



SOFTWARE LICENCE AGREEMENT

DATED THE _____ DAY OF _____ 20____

BETWEEN

Company Pty Ltd ACN 111 222 333

AND

Other Company Pty Ltd ACN 333 222 111

SOFTWARE LICENCE AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 20__.

BETWEEN: Company Pty Ltd ACN 111 222 333 having its registered office at 1 Sydney Street Sydney 2000 (the “Licensor”);

AND: Other Company Pty Ltd ACN 333 222 111 having its registered office at 1 Brisbane Street Brisbane 7000 (the “Licensee”).

RECITALS:

- A. The Licensor has the right to license the Software and the Materials.
- B. The Licensee wishes to use the Software and the Materials.
- C. The Licensor has agreed to license the Software and the Materials to the Licensee and the Licensee accepts the licence on the following terms and conditions.

THE PARTIES AGREE:

1. LICENCE

- 1.1. The Licensor grants non-exclusive, non-transferable, non-revocable licence to the Licensee to Use the Software and Materials on and from the date of this Agreement for the Permitted Purpose.
- 1.2. The Licensee may not assign the Licence.
- 1.3. The Licensee may not sublicense the Licence. The Licensee is not permitted to adapt/modify the code.
- 1.4. The Licensee is not permitted to reverse engineer, disassemble or otherwise endeavour to obtain the source code from the object code.
- 1.5. The Licensee is limited to Use the Software to Six (6) user(s) simultaneously. If the Licensee wishes to Use the Software over this limit, the Licensee will obtain the Licensor’s permission in writing and the Licensor reserves the right to charge an additional Licence fee.

2. TERM OF LICENCE

- 2.1. The parties acknowledge that the Licence is perpetual as set out in Clause 1.1.

3. LICENCE FEE

- 3.1. The Licensee will pay the Licensor the fee as set out in Part D of Schedule One.
- 3.2. The Licensee is not obliged to pay any fee due unless it has received a Tax Invoice from the Licensor.

Initial: _____

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4. INTELLECTUAL PROPERTY

4.1. The Licensee must not alter, remove or obscure any trade mark or copyright symbol or legend or other proprietary mark on the Software and the Materials.

5. CONFIDENTIAL INFORMATION

5.1. The Licensee acknowledges and agrees that the Software and the Materials contain Confidential Information belonging to the Licensor.

5.2. The Licensee agrees to disclose the Software and Materials only to its employees and contractors who need to access such information so that the Licensee can exercise its rights and obligations under this Agreement.

5.3. The Licensee undertakes to obtain signed deeds of confidentiality from any contractor who needs access to the Software and Materials.

6. INSTALLATION & ACCEPTANCE TESTING

6.1. The Licensor will install the Software on the Licensee's equipment and will conduct all relevant acceptance testing, and the Licensor will inform the Licensee by Notice when the acceptance testing is complete. The Licensor will allow the Licensee to be present at any acceptance testing.

6.2. The parties agree that the acceptance tests to be performed for the Software are set out in Schedule Two and will include functionality, compatibility, resilience, reliability and performance levels achieved.

6.3. The Licensor will supply all consumable items such as printer paper, printer cartridges, and discs as are reasonably required to support the acceptance testing program. If any such items are required over and above a reasonable amount, the parties agree to determine at such time which party will provide the additional items.

6.4. Where during acceptance testing the Licensor encounters any malfunction, defect or suspected error, the Licensor will correct any such malfunction, defect and suspected errors.

6.5. Where there is unreasonable delay due to the Licensor correcting malfunctions, defects and errors, the Licensee agrees to extend any period for acceptance testing to accommodate such delays and any additional costs arising directly from such delays will be borne by the Licensee. Where any delay has been caused by power failure, air conditioning failure, force majeure or other cause outside the control of the Licensee, the Licensor will bear any additional costs so arising.

6.6. Where the Licensor has conducted acceptance testing and has provided Notice that such testing is complete, the Licensee will issue a Certificate of Acceptance in the

form set out in Schedule Three as soon as practicable and in any case within One Week from receipt of the Licensor's Notice. If the Certificate of Acceptance is not issued within this period, the Licensee will be taken to have accepted the Software.

- 6.7. If the Licensor has notified the Licensee that acceptance testing is complete and the Licensee disputes the validity of such acceptance testing, the parties agree to resolve the dispute as set out in Clause 14.

7. LICENSOR REPRESENTATIONS & WARRANTIES

- 7.1. The Licensor represents and warrants that it has the right to license the Software and the Materials to the Licensee.
- 7.2. The Licensee's Use of the Software and the Materials will not infringe the rights including Intellectual Property Rights of any third party.

8. LICENSEE WARRANTIES, OBLIGATIONS & ACKNOWLEDGEMENTS

- 8.1. The Licensee warrants that it has not relied upon any representation made by the Licensor other than as set out in this Agreement.
- 8.2. The Licensee is not permitted to sell, charge, mortgage or otherwise encumber the Software and/or the Materials in any way.
- 8.3. The Licensee acknowledges that, subject to Clause 1, it has no Intellectual Property Rights in the Software and/or the Materials.
- 8.4. For the purposes of installing the Software, the Licensee will give the Licensor all reasonable access required to its premises and during ordinary business hours on work days to enable the Licensor to carry out its obligation. The Licensee acknowledges that such access may cause interruption and disruption to its business whilst such installation is being carried out.
- 8.5. Where the Licensor has agreed to acceptance test pursuant to Clause 6, the Licensee undertakes to give free and reasonable access to the Licensor to enable the Licensor to perform its obligation.
- 8.6. The Licensee acknowledges that the Licensor gives no guarantee as to the accuracy or completeness of the Software and the Materials nor that they are free from error.
- 8.7. The Licensee is solely responsible for the use, supervision, management and control of the Software and the Materials.
- 8.8. The Licensee will ensure that the Software and Materials are at all times protected from access, use or misuse and damage and destruction by any person not authorised by either the Licensor or the Licensee and the Licensee will notify the Licensor

immediately if it becomes aware of any unauthorised use of the Software and/or Materials.

9. LIMITATION OF LIABILITY

- 9.1. To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions, including without limitation implied warranties as to merchantability, fitness for purpose of the Software and Materials.
- 9.2. To the extent that any liability of the Licensor under the *Trade Practices Act 1974* (Cth) cannot be excluded, the Licensor's liability is limited to replacing the Software and/or Materials.
- 9.3. Where the Licensor has agreed to install or install and acceptance test the Software, to the fullest extent permitted by law the Licensor makes no representation or gives any warranty in respect of the provision of the services except that it will carry out the service competently, professionally and to the best of its ability having regard to the terms of this Agreement.
- 9.4. To the extent that any liability of the Licensor under the *Trade Practices Act 1974* (Cth) cannot be excluded, the Licensor's liability is limited to either the supply of the services by the Licensor under these terms and conditions again or the payment of the cost of having another person provide again to the Licensee similar services as the services supplied by the Licensor under these terms and conditions.
- 9.5. To the fullest extent permitted by law, the Licensor excludes all liability for indirect and consequential loss including without limitation the loss or corruption of the Software, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement or the provision of any services by the Licensor.

10. INDEMNITY

- 10.1. The Licensee indemnifies and holds harmless the Licensor and promises to keep the Licensor indemnified against any loss, claim, action, settlement, award, judgment, expense or damage of whatsoever kind or nature and howsoever arising that the Licensor might suffer as a result of any inaccuracy of the Software and/or the Materials including any unauthorised use of the Software and/or Materials by the Licensee.

11. SOURCE CODE IN ESCROW

- 11.1. The parties agree that source code is not required to be placed in escrow.

12. TERMINATION

- 12.1. Where the Licensee fails to perform any of its obligations set out in this Agreement, the Licensor reserves the right to immediately terminate the Licence with Notice to the Licensee.
- 12.2. Either party may terminate this Agreement having immediate effect by Notice to the other party if the other party:
- (a) breaches any provision of this Agreement and fails to remedy the breach within twenty-one days (21) days of receiving Notice requiring it to do so; and/or
 - (b) is wound up, has an administrator appointed to it, a receiver appointed to any of its assets, enters into any arrangement, assignment or composition with any of its creditors or any of them or becomes insolvent; and/or
 - (c) ceases to carry on its business or where there is any effective change in the control of or ownership of that business.
- 12.3. Subject to Clause 12.4, on termination the parties agree that all rights granted to the Licensee under this Agreement will cease immediately and the Licensee will return all Software and Materials provided under this Agreement. If requested by the Licensor, the Licensee will provide Notice to the Licensor stating that the Software and Materials have been returned, destroyed or otherwise dealt with as the case may be as directed by the Licensor.
- 12.4. Following termination, the parties agree that the provisions set out in Clauses 5 (Confidential Information), 7.1 (Licensor warranty), 8.1 (Licensee warranty), and 9 (Limitation of Liability) will continue to be binding.

13. NOTICES

- 13.1. Any Notice given pursuant to this Agreement must be in writing, signed by an officer of the sender, addressed to the recipient at the address, facsimile number or email address set out below or to such other address, facsimile number or email address as a party may from time to time notify in writing to the other:

14. DISPUTE RESOLUTION

- 14.1. In the event of a dispute arising between the parties in respect of any right or obligation under this Licence, each party covenants with the other in good faith to take all steps necessary to attempt to resolve the dispute.
- 14.2. In the event that the parties are unable between themselves to resolve a dispute within a reasonable period having regard to the nature of the Licence and the dispute, then

either party may apply to their local State/Territory Alternative Dispute Resolution centre for resolution of the dispute under the ADROIT Principles.

15. GENERAL PROVISIONS

- 15.1. **(Law and Jurisdiction)** This Agreement shall be governed by and construed in accordance with the laws of New South Wales and any claim made by one party against the other in any way arising out of this Agreement will be heard in New South Wales and the parties submit to the jurisdiction of those Courts.
- 15.2. **(Relationship)** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties.
- 15.3. **(Entire Agreement)** The terms of this Agreement constitute the entire terms of this Agreement and all understandings, prior representations, arrangements or commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.
- 15.4. **(Waiver):** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.
- 15.5. **(Implied Terms):** Any implied term under law that can be excluded is hereby expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.

16. INTERPRETATION

16.1. Definitions

“**Agreement**” means this licence agreement including the Schedules and any amendments in writing.

“**Confidential Information**” means all information in whatsoever form that is:

- (a) marked or identified as “Confidential”, “Secret”, “Not to be Disclosed” or “Private”;
- (b) is designated, described or referred to by the discloser in any document or correspondence as confidential, secret or private or not to be disclosed;
- (c) the receiving party knows or ought to know is confidential;

but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the discloser has published, circulated or announced publicly or was developed by the receiving party independently of the disclosing party.

“**Intellectual Property Rights**” means all rights in copyright, circuit layout, designs, trade marks, patents and all other rights in intellectual property as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention whether registrable, registered, patentable or not.

“**Licence**” means the software licence granted by the Licensor to the Licensee in Clause 1.

“**Materials**” means the documentation provided by the Licensor to the Licensee and including the operating manuals and other material set out in Part A of Schedule One relating to the Software and includes updates to those materials.

“**Permitted Purpose**” means the purpose set out in Part B of Schedule One.

“**Software**” means the computer program/s provided by the Licensor set out in Part C of Schedule One and includes any updates provided by the Licensor during the term of this Agreement.

“**Tax Invoice**” means an invoice that is GST compliant.

“**Use**” means use/load, run, and store.

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS

EXECUTED as an Agreement by the parties on the day and year first mentioned.

SIGNED BY)
Company Pty Ltd)
ACN 111 222 333 pursuant to Section 127)
of the *Corporations Act* 2001 in the)
presence of:)

Director

Print Name:

Signature of Witness

Print Name:

Director/Secretary

Print Name:

SIGNED BY)
Other Company Pty Ltd)
ACN 333 222 111 pursuant to Section 127)
of the *Corporations Act* 2001 in the)
presence of:)

Director

Print Name:

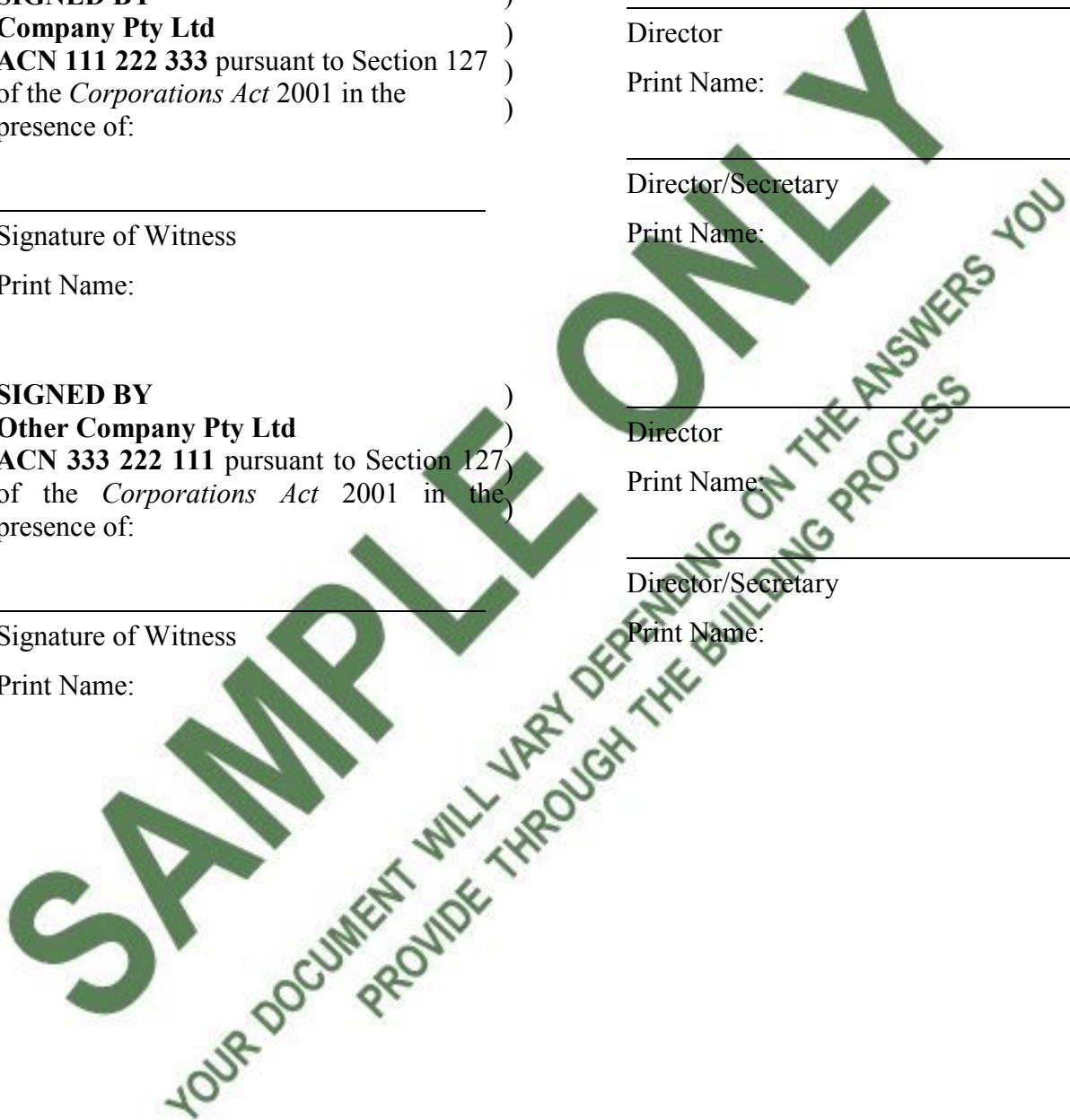
Signature of Witness

Print Name:

Director/Secretary

Print Name:

Initial: _____



SCHEDULE ONE

PART A – MATERIALS (Definition)

CD Roms

PART B – PERMITTED PURPOSE (Definition)

To sell and market the product in the Territory.

PART C – SOFTWARE (Definition)

acb Account system; and Upgrades.

PART D – LICENCE FEE/S (Clause 3)

\$500 payable on purchase.

The amount as indicated above includes GST.

PART E – NOTICES (Clause 13)

Company Pty Ltd (**the Licensor**)

of: 1 Sydney Street Sydney 2000

Attention: _____

Facsimile N^o: _____

Email: _____

Other Company Pty Ltd (**the Licensee**)

of: 1 Brisbane Street Brisbane 7000

Attention: _____

Facsimile N^o: _____

Email: _____

Initial: _____

SCHEDULE TWO

Acceptance Testing of Licensed Software (Clause 7.3)

Details of Acceptance Tests Required (including functionality, compatibility, resilience reliability and performance levels):

Acceptance criteria:

Period/time for Acceptance Tests:

Other (if any):

Initial: _____

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YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE THREE

Certificate of Acceptance (Clause 6.7)

Licensor Name:	Company Pty Ltd
Licensor's Address:	1 Sydney Street Sydney 2000
Licensee Name:	Other Company Pty Ltd
Licensee's Address:	1 Brisbane Street Brisbane 7000
Licensee's Premises:	1 Brisbane Street Brisbane 7000

The Software licensed by the Licensor to the Licensee by Agreement dated _____ 20____
has been accepted as follows:

SOFTWARE components: Accepted: YES/NO

Launch of product

Different browser compatibility

¹Conditions attached to the Certificate of Acceptance (if any):

Date of Certification:	
Name of Certifier:	

¹ Set out any conditions pertaining to the Certificate of Acceptance.

Initial: _____