materially in accordance with the Documentation; or
- (b) any part of the Software that:
 - (i) causes an error message triggered by an unreasonable adverse effect on the response time or performance of the Software to be displayed (whether generated by the Software or by the Operating System running the Software);
 - (ii) results in the Software doing something that it was not designed to do; or
 - (iii) results in the Software not doing something that it was designed to do.

'Fees' means RELIANSYS fees for the Services provided under this Agreement including the Licence Fees (for Licensing, Hosting, Maintenance, and Support for the Software), Training Fees, Customisation Fees and Additional Charges.

'Force Majeure Event' means any act of God, strike, lockout, other disturbance or labour difficulty, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or anything done or not done by or to a person, government or other competent authority, except the party relying on the force majeure.

'GST' means any tax imposed on the supply of goods or services, consumption or value added tax, including without limitation and tax imposed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time in Australia.

'Hardware' means computer equipment including, without limitation, mainframes, servers, minicomputers, work-stations, personal computers, networks, modems and other electronic apparatus which is used to perform information technology functions.

'Hosting Services' means the storage of the Software in a secure server environment, together with the Data.

'Insolvency Event' means an event by which a party:

- (a) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (b) is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (c) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (d) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
- (e) is or applies to be protected from any of its creditors under any applicable legislation; or
- (f) has anything similar to any of the events in paragraphs (a) to (e) happen to it under the law of any applicable jurisdiction.

'Licence' means the non-exclusive and non-transferable licence to use the Software granted to the Licensee under this Agreement.

'Licence Fee' means the fees payable for the Licence and Services.

'Maintenance' means work required and carried out to ensure the hosting environment operates effectively, and correction of any identified problems, including those reported by the Licensee.

'New Release' means any update or new version of the Software provided under this Agreement and supplied or made available by RELIANSYS to the Licensee.

'Operating System' means the system software responsible for the direct control and management of Hardware, basic system operations and overall operation of a multipurpose computer system, including such tasks as Hardware and memory allocation and management, input and output distribution, interrupt processing and job scheduling.

'Other Services' means any services other than Hosting Services, Maintenance Services, and Support Services provided by RELIANSYS to the Licensee at the written request of the Licensee pursuant to this Agreement, such services as agreed in writing between the parties from time to time and subject to Additional Charges agreed between the parties.

'Schedule' means a schedule to this Agreement (unless specifically stated otherwise);

'Services' means the Hosting Services, Maintenance Services, Support Services and Other Services (if any and as the case may be) provided by RELIANSYS to the Licensee pursuant to this Agreement.

'Services Scope' means the definition of the Other Services agreed between the parties.

'Software' means the RELIANSYS cloud-based software application and Documentation, and any enhancements, modifications, updates or New Releases of that software or any part of that software which RELIANSYS provides or makes available.

'Support Services' means reasonable provision of advice and assistance in the use and application of the Software to the Licensee.

'Third Party' means any natural person or organisation other than RELIANSYS and the Licensee.

'Training Services' means the provision of services to reasonably ensure user competence in the use and application of the Software.

'Training Fees' means the fees for the Training Services as agreed between the parties from time to time.

2. Term

2.1 This Agreement commences on the Commencement Date and will continue unless it is terminated pursuant to the terms of this Agreement.

3. Grant of Licence

3.1 On the Commencement Date, and subject to the payment of the Licence Fee, RELIANSYS:

- a) Grants the Licence to the Licensee unless terminated in accordance with clause 16.1, 16.2 or 16.3; and
- b) Subject to clause 4.1, will provide access to the Software in accordance with this Agreement.

4. Access

- 4.1 The Licensee, at its own expense, will be responsible for necessary software, equipment or services required to obtain access to the Software or any add-on modules with its own computer system.
- 4.2 RELIANSYS will not be liable for any costs incurred by the Licensee, delays in access to the Software or other consequences where the Licensee solely causes the delays or prevents RELIANSYS performing its obligations under this clause.

5. Updates and New Releases

- 5.1 During the Term, RELIANSYS will provide the Licensee with any updates or New Releases relating the Software for no Additional Cost.
- 5.2 RELIANSYS warrants that such upgrades and New Releases will not reduce the core functionality of the Software.

6. Services

- 6.1 In consideration of the payment of the Licence Fees, RELIANSYS must provide the Services in respect of the Software upon and subject to the terms and conditions of this Agreement.
- 6.2 RELIANSYS may perform its obligations under this Agreement by appointing a sub-contractor to do so on its behalf and in its name, provided that RELIANSYS will at all times remain responsible for providing the Services and liable for the Services provided by the sub-contractor appointed by RELIANSYS.

7. Training

- 7.1 If the Licensee requires Training Services, upon request to RELIANSYS detailing the desired Training Services, RELIANSYS may determine (acting reasonably) whether or not it is able to provide such Training Services having regard to the scope and timing parameters of the Licensee's request in the context of RELIANSYS's current and projected service requirements for its other customers, and the terms on which the Training Services will be provided, and the Training Fees.

8. Customisation

- 8.1 From time to time during the Licence, the Licensee may request RELIANSYS to provide Customisations to the Software. RELIANSYS will use its best endeavours to provide the Customisation. If RELIANSYS agrees to provide a Customisation requested by the Licensee, it must advise the Licensee of the Customisation Fees, estimated time and other terms on which it offers to provide such Customisation. If the Licensee accepts (in writing) the terms offered by RELIANSYS, RELIANSYS must provide the Customisation on terms offered and in accordance with this Agreement.
- 8.2 Where Customisation of the Software is requested, and agreed to by RELIANSYS, the Licensee must pay the Customisation Fee in accordance with the terms agreed with RELIANSYS.
- 8.3 All Customisations remain the property of RELIANSYS.

9. Payments and Fees

- 9.1 The Licensee must pay the Licence Fees, upon initial connection, and on the subsequent due date. However, where a trial period has been agreed, the Licence Fees are payable upon expiry of the trial period.
- 9.2 The Licensee cannot suspend the Software Licence.
- 9.3 The Licensee may acquire other modules of the RELIANSYS Software at any time during the term, at the price applicable at the time. Any Licence Fees paid in advance will be offset against the cost on a pro rata basis.
- 9.4 All charges quoted pursuant to this Agreement are inclusive of Australian GST. The Licensee will be provided with a valid tax invoice for GST purposes. In addition to payment of the charges, the Licensee must pay any other taxes or duties payable at the same time the charges are paid.
- 9.5 The Licence Fee will from time to time be adjusted as advised in advance. Any delay in implementing a change to the Licence Fee does not prevent the adjustment taking place and being effective from the adjustment date.

10. Licensee's Obligations

- 10.1 Until the Agreement is terminated, the Licensee must:
- (a) make payment of any amount required under this Agreement;
 - (b) comply with and supervise and control the use of the Software in accordance with the terms of this Agreement;
 - (c) provide all necessary information and assistance reasonably required to enable RELIANSYS to comply with its obligations under this Agreement;
 - (d) not sell, market, network, transfer, lease, sub-licence, rent, lend or otherwise dispose of or distribute the Software;
 - (e) not decompile, disassemble, reverse engineer, copy, create a derivative work from, reconfigure or otherwise attempt to discover the source code of the Software; and
 - (f) allow Reliansys to publish on its website or any other material that Reliansys is a supplier to the Licensee, and to use the trademark of the Licensee current at the time, registered or unregistered, solely for that purpose.

11. Copyright

- 11.1 The Software (including any Customisation) and the Documentation is the subject of copyright. The Licensee must not during or any time after the expiry or termination of this Agreement permit any act which infringes that copyright and, without limitation, the Licensee must not copy or distribute the Software and the Documentation except as otherwise expressly authorised by this Licence.
- 11.2 The Licensee must indemnify RELIANSYS fully against all liabilities, costs and expenses that RELIANSYS may incur to a Third Party as a result of the Licensee's breach of copyright.
- 11.3 The Software and Documentation are and at all times will remain the property of RELIANSYS. The Licensee acknowledges that there is no transfer of title or ownership to the Licensee of the Software, or the Documentation or any modifications, updates or New Releases of the Software.
- 11.4 The Licensee is responsible for data entry and data input integrity. All data entered into the Software by the Licensee, remains the property of the Licensee. Upon termination of this Agreement the Licensee is responsible for extracting from the Software any data they wish to retain.
- 11.5 The Licensee will be responsible for any breach of this Agreement by its employees, agents, contractors and representatives.
- 11.6 This clause survives termination of this Agreement.

12. Warranty

- 12.1 RELIANSYS warrants and represents:
- (a) it will promptly notify and fully disclose to the Licensee any event (actual or threatened) arising during the Term which could have an adverse effect on RELIANSYS's ability to perform any of its obligations under this Agreement;
 - (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
 - (c) the Software (including any updates and New Releases) will be free from defects and Errors, other than minor bugs and errors that do not affect the overall functionality of the Software;

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- (d) the Software (including any updates and New Releases) delivered to the Licensee from time to time has been subjected by RELIANSYS (before each delivery) to all prudent and professional tests to ascertain that it conforms to its technical specifications and any agreed requirements and that it operates in its intended environment;
- (e) the performance of the Software will conform with the relevant technical specifications in all respects;
- (f) it will provide sufficient information for the proper operation of the Software (including updates and New Releases);
- (g) it has, and will continue to have and to use, the skills, qualifications and experience, to perform the obligations under this Agreement in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement; and
- (h) it has and will continue to have the necessary resources, including financial resources, to carry out its obligations under this Agreement and will use those resources to do so.

- 12.2 RELIANSYS acknowledges that the Licensee in entering into this Agreement is relying on the warranties and representations contained in this Agreement.
- 12.3 The Licensee acknowledges that the Software cannot be guaranteed error free or access to be interruption free and the Licensee further accepts that the existence of any such errors shall not be construed a breach of this Agreement provided RELIANSYS acts promptly to rectify any such errors.
- 12.4 RELIANSYS makes no representation nor gives any warranty in relation to any incorrect performance or functionality which results, partly or wholly, from data, records or other information provided by the Licensee or a Third Party.
- 12.5 RELIANSYS will ensure that the Software is available for use 99% of the time (during business hours) averaged over a 12-month period excluding any time for scheduled maintenance or for any periods where a Force Majeure Event is in place.
- 12.6 RELIANSYS will give the Licensee at least 3 Business Days notice of any planned outages during normal Business Days and Business Hours.

13. Liability and Indemnity

- 13.1 RELIANSYS agrees to indemnify the Licensee, its employees, agents and contractors, from and against all actions, costs (including legal costs on a full indemnity basis), claims, charges, expenses, penalties, demands and damages which may be brought, made or claimed against them, or any of them, arising out of or in any way connected with:
- (a) RELIANSYS's performance or purported performance of its obligations under this Agreement;
 - (b) a breach of this Agreement by RELIANSYS; or
 - (c) any loss or damage or property or injury or death of any person caused by RELIANSYS, its officers, employees or contractors that is related to the wilful or negligent act or omission of RELIANSYS.
- 13.2 RELIANSYS's liability to indemnify pursuant to this clause will be reduced proportionally to the extent that any act or omission of the Licensee, the Related Entities, its employees or contractors contributed to the loss or liability.
- 13.3 RELIANSYS bears no responsibility for the accuracy, integrity and currency of data contained within the application, whether input by the Licensee or Third Parties.
- 13.4 The indemnities contained in this Agreement will survive and have effect notwithstanding the completion, termination, discharge or rescission of this Agreement for any reason whatsoever.

14. Overdue Payments

- 14.1 If the Licensee defaults in payment of any amount due to be paid to RELIANSYS, RELIANSYS may suspend any Licence granted under this Agreement and take any other action which it is legally entitled to take, until such time that all monies owed by the Licensee to RELIANSYS are paid in full. RELIANSYS shall not be liable by reason of termination or expiration of this Agreement to the Licensee for any consequential or indirect losses howsoever arising.

^{14.2} Any indulgence afforded by RELIANSYS under 15.1 does not prejudice RELIANSYS in exercising any of those rights at a later time, or in respect of any future breach by the Licensee.

15. Termination

- 15.1 The Licensee may terminate this Agreement by giving RELIANSYS written notice to be effective at the end of the month during which the notice is received or such longer period as specified in the notice. Upon termination, the Licensee is not entitled to any refund of monies paid in advance which relate to the period after such termination.
- 15.2 This Agreement may be terminated immediately by the Licensee in the following circumstances:

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- (a) if RELIANSYS is in breach of any term of this Agreement and, if such breach can be remedied, RELIANSYS fails to remedy the breach within 7 days of written notice;
- (b) if there is any breach of copyright by RELIANSYS;
- (c) if RELIANSYS experiences an Insolvency Event;
- (d) a Force Majeure Event continues for at least 3 consecutive months.

15.3 This Agreement may be terminated immediately by RELIANSYS in the following circumstances:

- (a) if the Licensee is in breach of any term of this Agreement and fails to remedy the breach within 7 days of written notice;
- (b) if there is any breach of copyright by the Licensee, its employees, agents, contractors or representatives;
- (c) if the Licensee is subject to an Insolvency Event;

15.4 If this Agreement is terminated for any reason:

- (a) each party must pay to the other any amounts payable in relation to the period before the date of termination or expiry;
- (b) RELIANSYS must promptly reimburse to the Licensee any amounts paid in advance which relate to the period after termination for termination pursuant to clause 18.2(a)-(c);
- (c) RELIANSYS must promptly reimburse to the Licensee any amounts paid in advance which relate to the period after the Force Majeure Event for termination pursuant to clause 18.2(d);
- (d) each party must destroy or return any Confidential Information supplied to the other under this Agreement, if requested to do so by the other party;
- (e) each party must perform all outstanding obligations under this Agreement up to and including the date of termination;
- (f) the Licensee must cease using the Software;
- (g) each party maintains:
 - (i) any other rights available to them under this Agreement; and
 - (ii) any other legal and equitable remedies available to them.

15.5 RELIANSYS shall not be liable by reason of termination or expiration of this Agreement to the Licensee for any consequential or indirect losses howsoever arising.

16. Confidentiality

16.1 Either party must not disclose, and must ensure that its employees, contractors and agents do not disclose, to any person (other than to a person properly approved by the party disclosing the information) any Confidential Information of the other party.

16.2 If a party becomes aware of any steps taken, being taken, or considered, to compel that party or any of its employees, contractors or agents to disclose Confidential Information, that party must:

- (a) to the extent permitted by law, defer and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible;
- (b) promptly notify the other party; and
- (c) do anything reasonably required by the other party including the institution and conduct of legal proceedings at the other party's direction and expense to oppose or restrict that disclosure.

16.3 Neither party will, without the prior written approval of the other party, disclose or give any Third Party access to the Software, any part of it or report generated by it, other than in the normal course of business.

16.4 Neither Party will be in breach of clause 16.2 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

16.5 Notwithstanding any other provision of this clause, the Licensee may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to the Related Entities, solicitors, auditors, insurers and accountants.

16.6 This clause will survive the termination of this Agreement.

17. Assignment

20.1 The benefit of this Licence must not be dealt with in any way by either party (whether by assignment, sub-licensing or otherwise) without the other's prior written consent, which consent must not be unreasonably withheld.

18. Waiver

- 18.1 Failure or neglect by either party to enforce at any time any of the provisions of this Licence will not be construed or deemed to be a waiver of that party's rights under this Agreement.

19. Governing Law

- 19.1 The law of Victoria, Australia from time to time governs this Agreement.
- 19.2 The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.

20. Severability

- 23.1 If all or any part of any provision is judged invalid or unenforceable, in all the circumstances, it will be deemed to be deleted and will not affect the validity or enforceability of the remaining provisions.

21. Notices

- 24.1 Any notice required or authorised to be given or served pursuant to this Agreement will be deemed to have been duly received by the person to whom addressed on the same day when forwarded by electronic mail, facsimile, or personally delivered, or 48 hours after posting by ordinary prepaid post.

22. Force Majeure

- 22.1 If a party cannot perform its obligations under this Agreement because of a Force Majeure Event (other than an obligation to pay money), that party must give notice to the other party as soon as possible setting out:
- (a) the circumstances amounting to the Force Majeure Event;
 - (b) the nature of the Force Majeure Event; and
 - (c) the expected length of time the circumstances will continue.
- 22.2 If there is a Force Majeure Event and notice is given under clause 22.1:
- (a) the obligations of the party giving notice will be suspended while the Force Majeure Event continues;
 - (b) the party affected by the Force Majeure Event must:
 - (c) take all reasonable steps to minimise the effects of the Force Majeure Event;
 - (d) permit the other party to take whatever steps it considers reasonably necessary to minimise the effects of the Force Majeure Event (noting that there is no obligation on that party to do so); and
 - (e) start performing its obligations under this agreement as soon as possible after the Force Majeure Event ends.

23. Entire Agreement

- 23.1 This is the entire agreement of the parties concerning the subject matter of this Agreement. There is no other agreement, understanding, warranty or representation, whether oral or written, binding the parties concerning any aspect of this Agreement.

END