

Agreement for Supply of Software Licence (Terms of Trade)

BACKGROUND

- A. The Supplier owns the Software.
- B. The Supplier wishes to grant, and the Customer wishes to take, a licence to use the Software on the terms of this agreement.

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1 Definitions

Acceptance Date means the date upon which the Software is accepted as provided by clause 6;

Commencement Date means the date specified in clause 2(c) of this agreement;

Confidential Information means information that is by its nature confidential but does not include:

- (a) information already known to the receiving party at the time of disclosure by the other party; or
- (b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this agreement;

Customer means a party acquiring a licence of the Software and the Services from the Supplier;

Delivery Date means the date specified in the Proposal;

Designated Computer Equipment means the equipment on which the Software is to be installed as specified in the Proposal;

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this agreement in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

GST Law means the same as "GST law" in A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

Licence means the licence of Software granted pursuant to this agreement;

Licence Fee means the amount so specified in the Proposal;

Location means the place at which the Designated Computer Equipment is located as specified in the Proposal;

Manual of Specifications means the document which forms part of the Software and which contains technical information relating to the Software which is available on <https://learn.greenorbit.com>;

Media means the media on which the Software is recorded or printed;

Moral Right means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) a right of a similar nature;

which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form comprised within this agreement;

New Release means software which has been provided primarily to implement an extension, alteration, improvement or additional functionality to the Software;

Order means an order by the Customer to licence the Software and purchase Services at a price specified in the Proposal signified by clicking the "Accept" button provided within the Proposal;

Privacy Act means the *Privacy Act 1998* (Cth);

Proposal means a quotation as to the price of the licence of the Software and the Services and other information contained therein given by the Supplier to the Customer;

Services means services in support of the usage of Software to be provided by the Supplier to the Customer under this agreement;

Software means the computer program and related documentation as specified in the Proposal;

Specifications means the specification set out in the Manual of Specifications;

Supplier means Effective Digital Solutions Pty Ltd (ACN 071 897 508);

Update means software which has been produced primarily to overcome defects in the licensed Software.

1.2 Interpretation

- (a) Words importing the singular include the plural and vice versa and words importing one gender shall include all other genders.
- (b) Headings are for ease of reference only and shall not affect the interpretation of this agreement.

2. Formation of contract and Licence

- (a) Proposals issued by the Supplier will not constitute an offer to licence the Software and to supply specified Services at a specified price, but rather will constitute an invitation to the Customer to make an offer to purchase the specified Services at the quoted price by placing an Order. A contract for the licence of Software and supply of Services by the Supplier to the Customer is formed when the Customer places an Order and the Supplier accepts the Order.
- (b) Any qualification, addition, variation or provision which conflicts with this agreement and the Proposal which appears on the Customer's Order shall not form part of the contract between the Supplier and the Customer unless such change appears on the face of the Order duly accepted by an authorised person of the Supplier or is otherwise confirmed by the Supplier in writing.
- (c) Commencing on the date on which the Supplier accepts the Order, which date shall be confirmed by the Supplier to the Customer and properly documented, the Supplier grants a non-transferrable, non-exclusive licence to the Customer to use the Software under the terms of this agreement.
- (d) Subject to the terms of this agreement, the Licence will continue in perpetuity.

3. Conditions of Licence

- (a) The Supplier warrants that it has the authority to grant the Licence.
- (b) The Licence shall be non-transferable and non-exclusive to the Customer.
- (c) The Software must only be used on the Designated Computer Equipment, unless the consent of the Supplier is obtained to use the Software on alternative equipment. Such consent shall not be unreasonably withheld.
- (d) The Supplier shall provide Updates or New Releases pursuant to this agreement at no additional fee. Upon delivery of the Updates or New Releases to the Customer they would automatically become incorporated as an element of the Software governed by this agreement.
- (e) The Customer will not create or permit to exist a security interest over the Software or documentation or in any modifications to, or enhancements, Updates or New Releases of, the Software or documentation. For the purposes of the foregoing, "security interest" means a security interest that is subject to the *Personal Property Securities Act 2009* (Cth) or any other mortgage, pledge, lien, charge or other arrangement of any kind which in substance secures the payment of money or the performance of any obligation, or that gives a creditor priority over unsecured creditors.

4. Delivery

The Supplier shall use best endeavours to arrange delivery of the Software to the Location at the time specified in the Proposal or on such other date as is mutually agreed between the parties.

5. Installation

- (a) The Supplier shall provide a hosted platform for the installation of the Software at its managed Amazon Web Services platform and shall provide any appropriate services or support in respect of installation of the Software under this agreement.
- (b) The Customer is responsible for a proper installation of the Software on its Designated Computer Equipment.

6. Acceptance

- (a) Upon installation of the Software, the Customer will be responsible for ensuring that the Software is used in accordance with the Specifications.
- (b) If, during a period of 10 working days following the Commencement Date, the Software fails to

perform substantially in accordance with the Specifications, it will be deemed not to be accepted.

- (c) If the Software is deemed not to be accepted pursuant to subclause (b), the Supplier will be given the opportunity to rectify the defect or replace the Software within a further period of 14 days.
- (d) If the Software fails to perform substantially in accordance with the Specifications during the 14-day period referred to in subclause (c), the Customer may, at its option, grant a further period during which satisfactory performance is to be achieved or alternatively terminate the agreement.
- (e) The Software will be deemed accepted if it does not fail to substantially perform in accordance with the Specifications during any of the periods referred to in the preceding subclauses.
- (f) The Software will be deemed accepted if the Customer fails to install the Software within 7 days of delivery.

7. Manual of Specifications

- (a) The Supplier must deliver a copy of the Manual of Specifications to the Customer on or before the Delivery Date.
- (b) The Supplier warrants that the Manual of Specifications will be adequate to enable the Customer to operate the Software in the manner reasonably contemplated by the parties.
- (c) The Supplier must inform the Customer within reasonable time of any amendments to the Manual of Specifications which may become necessary.
- (d) The Customer acknowledges the Supplier's proprietary interest in the Manual of Specifications. The Customer will not copy the Manual of Specifications except where necessary to enable proper use of the Software in the manner reasonably contemplated by the parties.

8. Support Services

- (a) The Supplier shall provide the Services to the Customer in accordance with GreenOrbit Support Service Level Agreement and GreenOrbit Cloud Service Level Agreement the terms and conditions of which are available at www.greenorbit.com/terms and are expressly incorporated into this agreement.
- (b) The Supplier shall provide the Customer with access to the Client Portal where the Supplier shall make available to the Customer: Manual of Specifications and help desk assistance.

9. Licence Fee

- (a) In consideration of the Licence and provision of Services, the Customer must pay the Licence Fee to the Supplier in accordance with the requirements of the Proposal.
- (b) The Licence Fee is exclusive of all taxes, duties and surcharges payable in respect of the Software, the Services and in respect of this agreement.
- (c) If payment is not made within 30 days of the due date, interest will be payable by the Customer at the rate of 12 per cent per annum on the overdue amount and, if any payment is owing after 60 days from the due date, the Supplier will be entitled, in its sole discretion, to suspend its remaining obligations under this agreement and to re-possess or withhold access to the Software.
- (d) If the Customer disputes the whole or any part of the amount claimed in an invoice submitted by the Supplier pursuant to this agreement, the Customer will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the dispute resolution procedure prescribed by this agreement. If it is subsequently resolved that a further amount is payable, the Customer will pay that amount together with interest at the rate of 12 per cent per annum.

10. Ownership and Intellectual Property Rights

- (a) The Supplier retains ownership of the Software whether in its original form or as modified by the Customer during the term of the Licence.
- (b) All Intellectual Property Rights in the Software are retained by the Supplier.
- (c) Nothing in this agreement affects the ownership of Moral Rights in the Software.

11. Copies

- (a) Subject to the following subclauses of this clause, and without seeking to exclude or limit the application of sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth) the Customer must not copy the Software, in whole or in part.
- (b) The Customer may make such number of copies of the Software as is necessary to serve its internal needs for system's backup and security. All copies of the Software and the Media in which the copies are contained will be and remain the property of the Supplier.
- (c) The Customer must mark all copies of the Software and the Media in which the copies are contained with a notice of:

- (i) the Supplier's ownership of the Software and the Media;
 - (ii) the confidentiality of the Software; and
 - (iii) such other information as the Supplier requires.
- (d) The Customer must maintain records of all copies of the Software made by it and the place at which those copies are situated. Such records must be furnished to the Supplier upon reasonable notice.
- (e) The Customer must notify the Supplier immediately on becoming aware of any unauthorised use or copying of the whole or any part of the Software or of the Manual of Specifications.
- (f) Immediately upon termination of this agreement, the Customer must deliver up to the Supplier the Software (including all copies, authorised or otherwise), the Media and the Manual of Specifications, whether in their original form or as modified by the Customer.

12. Modifications

- (a) The Customer must not modify the whole or any part of the Software or combine or incorporate the whole or any part of the Software in any other program or system without the prior consent in writing of the Supplier.
- (b) If the Software is modified in accordance with subclause (a), the modifications must, unless the Supplier directs otherwise, be made in accordance with a written proposal submitted by the Customer to the Supplier.
- (c) The Customer shall fully indemnify and hold harmless the Supplier against any liability incurred if the modifications infringe the Intellectual Property Rights of a third person.
- (d) The Software as modified remains the property of the Supplier.
- (e) This agreement shall continue to apply to the Software as modified.
- (f) This clause is subject to any right of modification arising pursuant to sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth).

13. Reverse engineering

Except as expressly permitted by sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth), the Customer must not reverse assemble or reverse compile the Software or any part of the Software.

14. Security

- (a) The Customer will be responsible for protecting the Software and the Manual of Specifications at all times from unauthorised access, use or damage.
- (b) The Customer must not at any time allow the Software to be used to publish content of any nature that may be accessed by the public Internet unless explicitly agreed by the Supplier.
- (c) The Customer must not allow access to the Software to any users beyond and above the licensed number of users as specified in Item 7 of the Proposal.

15. Risk

Risk of loss or damage to the Software, the Media and the Manual of Specifications will pass to the Customer upon delivery of the Software to the Location.

16. Warranties

- (a) The Supplier warrants that the Software will perform substantially in accordance with the Specifications for a period of 90 days after the Acceptance Date.
- (b) If, within 90 days after the Acceptance Date, the Customer notifies the Supplier in writing of:
- (i) the fact that the Software is not performing substantially in accordance with the Specifications; and
 - (ii) the alleged defects or errors, with sufficient particularity to enable the Supplier to remedy the defects or errors,
- the Supplier must at its own expense, commence to examine the Software within three working days and, as soon as practicable thereafter, rectify the defect or replace the Software.
- (c) The warranty contained in subclause (b):
- (i) is subject to the Customer having fully complied with its obligations under this agreement;
 - (ii) is not a warranty that the results obtained from the Software will be in accordance with the Customer's expectations; and

- (iii) does not operate where the substantial non-performance arises in any respect from the installation of the Software, the nature or operation of the equipment on which the Software is used or the use of any materials or software not provided by the Supplier.

17. Indemnity and liability

- (a) The Supplier warrants that it has the right to grant the Licence to the Customer.
- (b) Subject to subclause (c), the Supplier shall indemnify and hold harmless the Customer against any claim made against the Customer by a third party alleging that the Software infringes the copyright of that third party.
- (c) The Supplier shall not be liable to the Customer under subclause (a) or (b) if:
 - (i) the Customer does not notify the Supplier of the other person's claim or of infringement of copyright within seven days after becoming aware of the claim;
 - (ii) the Supplier's ability to defend the claim has been prejudiced by the Customer's non-compliance with any of its obligations under this agreement;
 - (iii) the Customer does not give the Supplier reasonable assistance in defending the claim;
 - (iv) the claim has arisen because of the use of the Software in combination with equipment, materials or computer programs not supplied or approved by the Supplier; or
 - (v) the Customer does not permit the Supplier to have control of the defence of the claim and all related settlement negotiations.
- (d) Except in relation to liability for personal injury (including sickness and death), property damage or an infringement of confidentiality or Intellectual Property Rights, the liability of the Supplier in damages (including special, indirect or consequential damages, which damages will be deemed to include loss or revenue, loss or profit and opportunity loss) in respect of any act or omission of the Supplier in connection with its obligations under this agreement will not exceed the amount (if any) equalling the amount of the Licence Fee less any reasonable expenses incurred by the Supplier, even if the Supplier has been advised by the Customer as to the possibility of such losses being incurred.
- (e) In respect of any claim between the parties under or in connection with this agreement, the parties agree that to the maximum extent permitted by law, the operation of Part 4AA of the Wrongs Act 1958 (Vic) or of any laws having a similar effect in the Commonwealth and other states and territories of Australia with respect to proportionate liability, are excluded and have no application or effect.

18. Termination

- (a) For the purpose of this agreement, each of the following is a **Terminating Event**:
 - (i) the breach or threatened breach by either party of any of its material obligations under this agreement;
 - (ii) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;
 - (iii) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;
 - (iv) the permanent discontinuance of use of the Software or any part of the Software by the Customer;
 - (v) the merger with or the takeover of either party by another person;
 - (vi) any event described in this agreement as a Terminating Event; and
 - (vii) the purchase of the Software by the Customer pursuant to an agreement between the parties.
- (b) This agreement may be terminated immediately with effect from the date specified in the notice served under subclause (c) on the happening of a Terminating Event at the option of the affected party.
- (c) If the Terminating Event is one specified in subclause (a)(i)-(vi), the affected party must give to the other party notice of the happening of that event and require the breach to be remedied or a written undertaking to be given that the breach will not occur, as the case may be. If the breach is not remedied or the undertaking not given (as the case may be) within 14 days of service of the notice the affected party may agree to waive its rights under this clause if satisfied that the happening of the Terminating Event has not in any way prejudiced its position under this agreement. Alternatively, if the affected party does not waive its rights, this agreement is at an end.
- (d) Neither party shall be liable for the consequences of an occurrence of any event beyond its

reasonable control.

- (e) In the event that a Terminating Event specified in subclause (a)(i)-(vi) occurs, and the subject of that Terminating Event is the Customer's fault, the Customer shall immediately on termination return to the Supplier the Software and all copies of the Software, all revisions, enhancements and upgrades of the Software, the Media and the Manual of Specifications. Alternatively, if the Supplier requests, the Customer must destroy such Software, copies, revisions, enhancements and up-grades by erasing them from the Media and must certify in writing to the Supplier that they have been destroyed.
- (f) Any termination of the Licence shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this agreement which is expressly or by implication intended to continue in force after such termination.

19. Implied terms and consumer guarantees

- (a) Subject to subclause (b), any condition or warranty which would otherwise be implied in this agreement, the Proposal or the Order is hereby excluded.
- (b) Pursuant to ss 64A of the Australian Consumer Law, this subclause applies in respect of any goods or services supplied under this agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this subclause will not apply if the Customer establishes that reliance on it would not be fair and reasonable. Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited:
 - (i) in the case of goods, to any one of the following as determined by the Supplier:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services, to any one of the following as determined by the Supplier:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.

20. Confidentiality

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of subclause (a) in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's Confidential Information.
- (d) Notwithstanding any other provision of this clause, a party may disclose the terms of this agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (e) This clause will survive the termination of this agreement.

21. Privacy

- (a) In order to implement this agreement, the parties acknowledge that a party may collect certain personal information about individuals connected with the other party.
- (b) Each party warrants to the other party to this agreement that it has in place adequate policies and processes for handling personal information in compliance with the Privacy Act.
- (c) Each party indemnifies the other against any reasonable loss, liability, cost or expense suffered or incurred by the other party as a consequence of any claim made against a party as a result of a breach of warranty in subclause (b).

22. GST

- (a) Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- (b) In addition to paying the Licence Fee and any other amount payable or in connection with this agreement (which is exclusive of GST), the Customer will:

- (i) pay to the Supplier an amount equal to any GST payable from any supply by the Supplier in respect of which the Licence Fee or any other amount is payable under this agreement; and
- (ii) make such payment either on the date when the Licence Fee is due or within 7 days after the Customer is issued with a tax invoice, whichever is the later.
- (c) The Supplier must, within 28 days of request from the Customer, issue a tax invoice (or an adjustment note) to the Customer for any supply under or in connection with this agreement.
- (d) The Supplier will promptly create an adjustment note for (and apply to the Commissioner of Taxation for) a refund, and refund to the Customer, any overpayment by the Customer for GST but the Supplier need not refund to the Customer any amount for GST paid to the Commissioner of Taxation unless the Supplier has received a refund or credit for that amount.

23. Dispute Resolution

- (a) If a dispute arises between the parties regarding any matter relating to this agreement, then either party may notify the other party in writing of the dispute and provide particulars of the dispute. Within seven (7) days of the service of such notice, the parties must meet in good faith and use their best endeavours to resolve such dispute to the parties' mutual satisfaction.
- (b) If the parties are unable to resolve the dispute under subclause (a), then the parties, by mutual agreement will appoint a mediator to mediate the dispute. Failing such agreement, a mediator will be appointed by the President for the time being of the Law Institute of Victoria.
- (c) The parties involved in a dispute will bear their own costs incurred pursuant to this clause, except that they will share equally the costs relating to any mediator appointed under this clause.
- (d) Neither party will commence legal proceedings, other than on an urgent injunctive basis, without first completing the procedure set out in this clause.

24. General

(a) Entire agreement

This agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Software. No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

(b) Notices

All notices which are required to be given under this agreement must be in writing and must be sent to the address of the recipient as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by prepaid letter or email. Any such notice will be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by prepaid letter) or when on transmission by the sender (if sent by facsimile) or (if sent by email and unless agreed otherwise), when the email enters the recipient's mail server.

(c) Assignment

Neither party shall assign, whether in whole or part, the benefit of this agreement or any rights or obligations hereunder, without the prior written consent of the other party.

(d) Governing law

This agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

(e) Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

(f) Variation

No variation of this agreement will be effective unless in writing and signed by both parties.

(g) Severability

Should any part of this agreement be or become invalid, that part shall be severed from this agreement. Such invalidity shall not affect the validity of the remaining provisions of the agreement.