



SOFTWARE LICENCE TERMS

1. Background

This is a legally binding agreement between Preemptive Consulting Pty Ltd (**Preemptive**) and the Customer for the licence of the Software to the Customer on the terms and conditions set out in this Agreement.

2. Definitions

Unless the context requires otherwise, the following definitions are used:

- a) **Agreement** means this agreement and any Schedule or annexure to it.
- b) **Business Day** means a day that is not a Saturday, Sunday or public holiday or bank holiday in the Australian Capital Territory.
- c) **Business Hours** means from 9.00am to 5.00pm on a Business Day.
- d) **Confidential Information** means
 - i. information that is by its nature confidential;
 - ii. information that a party claims is confidential to itself; and
 - iii. includes the Confidential Information, if any, described in the Schedulebut does not include
 - iv. information that is independently developed or known by the other party (including because it is in the public domain); or
 - v. information required to be disclosed by law.
- e) **Commencement Date** means the date specified in the Schedule.
- f) **Customer** means the entity named in the Schedule.
- g) **Documentation** means the documentation relating to the Software or this Agreement as specified in the Schedule.
- h) **Fee** means the Licence Fee and the Support Fee.
- i) **Intellectual Property Rights** means all intellectual property rights in any country, including copyright, rights in circuit layouts, patents, registered and unregistered designs, trade marks, domain names and business names, any right to have confidential information kept confidential; and any application or right to apply for registration of any of these rights.
- j) **Licence Fee** means the fees for the licence of the Software as set out in the Schedule.
- k) **Personnel** means a party's employees, officers, agents and subcontractors.
- l) **Preemptive** means Preemptive Consulting Pty Ltd, further details of which are set out in the Schedule.
- m) **Problem** means a fault, failure or defect with the Software.
- n) **Schedule** means the schedule to this Agreement.
- o) **Software** means the software specified in the Schedule.
- p) **Support Fee** means the fees for the provision of the Support Services as set out in the Schedule.
- q) **Support Services** means the support services to be provided by Preemptive under this Agreement as specified in the Schedule.
- r) **Support Period** means the period during which Preemptive is to supply the Support Services.

3. Grant of licence

Subject to the terms and conditions of this Agreement, Preemptive grants to the Customer a non-exclusive, perpetual, non-transferable licence to install and use the Software and Documentation for its internal business purposes in accordance with the licence limitations (if any) set out in the Schedule. Preemptive reserves all rights not expressly granted to the Customer.

4. Conditions of use

The Customer must not:

- a) redistribute, copy, publish, alter, modify, tamper with, reverse engineer, decompile, or disassemble the Software or Documentation, except to the extent permitted by the applicable law; or
- b) sell, rent, lease, sub-license, assign or otherwise transfer the Software or Documentation.

5. Support Services

- a) Preemptive must supply the Support Services to the Customer during the Support Period.
- b) The parties may extend the Support Period by agreement between them in writing.
- c) Preemptive is not required to provide services involving:
 - i. correction of a Problem caused by operation of the Software in a manner other than that authorised by Preemptive;
 - ii. rectification of Problems caused by misuse or incorrect use of the Software by the Customer; or
 - iii. equipment maintenance.

6. Fees

The Customer must pay Preemptive the Fees:

- a) by the due date for payment specified on the invoice issued by Preemptive to the Customer; and
- b) in accordance with the requirements set out in the Schedule.

7. Taxes

- a) The Fees do not include any applicable freight, duty, goods and services tax or other applicable taxes.
- b) Unless otherwise agreed by the parties in writing, all taxes and duties (including applicable stamp duty, goods and services taxes, withholding tax, customs duties, value added tax, fines, penalties and interest but excluding income tax payable by Preemptive) in

CONFIDENTIAL

connection with this Agreement, or anything provided or supplied under this Agreement or the performance of this Agreement must be borne by the Customer.

- c) Words or expressions used in this clause 7, which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.
- d) Despite any other provision of this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).
- e) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 7d).
- f) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- g) If the GST payable by a Supplier on any supply made under or in connection with this Agreement varies from the GST Amount paid or payable by the Recipient under clause 7d) such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- h) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 7d).
- i) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within fourteen (14) days after becoming aware of the adjustment.

8. Delivery

- a) Unless otherwise specified in the Schedule, Preemptive must supply to the Customer one copy of the Software and Documentation in accordance with the delivery terms set out in the Schedule.
- b) Preemptive will use its best endeavours to deliver the Software and Documentation to the Customer in accordance with the requirements set out in the Schedule. However, Preemptive will not be liable for any loss suffered by the Customer or any third party as a result of any delay in delivery of the Software or Documentation.

9. Transfer of Risk and Title

- a) The risk in the Software and Documentation products will pass to the Customer at the time of dispatch from Preemptive's place of business.
- b) Title to the physical media that contains the Software and Documentation, will pass to the Customer once Preemptive has received payment of the Fee.

10. Limited Warranty

- a) Clauses 10 to 12 of this Agreement do not exclude or modify any condition or warranty implied into this Agreement or any liability imposed on Preemptive by law if to do so would contravene the law or make any part of clauses 10 to 12 void.
- b) Preemptive warrants that the physical media that the Software and Documentation is supplied on, is substantially free from any physical defects for a period of ninety (90) days from the date of purchase. The Customer's sole remedy for defective media is replacement.
- c) Preemptive warrants that if the Software fails to substantially conform to the specifications in the Documentation accompanying the Software and if the nonconformity is reported in writing by the Customer to Preemptive within ninety (90) days from the date that the Software is received, then Preemptive will either:
 - i. remedy the nonconformity; or
 - ii. refund the Fee paid by the Customer upon the Customer ceasing use of the Software and Documentation and returning all copies of the Software and Documentation to Preemptive

11. Disclaimer

Preemptive makes no express warranty, representation or promise other than the limited warranty set out in clause 10. To the extent permitted by law. Preemptive disclaims and excludes any and all warranties implied by law or custom into this Agreement, including any warranties relating to title or fitness of the Software or Documentation for a particular purpose. Preemptive does not warrant that the Software or associated Documentation will satisfy the Customer's requirements or that the Software or Documentation are without defect or error or that the operation of the Software will be uninterrupted.

12. Limitation of liability

- a) Preemptive's aggregate liability arising from or relating to the Customer's use of the Software or associated Documentation is limited to the total of all payments made by or for the Customer for the relevant copy of the Software and Documentation under this Agreement.
- b) Neither Preemptive nor any of its licensors, or Personnel shall in any case be liable for:
 - i. any special, incidental, consequential, indirect or punitive damages (including loss of profits or revenue) even if advised of the possibility of those damages; or
 - ii. loss of use of the Software, loss of data, costs of recreating lost data, or the costs of obtaining any substitute software or documentation.

13. Intellectual Property Rights

- a) The Customer acknowledges that Preemptive owns valuable Intellectual Property Rights in the Software and Documentation.
- b) This Agreement does not transfer to the Customer any Intellectual Property Rights in the Software or the Documentation and the Customer must not represent that it owns those rights.

14. Confidentiality

- a) A party must keep the other party's Confidential Information confidential.
- b) A party may only:
 - i. use the other party's Confidential Information for the purposes of this Agreement; and
 - ii. disclose that information to its Personnel:
 - A. to the extent that they need to know the Confidential Information for the purposes of this Agreement and are under an obligation to keep it confidential; and
 - B. it takes all steps reasonable to prevent any actual or potential breach of that direction.

CONFIDENTIAL

- c) A party must exercise the same degree of care and diligence in protecting the confidentiality of the other party's Confidential Information as it exercises in relation to its own Confidential Information.
- d) Upon request of the disclosing party, the receiving party will immediately, unless otherwise required by law, return or destroy all Confidential Information made available by the disclosing party including, but not limited to, documents, and media without retaining any copies, notes or extracts.

15. Reporting and auditing

The Customer must:

- a) provide reports to Preemptive as required in the Schedule; and
- b) allow, on giving 5 Business Days notice, Preemptive, or its nominee, to conduct annual audits of the Customer's compliance with this Agreement, including allowing Preemptive to access the Customer's books and records relevant to this Agreement and take such copies as Preemptive may reasonably require to conduct the audit.

16. Term and Termination

- a) This Agreement commences on the Commencement Date and continues unless otherwise terminated in accordance with this clause 16.
- b) A party may terminate all or part of this Agreement by giving the other party notice if:
 - i. the other party breaches a term of this Agreement and fails to rectify the breach within 30 days after receiving a notice requiring it to do so; or
 - ii. the other party;
 - A. disposes of the whole or any part of its assets, operation or business other than in the ordinary course of business;
 - B. cannot pay its debts as they become due;
 - C. becomes bankrupt, enters into liquidation or has a controller or a managing controller or liquidator or administrator appointed
 - D. stops carrying on business; and
 - E. undergoes a change in direct or indirect beneficial ownership or control.
- c) On termination of the licence granted under clause 3 of this Agreement in accordance with clause 17.b), the Customer must:
 - i. stop using the Software and Documentation;
 - ii. return to Preemptive or destroy all copies of the Software or Documentation in its possession or control (including permanently deleting the Software from any computer equipment on which it is stored); and
 - iii. confirm in writing to Preemptive that all Software or Documentation has either been returned or destroyed.

17. Dispute resolution

- a) A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause 17.
- b) A party claiming that a Dispute has arisen must notify the other party giving details of the Dispute. On receipt of that notice each party must negotiate in good faith to resolve the Dispute and, if necessary to resolve the Dispute, involve senior executives for each party directly in those negotiations.
- c) If the Dispute is not resolved under clause 17b) within 30 days (or longer period agreed between the parties) the parties must refer the Dispute for mediation if one of them requests it. If the parties to the Dispute cannot agree on a mediator within seven days, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.
- d) If the Dispute is not resolved under clause 17c):
 - i. the parties must refer the Dispute for arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those Rules;
 - ii. the arbitration will take place in Canberra, Australia (unless otherwise agreed by the parties) and be held in the English language;
 - iii. the arbitral award will be final and binding upon the parties and enforceable in the courts of Australia.
- e) Subject to any award for costs, each party must pay its own costs of complying with this clause 17 and must continue to comply with its obligations under this Agreement notwithstanding the existence of a Dispute.

18. Notices and other communications

- a) A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be in writing: in English and signed by a person duly authorised by the sender; and must be hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Schedule, as varied by any Notice given by the recipient to the sender.
- b) A Notice given in accordance with clause 18a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - i. if hand delivered, on delivery;
 - ii. if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
 - iii. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice.

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

19. Miscellaneous

- a) This Agreement may only be altered in writing signed by each party.
- b) This Agreement constitutes the entire agreement between the parties in relation to its subject matter.
- c) Waiver of any provision or right under the Agreement must be in writing and signed by the party entitled to the benefit of the provision or right, and is effective only to the extent set out in any written waiver.
- d) A party may only assign or novate its rights and obligations under this Agreement with the written consent of the other party.
- e) A provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions (or parts thereof) continue in force.
- f) This Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- g) Clauses 10, 11, 12, 13, 14, and 17 survive termination of this Agreement.
- h) This Agreement may be executed in counterparts. All executed counterparts constitute one Agreement.
- i) This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

CONFIDENTIAL