

Appendix A - End User Terms and Conditions

WARNING:

Permission to use the SauceOpen internet based software platform (“the Software Platform”) is conditional upon You, the Customer, agreeing to the terms set out below. You must read this agreement carefully. By using all or any portion of the Software Platform, you accept all the terms and conditions of this Agreement. Acceptance shall bind You and all of Your employees in terms of this License. Including, in particular, any limitations on use, transfer ability, warranty and liability. You agree this Agreement is enforceable in the same manner as any written negotiated contract bearing your signature or seal. If You do not agree, do not use the Software Platform.

BACKGROUND

A.Sauce Software Pty Ltd (“Sauce”) has the right to license the Software Platform and provide services to customers relating to the Software Platform.

B.The Customer wishes to utilise the Software Platform and engage Sauce to provide these services.

C.This Agreement records the arrangements between Sauce and the Customer.

THE TERMS AND CONDITIONS OF USE ARE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the contrary intention appears:

"Acceptable Use Policy" means the policy as prescribed by Sauce outlining the terms of acceptable and appropriate use and application of the Software Platform as may be substituted or amended by Sauce from time to time.

"Agreement" means these general terms and conditions;

"Claim" means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

"Customer" means You, the end user, as does any reference to "You" or "Your";

"Customer Data" means data owned or supplied by the Customer and stored on our systems through the Customer's usage of the Software Platform;

"Force Majeure" means any act of God, fire earthquake, storm or flood or any other cause beyond the reasonable control of the party claiming the benefit of clause 17 and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost;

"License" means the right to use the Software Platform granted by Sauce under this Agreement;

"Login Information" means, in combination, the username and password issued by Sauce to the Customer in order for them to access the Software Platform.

"Sauce" means Sauce Software Pty Ltd (ACN 116 591 309) and its successors, administrators and assigns;

"Software Platform" means the SauceOpen internet based software platform;

"Subscription Fee" means the monthly license fee for the Software Platform;

"Support Services" means the services offered to the Customer as outlined in clause 8;

"Term" means the period from the execution and/or acceptance of these terms and conditions by the Customer until validly terminated in accordance with clause 14;

1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

(a) singular includes plural and vice versa;

(b) any gender includes every gender;

(c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;

(d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;

(e) references to signature and signing include due execution of document by a corporation or other relevant entity; a

(f) references to months mean calendar months;

(g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders in council, rules, by laws and ordinances made under those statutes;

(h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

(i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;

(j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;

(k) each paragraph or subparagraph in a list is to be read independently from the others in the list;

(l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;

(m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns; and

(n) the phrase "in writing" includes communication via any form of electronic text based communication, including but not limited to email, the Software Platform online request system, SMS, approved internet chat facilities, approved bulletin board services and other approved instant messaging systems.

2. LICENCE

2.1 Grant of License

In consideration of payment of the Subscription Fee, Sauce, for the Term and on the terms of this Agreement hereby grants to the Customer a non-exclusive, non-transferable license to use the Software Platform.

2.2 Limitations of License

The license granted pursuant to clause 2.1 is on the following conditions:

(a) the Customer may only use the Software Platform in accordance with this Agreement;

(b) except as specified to the contrary in this Agreement, Sauce shall not be obliged to provide advice, training, error correction, modifications, updates, new releases or enhancements of the Software Platform;

(c) the Customer shall not, nor shall it permit others to sublicense, rent, lease, distribute the Software Platform to any third party;

(d) except as explicitly permitted in this Agreement the Customer shall not, and agrees not to make any attempt to:

(i) decompile, reverse engineer, disassemble or otherwise derive the source code or database structures from any component of the Software Platform;

(ii) modify, enhance, translate, alter, tamper with, upgrade or create derivative works of the Software Platform; or

(iii) strip out or alter any trademark, service mark, copyright, patent, trade secret, ownership or any other proprietary or intellectual property notices, legends, warnings, markings or indications on or with any component of the Software Platform or Documentation;

(e) this Agreement does not transfer to the Customer any ownership rights in the Software Platform, the Customer is only acquiring a right to use the Software Platform in accordance with and subject to the provisions of this Agreement.

(f) the Customer shall comply with the Acceptable Use Policy.

3. SUITABILITY

(a) The Customer is solely responsible for determining the suitability of the Software Platform for its particular needs and for the results obtained.

(b) By entering into this Agreement the Customer warrants to Sauce that it has (and will in future have):

(i) determined its needs;

(ii) evaluated the Software Platform's capabilities; and

(iii) satisfied itself as to its suitability for the Customer's purpose before entering into this Agreement;

(c) Sauce makes no representation that the Software Platform is suitable for the Customer's application or that it conforms to or satisfies any Commonwealth, state or local laws.

4. PROVISION OF THE SOFTWARE PLATFORM

4.1 Access

Sauce, in accordance with the terms and conditions of this Agreement shall provide access to the Software Platform to the Customer in consideration of payment of the Subscription Fee by the Customer.

4.2 Log In Information

(a) Sauce shall provide the Customer with Log in Information required for access to the Software Platform.

(b) The Customer is responsible for maintaining the secrecy and confidentiality of the Log in Information.

(c) The Customer must not disclose to any other person, corporation, entity or organisation any Log in Information whether in use or not.

(d) Nothing in the clause shall prevent the Customer from disclosing their Software Platform user name to allow third parties to interact with the Customer through their website or by other means.

4.3 Use of the Software Platform

Throughout the Term of this Agreement the Customer must comply with all reasonable directions that Sauce may issue in its discretion from time to time with respect to the use of and access to the Software Platform.

4.4 Proper Use

The Customer must not knowingly use the access nor permit any other party to access the Software Platform for any purpose or activity of an illegal or fraudulent nature and must not use the service to contribute or aid the commission of a crime or to infringe upon the rights of a third party.

5. VARIATION

Sauce reserves the right to amend, repair, vary particular aspects of the Software Platform, information and facilities from time to time at its discretion, even if that amendment, repair or variation results in a variation, amendment or limitation of the functionality of the Software Platform. Provided however that Sauce shall use its best endeavors to avoid but shall not be liable for any reduction in the quality, speed, or performance of the Software Platform as a result of such repair, amendment or variation.

6. DATA

6.1 Third Party Infringement

The Customer shall not knowingly do any act or thing in relation to data which would infringe any party's copyright or intellectual property and shall be responsible for obtaining consent, approval or license from the holders of any intellectual property rights required to enable the Customer to deal with any relevant data or to do any act or thing in relation to those intellectual property rights.

6.2 Security

Sauce shall use all reasonable endeavors to ensure that Sauce's servants, agents and employees provide a secure environment for the any Customer Data held on its systems as a result of use of the Software Platform.

7. SERVICE AVAILABILITY

7.1 Availability

Sauce shall use all reasonable endeavors to provide the Software Platform on a continuous basis during the Term of this agreement

F:\Data\Sauce Software Pty Ltd\05854 -Operational Agreements\Documents\End User License Agreement.FINAL.doc

provided however that Sauce may without notice suspend all or part of the Software Platform immediately, including where:

- (a) there is a malfunction or breakdown of any of Sauce's equipment or if Sauce is required to undertake the repair, maintenance or Service of any part of the Software Platform;
- (b) there is an electrical storm, tempest, electrical short circuit, power failure, telecommunications failure or fault
- (c) there is an industrial dispute or lockout;
- (d) it is reasonably required to reduce or prevent fraud or interference with the Software Platform;
- (e) Sauce is required to comply with an order, instruction or request of government, or other such competent body;
- (f) the Customer has failed to pay Subscription or other fees that are due and payable to Sauce;
- (g) there is an act of God, war, government action, or any other circumstance beyond Sauce's reasonable control occurs.

7.2 Viability of Software Platform

If Sauce's ability to provide the Software Platform is restricted, or altered in such a way that Sauce considers it is impractical, impossible or not commercially viable to continue to provide the Software Platform or any claim is made that infringes the rights of a third party or exposes Sauce to liability to any third party or to liability for prosecution for an offence or liability to a statutory penalty, Sauce may elect to discontinue the Customer's access to the Software Platform provided however Sauce will endeavour to provide the Customer with prior written notice, where it is reasonable and practicable in Sauce's opinion to do so.

7.3 Notice of Maintenance

Sauce will use its reasonable endeavors to

(a) except in an emergency situation, provide the Customer with 7 days notice of any scheduled maintenance of the Software Platform;

(b) ensure that any scheduled maintenance is carried out between the hours of 7pm and 7am AEST on weekdays or on weekends.

7.4 Loss of Access

The Customer Shall have no claim against Sauce in respect of loss of access or functionality to the Software Platform referred to in this clause whether such claim lies in contract, tort or otherwise (including negligence) for any loss or damage howsoever arising.

7.5 Credit for Unavailability

Despite the terms of clause 7.4, if, due to the negligent act or omission of Sauce, the Customer is unable to access the Software Platform in accordance with this Agreement, Sauce will, at its sole discretion, issue the Customer with an amount of credit calculated with reference to the time that the Software Platform was not accessible as a percentage of the total hours available.

7.6 Software Platform Malfunctions

Sauce does not warrant that the Software Platform is or will be completely error free.

8. SUPPORT AND MAINTENANCE

8.1 Provision of Support Services

In compliance with this Agreement, Sauce will provide Support Services as it considers reasonable to ensure the Customer is able to maintain access and use of the Software Platform. Such Support Services may, at the sole option of Sauce, take the form of:

(a) telephone advice;

(b) Support Services via the internet;

(c) error correction by means of updates; or

(d) such other services as Sauce considers are effectively provided online.

8.2 Hours for Support Services

Sauce shall provide the Support Services during the hours specified on its website and does not warrant that it will be capable of promptly receiving, processing or otherwise acting upon a request for support which is made outside those hours or that it can provide onsite Support Services outside those hours.

8.3 Exclusions

Support Services to be provided by Sauce under this Agreement do not include:

(a) correction of errors or defects caused by operation of the Software Platform in a manner other than that currently specified by Sauce;

(b) correction of errors resulting from data migration or transformation, whether performed by Sauce or third parties;

(c) correction of errors or defects caused by modification, revision, variation, translation or alteration of the Software Platform not authorised by Sauce;

(d) correction of errors caused in whole or in part by the use of computer programs other than the Software Platform;

(e) correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained operating and programming staff for the operation of the Software Platform;

(f) training of operating or programming staff;

(g) rectification of operator errors;

(h) rectification of errors caused by incorrect use of the Software Platform;

(i) rectification of errors caused by the Customer's equipment failure;

(j) The Customer's equipment maintenance;

(k) diagnosis or rectification of faults not associated with the Software Platform;

(l) installation of software;

(m) third party materials;

(n) rectification of errors in the Customer Data;

(o) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Sauce;

(p) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with Sauce; or

(q) correction of errors or defects which are the subject of a warranty under another agreement.

8.4 Additional Services

If the Customer so requests, Sauce may at its option provide any of the Support Services referred to in sub clause 8.3 and may charge an additional fee for providing such services.

9. BACK UPS

9.1 Back Up Services Available

(a) Sauce will make back ups of the Customer Data stored on the Sauce servers at intervals or as frequently as requested by the Customer and is technically feasible.

(b) In the event of a backup needing to be restored, Sauce will restore the most recent backup.

(c) Sauce shall not in any circumstance be responsible or liable for any loss of Customer Data.

(d) Sauce reserves the right to suspend back up services should the customer be in arrears on any invoice

(e) Should the Customer choose not to renew the agreement, Sauce will supply an electronic copy of the Customer's data in a format determined by Sauce.

(f) Sauce shall on reasonable Notice make the Customer Data and related data, documentation or records maintained on behalf of the Customer available for inspection by the Customer or the Customer's auditors.

9.2 Additional Fees

If the Customer requests any of the back up services as offered under sub clause 9.1, the Customer will be required to pay a prescribed additional fee.

10. PRIVACY POLICY

10.1 Commitment to Privacy

Sauce is committed to protecting Customer privacy. We understand that Customers of the Software Platform are concerned about their privacy, and the confidentiality and security of any information that is provided. Sauce undertakes to comply with the terms of our privacy policy which can be accessed at the following address:

http://www.sauceopen.com/portal/components/com_purchasesauce/legals/privacy.pdf

11. USE OF CUSTOMER DATA

11.1 Provision of Information

Through the usage of the Software Platform, Customers will provide and have stored on Sauce's servers Customer Data.

11.2 Use of Customer Data

The Customer grants and Sauce reserves the right to use, test, manipulate or put to any other application the Customer Data for the purpose of improving the Software Platform. In this context Sauce will use all reasonable endeavours to preserve the confidentiality of the Customer Data.

12. CUSTOMER'S FACILITIES

12.1 Requirements

The Customer shall be responsible for providing its own internal facilities (including terminal, software, modem and telecommunications facilities) necessary for utilising the Software Platform.

12.2 Assistance by Sauce

Sauce shall, upon request from the Customer, supply such information and assistance as is reasonably required by the Customer to enable the Customer to prepare and install its own access facilities. This may require the Customer to pay Sauce an additional fee.

12.3 Customer's Responsibility

Notwithstanding clause 12.2, Sauce accepts no responsibility for any deficiency in the Customer's access facilities.

13. COMPLIANCE WITH LAW

13.1 No Obligation

Sauce is under no obligation to the Customer under this Agreement or otherwise if and to the extent the Customer's accessing of the Software Platform constitutes a breach of any relevant law or regulation.

13.2 Delivery of Data

Sauce is under no obligation to refrain from delivering the Customer Data or related data, documentation or records into the custody of a duly authorised law enforcement officer or government representative, officer or agency or from providing such persons or instrumentalities with access to the Customer Data or related data, documentation or records if Sauce receives a request or demand for such information.

13.3 Indemnities

The Customer shall to the extent permissible by law indemnify Sauce against all costs and liability incurred as a result of:

(a) its possession, processing, use or other handling of the Customer Data or related data, documentation or records; and

(b) delivering materials or information to a third party in accordance with clause 13.2.

14. TERMINATION

14.1 Right to Terminate

Without limiting the generality of any other clause in this Agreement, Sauce may terminate this Agreement immediately by notice in writing if:

- (a) the Customer is in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of receipt of notice of breach from Sauce;
- (b) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (c) the Customer, (if a partnership), dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) the Customer, (if a natural person), dies; or
- (e) the Customer ceases or threatens to cease conducting its business in the normal manner.

14.2 Additional Rights

If notice is given to the Customer by Sauce pursuant to clause 14.1, Sauce may, in addition to terminating this Agreement:

- (a) retain any moneys paid by the Customer;
- (b) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (c) be regarded as discharged from any further obligations under this Agreement
- (d) exercise a lien over the Customer's Data until all fees payable by the Customer are paid; and
- (e) pursue any additional or alternative remedies provided by law.

14.3 Your Rights

You may terminate this agreement at any time by giving to Sauce thirty (30) days notice in writing and by paying all outstanding Subscription Fees and others amounts owing and that will become owing up to and including the termination date.

15. LIMITS OF LIABILITY

15.1 Exclusion of liability

To the maximum extent permitted by law, Sauce will not be liable for any ordinary, incidental, consequential or special loss or damage (including but not limited to loss of profits, loss of data and loss of personnel) arising out of this Agreement or the use of the Software Platform even if appraised of the likelihood of such loss or damage occurring.

15.2 Limit of liability

- (a) Except as expressly provided by this Agreement, the Software Platform is provided on an "as is" basis without any representation, warranty or condition, whether express or implied, statutory,

out of a course of dealing or usage, trade or otherwise including any implied warranty or condition of merchantability quality or fitness for any particular purpose or use.

(b) Sauce does not warrant that the Software Platform will be free of defect, uninterrupted, accurate, complete, current, stable, bug free, error free or available at any time in respect of its operation.

(c) Sauce shall have no responsibility or liability whatsoever as a consequence of any Customer Data, lost, destroyed or damaged by the Software Platform.

(d) In no event will Sauce's liability arising out of or relating to this Agreement exceed the amount of the fees paid by the Customer for the use of the Software Platform or Services.

15.3 Exclusion of other Terms

(a) All other conditions, warranties, representations, liabilities and obligations, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description are hereby excluded to the extent permitted by law.

(b) Subject to any Commonwealth or state law that limits Sauce's right to restrict its liability or implies any warranty or condition or imposes any obligation upon Sauce which cannot be excluded, restricted or modified, and to the extent that Sauce may limit its liability under such law, Sauce's liability for breach of any such warranty, condition or obligation will be limited, at its option, to:

(i) the replacement of software;

(ii) the redelivery of the Services;

(iii) the repair of the Software Platform to render it compliant with the Specifications; or

(iv) the refunding of the fees paid in respect of the Software Platform giving rise to the liability.

15.4 Good Data Processing

The Customer acknowledges and agrees good data processing procedures dictate that any software be thoroughly tested with non critical data before implementing it in a business environment and undertakes to implement such procedures before using the Software Platform. Sauce shall under no circumstances be liable for the consequences of any failure by the Customer to comply with this practice.

15.5 Survival

The provisions of this clause 15 shall survive the termination of this Agreement.

16. LIABILITY OF SAUCE

Sauce's liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the Software Platform or services supplied pursuant to this Agreement or in respect of a failure or omission on the part of Sauce to comply with its obligations under this Agreement shall be limited, in aggregate, to an amount equal to the amount of the Subscription and other relevant fees.

17. FORCE MAJEURE

17.1 Delay

Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

17.2 Suspension of Obligations

If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

17.3 Thirty Day Failure

If a delay or failure by a party to perform its obligations due to Force Majeure exceeds thirty (30) days, either party may immediately terminate this Agreement on providing notice in writing to the other party.

17.4 Refund of Monies

If this Agreement is terminated pursuant to clause 17.3, Sauce shall refund monies previously paid by the Customer pursuant to this Agreement for goods or services that have not been provided by Sauce to the Customer.

18. GENERAL

18.1 Variation of Agreement

The terms of this Agreement shall be variable by Sauce upon notice in writing outlining the changes to be made, and:

- (i) the effect of the variation, if any, upon the fees; and
- (ii) the impact of the variation on the obligations of either party under this Agreement;

18.2 No Reliance

Subject to clause 18.3, the Customer warrants that it has not relied on any representation made by Sauce which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Sauce.

18.3 Independent Verification

The Customer acknowledges that to the extent Sauce has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

18.4 Third Party Materials

Except as expressed in this Agreement, Sauce makes no warranty in relation to any goods or Third Party Materials provided under this Agreement other than as provided by their

manufacturers as made known to the Customer in the documents supplied by Sauce or the manufacturer or as otherwise published or made known to the Customer.

18.5 Entire Agreement

This Agreement constitutes the entire Agreement between the Parties and supersedes all prior representations, Agreements, statements and understandings, whether verbal or in writing.

18.6 No Assignment Without Consent

(a) The benefit of this Agreement shall not be assigned by the Customer without Sauce's consent in writing.

(b) Sauce may consent to the assignment or novation of this Agreement by the Customer subject to such conditions as it chooses to impose.

18.7 Waiver

(a) No right under this Agreement shall be deemed to be waived except by notice in writing.

(b) A waiver made by a party pursuant to clause (a) will not prejudice its rights in respect of any subsequent breach of the Agreement by the other.

(c) Subject to clause (a), any failure by a party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by it to the other, will not be construed as a waiver of its rights under this Agreement.

18.8 Severability

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

18.9 Parties' rights

Any express statement of a right of a party under this Agreement is without prejudice to any other right of that party expressly stated in this Agreement or existing at law.

18.10 Survival

(a) Subject to any provision to the contrary, this Agreement shall continue for the benefit of and be binding upon the parties and their successors, trustees, permitted assigns or receivers but shall not continue for the benefit of any other persons.

(b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

18.11 Governing law

This Agreement will be governed by and construed according to the law of Queensland.

18.12 Counterparts

This Agreement may be executed in counterparts by the respective Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

18.13 Time

Time shall be of the essence of this Agreement.