

Customer Agreement

IMPORTANT - READ CAREFULLY: This Customer Agreement is a legal agreement between you (either an individual or a single legal entity) (**Customer**) and Alex Solutions to use the Software. This Customer Agreement applies after the Customer has received the Software from a Channel Partner or Alex Solutions. An amendment or addendum to this Customer Agreement may accompany the Software. The Customer agrees to be bound by the terms of this Customer Agreement by installing, copying, downloading or otherwise using the Software. If the Customer does not agree to the terms of this Customer Agreement, the Customer must not install copy, download or otherwise use the Software.

1 License

- 1.1 Alex Solutions grants a non-exclusive, non-transferable, non-sub-licensable license to the Customer (**License**) to use the Software solely as an end user only. The Software is for the Customer's own use and must not be used by others (including by way of sub-license) or for marketing or redistribution, whether alone or as a component of any other product.
- 1.2 The Customer may make one copy of the Software for backup purposes only.
- 1.3 An amendment or addendum to this Customer Agreement may accompany the Software. Any amendment or addendum forms part of the license terms as if they were included in this document and, together, form the terms of this Customer Agreement. To the extent that any inconsistency arises between the amendment or addendum and these terms, the relevant provisions of the amendment or addendum will apply to the extent of the inconsistency.
- 1.4 Subject to the terms of this Customer Agreement, and unless terminated earlier in accordance with this Customer Agreement, licenses are time limited for licenses acquired under "Subscription" or "Monthly Rental" options, with expiration dates based on Fees payments.

2 Intellectual Property Rights

- 2.1 The Software, all copies and all Intellectual Property Rights in the Software and copies are owned either by Alex Solutions or relevant third parties. The Software is protected by copyright and other Intellectual Property Rights, laws and treaties.
- 2.2 The Customer acknowledges that the Software is the subject of copyright and that the Customer must not at any time (either before or after termination of this License) do any act or permit the doing of any act which infringes that copyright.
- 2.3 Alex Solutions reserves all rights in the Software not expressly granted to the Customer in this Customer Agreement.

3 Services

- 3.1 Alex Solutions may at any time in its sole discretion discontinue any internet-based services provided or made available to the Customer through the use of the Software.
- 3.2 Any support services will be provided by Alex Solutions in accordance with the written terms for those services and may be subject to additional Fees.

4 License Fee

- 4.1 In consideration of the grant of the License by Alex Solutions, the Customer must pay the Fees. The Customer must pay all Fees by their

due date. Failure to pay Fees by the due date will result in the immediate termination of the licenses granted under this Customer Agreement which relate to the outstanding Fees.

5 Rights and Restrictions

- 5.1 The licenses are granted subject to the Customer ensuring that only an Authorised User uses the Software and that such use is strictly in accordance with the terms and conditions of this Customer Agreement.
- 5.2 Unless the Customer has Alex Solutions prior written consent, the Customer may only install the Software and make the Software available for use on hardware systems wholly controlled by the Customer.
- 5.3 If Alex Solutions provides written consent to the Customer under clause 5.2 for installation of the Software on another system (**Other System**), the Customer must ensure that the terms of this Customer Agreement are complied with by users of the Other System. The Customer indemnifies Alex Solutions for all costs, damages and losses Alex Solutions suffers arising from the installation and use of the Software on the Other System.
- 5.4 The Customer may not modify, adapt, translate, rent, lease, loan, sub-license, market, sell, distribute, transfer or create any derivative work based upon, the Software or any part of the Software including Embedded Software, Accessible Code or Protected Code.
- 5.5 The Software contains trade secrets and the Customer may not decompile, reverse engineer, disassemble or otherwise reduce the Software to a humanly perceivable form. The Customer agrees not to divulge, directly or indirectly, any such trade secrets to any person, unless and until such trade secrets cease to be confidential, other than through a breach of confidentiality by the Customer.
- 5.6 The Customer must not directly or indirectly access or use any Embedded Software independently of the rest of the Software.
- 5.7 The Customer must not copy or embed elements of the Accessible Code contained within the Software into other applications.
- 5.8 Subject to the terms of this Customer Agreement, the Customer may modify the Accessible Code to develop bug fixes, for customisation or to install additional features for the sole use of the Customer.

6 Embedded Software

- 6.1 The Customer acknowledges that the Software may contain Embedded Software and, in addition to the obligations of this Customer Agreement, additional obligations may apply to any use of the Embedded Software.
- 6.2 The Customer must consult with Alex Solutions and the relevant third party to acquire any necessary

licenses and consents for the installation and use of any Embedded Software.

7 Publicity

7.1 The Customer grants Alex Solutions the right to include the Customer as a customer of Alex Solutions in Alex Solutions promotional material, including on its website.

7.2 The Customer may withdraw the rights given under clause 7.1 by 14 days written notice to Alex Solutions.

8 Termination

8.1 This License is effective from the date of execution of this Agreement until terminated in accordance with this clause.

8.2 Alex Solutions may terminate this License immediately by notice in writing if:

- (a) the Customer fails to pay the Fees by the due date; or
- (b) the Customer is in breach of any term or condition of this License and such breach is not remedied within fourteen (14) days of written notice from Alex Solutions.

8.3 The Customer may terminate this License immediately by notice in writing if Alex Solutions becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration or ceases or threatens to cease conducting its business in the normal manner.

8.4 Upon termination of this License for whatever reason:

- (a) the Customer must prevent all access to the Software and all Authorised Users must cease all use of the Software;
- (b) the Customer must remove all copies of the Software from the Customer's hardware and system and any Other System and delete or destroy all copies of the Software and all Accessible Code in its possession, custody or control;
- (c) the Customer may be required to provide Alex Solutions with an unqualified certificate executed by the Customer's auditor verifying compliance with clause 8.4(a) and 8.4(b);
- (d) Alex Solutions may repossess the Software and any of Alex Solutions' property in the possession, custody or control of the Customer; and
- (e) Alex Solutions will be discharged from any further obligations under this License.

8.5 Decommissioning of the Software by the Customer will terminate this Customer Agreement between Alex Solutions and Customer.

8.6 Termination is without prejudice to any rights Alex Solutions may have as a result of breach of this License by the Customer or an Authorised User.

9 Assignment or other Transfer

9.1 The Customer can only assign this License to succeeding parties in the case of a merger, acquisition or change of control if:

- (a) the Customer notifies Alex Solutions within sixty (60) days of the assignment;
- (b) the assignee agrees to be bound by the terms and conditions of this Customer Agreement; and
- (c) upon assignment or transfer, the assigning Customer makes no further use of the Software and deletes or destroys all copies of the Software in its possession, custody or control.

9.2 Any purported assignment or transfer of the Software by the Customer other than in accordance with the requirements of this clause 9 will be void and will entitle Alex Solutions to terminate this Customer Agreement in accordance with clause 8.

9.3 Alex Solutions may assign its rights and obligations under this Customer Agreement without the consent of the Customer. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

10 Disclaimer & Limitation of Remedies

10.1 The Software is provided on an as is basis. The Customer acknowledges that software, by its very nature, is an imperfect product and has faults, gaps and other anomalies.

10.2 Alex Solutions warrants to the Customer that the Software conforms in all material respects to the Software specifications (as published by the developer of the Software) for a period of ninety (90) days from the date of delivery of the Software to the Customer, provided the Software is used in accordance with ordinary industry practices and conditions and not modified. However, Alex Solutions does **not** warrant that the operation of the Software will be uninterrupted or error free.

10.3 To the extent permitted by law, Alex Solutions expressly disclaims any and all warranties concerning the Software, including any warranties of merchantability and/or fitness for any particular purpose, warranties of performance and any warranty that might otherwise arise from the course of dealing or usage.

10.4 To the extent permitted by law, Alex Solutions will not be liable for any incidental, special, indirect, direct or consequential damages or loss of profits, interruption of business, loss of business opportunity or goodwill, any claims for indirect, special or punitive damages, third party claims or any indirect or consequential losses or related expenses which may arise from installation or use of the Software, including but not limited to those resulting from defects in the Software, or loss or inaccuracy of data of any kind and whether or not Alex Solutions has any notice of the possibility of such damages.

10.5 If Alex Solutions breaches any provision of this agreement, to the extent permitted by law, Alex Solutions' sole and exclusive maximum liability, whether based in contract, tort, or otherwise, will not in any event exceed, in Alex Solutions' absolute discretion, either: (i) the total price paid for the Software; (ii) the cost of replacing the Software; (iii) the cost of obtaining equivalent Software; or (iv) the cost of having the Software repaired.

10.6 Nothing in this License is intended or will be construed as excluding or modifying any statutory rights, warranties or conditions which are applicable to this License or the Software and which by virtue of any legislation may not be modified or excluded.

11 Indemnity

- 11.1 If the Software becomes or may become the subject of a claim of infringement of any third party's Intellectual Property Rights, Alex Solutions may, at its sole option and discretion:
- procure for the Customer the right to use the Software free of any liability;
 - replace or modify the Software to make in non-infringing; or
 - refund any License Fees related to the Software by the Customer.
- 11.2 To the extent permitted by law, the remedies set out in clause 11.1 are the sole liability of Alex Solutions and the exclusive remedy of the Customer for any infringement of Intellectual Property Rights by Alex Solutions in the Software or any other items provided by Alex Solutions under this Customer Agreement.
- 11.3 The Customer acknowledges and agrees that if the Customer breaches this Customer Agreement and Alex Solutions or a third party owner of Embedded Software suffers any loss, damage, cost or expense directly or indirectly as a result of the breach, Alex Solutions or the third party owner of the Embedded Software may bring an action directly against the Customer.
- 11.4 The Customer will indemnify Alex Solutions and hold Alex Solutions harmless against all costs, expenses, losses and claims made against Alex Solutions as a result of any infringement of Alex Solutions' or any third party's Intellectual Property Rights arising from the Customer's or an Authorised User's modification of any part of the Software or other items provided by Alex Solutions or any breach of this Customer Agreement.

12 Dispute Resolution

- 12.1 The parties agree to comply with the dispute resolution provisions of this clause 12 in respect to any dispute which arises between the parties in respect to this Customer Agreement prior to commencing any litigation or arbitration.
- 12.2 **Dispute notice.** If there is a dispute between the parties, either party may give a notice to the other succinctly setting out the details of the dispute and stating that it is a dispute notice given under this clause 12.
- 12.3 **Notice in response.** Within 5 Business Days after the delivery of the dispute notice, the recipient must deliver to the other party a notice in response:
- acknowledging the party's receipt of the dispute notice;
 - stating that it is a notice given under this clause 12.3; and
 - succinctly setting out any information it believes is directly relevant to the dispute.
- 12.4 **Initial meeting**
- The parties must meet within 10 Business Days after the date of delivery of the dispute notice and attempt to resolve the dispute.
 - Each party must use reasonable endeavours to resolve the dispute and act in good faith.

12.5 Mediation

- If the dispute is not resolved within 10 Business Days of the meeting held pursuant to clause 12.4 or such further period as the parties may agree, any party may refer the dispute to the Australian Commercial Disputes Centre (**ACDC**) for mediation.
- The mediation will be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of a mediator and the costs involved.

12.6 **Agreement remains in force.** The parties must each continue to perform their respective obligations under this agreement pending resolution of the dispute.

12.7 **Injunctions.** Nothing in this clause 12 prevents any of the parties from commencing injunctive relief where damages may be an inadequate or inappropriate remedy.

12.8 **Survival.** This clause 12 survives rescission, termination or expiry of this Agreement.

13 Survival

13.1 The provisions of clause 2 (Intellectual Property Rights), 5.4, 5.5, 5.6, 5.7, 5.8 (Rights and Restrictions), 8.4, 10 (Disclaimer and Limitation of Remedies), 11.4, 11 (Indemnity), 12 (Dispute Resolution), 14.2 (Law), 15 (Definitions) and 16 (Interpretation) survive rescission, expiry or termination of this Customer Agreement.

14 General

- 14.1 The Customer must immediately advise Alex Solutions if at any time the Customer becomes aware of any breach of its obligations under this Customer Agreement.
- 14.2 This License is governed by and construed in accordance with the laws in force in the State of Victoria and the Commonwealth of Australia. Any dispute under these terms shall be subject to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia and the parties submit to the jurisdiction of such courts for such purposes and waive any and all objections to jurisdiction or venue in such courts.

15 Definitions

- 15.1 **Accessible Code** means source code that is unprotected and accessible in the Software and includes, without limitation, assemblies, scripts, macros, custom reports and workflows.
- 15.2 **Additional Software** means updates, patches, new functionality, supplements, plugins, custom modifications or new functionality specific to the Customer's needs, or other add-on components of the Software.
- 15.3 **Authorised User** means a person who is authorised by the Customer to access or use the Software.
- 15.4 **Alex Solutions** means Alex Solutions Pty Ltd (ACN 608 949 122) of Ground Floor East, 101 Collins Street, Melbourne VIC Australia.
- 15.5 **Embedded Software** means any third party software which may contain Accessible Code or Protected Code licensed by Alex Solutions from a third party and embedded in the Software.
- 15.6 **Customer Agreement** means this document and any amendment or addendum provided by Alex Solutions to the Customer.

- 15.7 **Fees** mean all fees and expenses payable by the Customer to Alex Solutions or a Channel Partner in acquiring the Software.
- 15.8 **Intellectual Property Rights** means the rights comprised in any patent, copyright, design or trademark whether at common law or by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets, goodwill or confidential information.
- 15.9 **Protected Code** means any source code which Alex Solutions or a third party has taken steps to protect from access.
- 15.10 **Channel Partner** means an entity selling and distributing Alex Solutions products which is authorised by Alex Solutions to do so.
- 15.11 **Software** means the software that accompanies this Customer Agreement, including computer software, Additional Software, Accessible Code, Protected Code and associated media, printed materials, 'online' or electronic documentation, internet based services and Embedded Software.

16 Interpretation

16.1 Severability

If a provision of this document is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this document.

16.2 General.

In this document, unless the context otherwise requires:

- (a) a reference to:
- (i) the singular includes the plural and the plural includes the singular;
 - (ii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this document and references to this document include any recital, schedule or annexure;
 - (iii) any contract (including this document) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (iv) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (v) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (vi) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;

(vii) a group of persons is a reference to any two or more of them taken together and to each of them individually;

(viii) a reference to a day or a month means a calendar day or calendar month;

- (b) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (c) headings and the table of contents are for convenience only and do not form part of this document or affect its interpretation;
- (d) a provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the document.