

Software license and services agreement

This agreement is made between **Chronosoft Solutions Pty Ltd** ABN 44 608 831 625 ("**Chronosoft**," "**we**," "**us**") and the Chronosoft client identified in the Order ("**you**," "**your**").

Background

- A. We provide access to the Software.
- B. You wish to use the Software.
- C. We have agreed with you that you may access and use the Software, during the Term, in return for the Fee, on the terms of this agreement.

Operative Terms

1. Definitions

In this agreement:

"Confidential Information" means information that is not generally and publicly available.

"CPI" means the consumer price index (all groups, weighted average of eight capital cities) published by the Australian Bureau of Statistics.

"Customer Data" means content, information and data added, created, uploaded, submitted, distributed or posted to the Software by you or your Users.

"Equipment" means any equipment we provide to you as set out in the Order. Equipment may include hardware to host a local copy of the Software, laptop computers, tablets or other mobile devices and GPS devices.

"Fee" means a fee specified in the Order, as varied in accordance with this agreement.

"IP Rights" is an abbreviation for "intellectual property rights" and means all present and future rights conferred by statute, common law or equity in or in relation to circuit layouts, computer software, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

"Malicious Code" means any code, program, script, software, file, thing or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or

network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including viruses, exploits, malware, logic bombs, denial of service attacks, flood or mail bombs, back-doors and other similar things or devices.

"Order" means the order document provided by us and signed or otherwise accepted by you.

"Personal Information" has the meaning given to that term under applicable Privacy Law.

"Privacy Law" means laws relating to the collection, use and disclosure of personal information, such as the *Privacy Act 1988* (Cth).

"SLA" means the Service Level Agreement for Chronosoft Software published on our website (currently at www.chronosoft.com.au/sla).

"Software" means the software licensed to you by Chronosoft as set out in the Order.

"Support" means the provision of standard Software releases and updates, a business-hours helpdesk to provide Users with assistance in using the Software, and an incident notification and management service.

"Term" means the term of this agreement, as described in clause 2.

"Use Limits" means the maximum number of Users, or any other limits on your use of the Software, described in the Order.

"User" means a person authorised by you to use the Software and who has an active, unique login to the Software.

2. Term of this agreement

- (a) This agreement starts on the start date specified in the Order and continues for the Term specified in the Order.
- (b) If no Term is specified in the Order:
 - (i) this agreement continues for an initial Term of 1 year; and
 - (ii) after the initial Term, this agreement will automatically renew for additional periods each of 1 year, unless a party gives at least 60 days' written notice to the other prior to

the next renewal date that this agreement is not to renew.

3. Access to the Software

- (a) During the Term, subject to you paying the Fee, we will provide you with a limited, non-exclusive, non-transferable licence to access and use the Software.
- (b) Your use of the Software is subject to the Use Limits. If you need to vary the Use Limits, please contact us. Note this may result in a change to the Fee.
- (c) User profiles (and associated user IDs and passwords) identify a single User and may not be shared between Users.
- (d) Access to the Software is controlled and secured through user IDs and passwords. You must ensure that your Users' passwords are kept confidential. We are entitled to assume that use of the Software through a particular user ID and password is use by the User in respect of whom the ID was issued, and that the use is authorised by you.
- (e) You acknowledge that the Software has minimum system requirements, which we can provide to you on request. You must ensure that the PC or device you use to access and use the Software complies with those requirements.
- (f) You acknowledge that the Software may require an internet data connection (either wired, wireless or mobile) to operate. You must ensure such a connection is available and bear the costs of the connection, including costs for data sent and received by the Software.
- (g) You must ensure that all Users have completed all recommended eLearning and or reading of provided training documentation.

4. Trial use

This clause 4 applies if you are using the Software on a trial basis. You may only use the Software on a trial basis where this is stated in the Order. During the trial period, as set out in the Order, you may use the Software for free. We may terminate your use of the Software at any time and for any reason at our sole discretion, without liability to you. To the maximum extent permitted by law, during the trial period we disclaim all obligations or liability with

respect to the Software and Support, including all support, warranty and indemnity obligations.

5. Customer Data

- (a) You retain all rights, title and interest in and to Customer Data. You have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. You must ensure Customer Data is not unlawful or defamatory, and that it does not infringe others' rights.
- (b) In the event of any loss or damage to Customer Data, your sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up that we maintain.
- (c) You grant us a licence to use Customer Data for the purpose of performing this agreement. We may also use Customer Data to improve our products and services, provided that we will not disclose Customer Data that identifies you to any third party.
- (d) We have no obligation to monitor Customer Data, but we reserve the right to access, read, preserve and disclose Customer Data we believe is reasonably necessary to:
 - (i) satisfy any applicable law, regulation, legal process or governmental request;
 - (ii) enforce these terms, including investigation of potential violations;
 - (iii) detect, prevent, or otherwise address fraud, security or technical issues; or
 - (iv) protect the rights, property or safety of us, our users and the public.
- (e) You may export Customer Data from the Software using the functionality provided in the Software at any time during the Term. After the end of the Term, we are not required to store Customer Data, and we may delete it without prior notice.
- (f) This clause 5(f) only applies if you are using the Chronosoft Chronicler software. The Software has been developed to allow collaborative access by multiple clients. Therefore, Customer Data may be shared with other clients where you have agreed to this in the Order.

6. Software Support, Hosting and Management

6.1 Support

We will provide you with Support in respect of the Software. You can access Support using the contact details on our website. We will endeavour to respond to and resolve incidents affecting the operation of the Software in accordance with the timeframes in the SLA. We reserve the right to triage incidents and prioritise them as we consider appropriate.

6.2 Hosting

- (a) You acknowledge and agree that:
 - (i) the Software is built as a 'cloud-based' application and, unless the Order states otherwise, will only be accessible using the Internet (or other connection to third party servers);
 - (ii) the servers running the Software may be hosted by a third-party provider; and
 - (iii) unless the Order states otherwise, the servers will be located in a data centre in the jurisdiction in which you operate.
- (b) We may change the servers running the Software, the third-party provider hosting the servers, or the location of the servers at any time in our sole discretion, however, we will notify you of any major changes.

6.3 Changes to the Software

You acknowledge that the Software is under ongoing development. We may upgrade, maintain and modify the Software, including to add, remove or change its features. We will endeavour to provide reasonable notice of changes that we consider are not routine and should be advised to the you. You acknowledge that it may not be reasonably possible to provide notice in all circumstances and that in no event will we be obliged to provide notice exceeding 14 days.

6.4 Software availability

- (a) Unless otherwise set out in the Order, the availability target for the Software and the service credits you may be entitled to claim if the availability target is not met are set out in the SLA.

- (b) We recommend you take appropriate measures to ensure your access to the Software is not interrupted, including:
 - (i) investing in redundant power, network and internet connection options; and
 - (ii) contacting us to discuss additional risk mitigation option, such as us providing you with an on-site unit to host the Software.

6.5 Intentional inaccessibility

We may make some or all of the Software inaccessible from time to time as is required for upgrades, maintenance and updates. We will use reasonable endeavours to provide you with advance notice of any inaccessible period but you accept that this may not always be possible and we are not liable for any harm or damage you may suffer during an interruption.

6.6 Security responsibilities

We will take reasonable steps to ensure that the Software is secure from unauthorised access consistent with generally accepted industry standards in our industry. For clarity, these obligations shall only include taking reasonable measures to:

- (a) Secure our physical premises from unauthorised access;
- (b) Restricting access to critical parts of Software infrastructure to employees, contractors and third parties who are required to have access; and
- (c) Implementing recommendations from advisors provided to us from time to time in relation to securing the Software.

7. Equipment

- (a) We will provide you with the Equipment set out in the Order.
- (b) The Equipment is hired to you for the Term or such other duration set out in the Order. You do not have any right, interest or claim in or over the Equipment except as expressly set out in this agreement.
- (c) You must:
 - (i) ensure the Equipment remains in your possession and control at the location set out in the Order;
 - (ii) only use the Equipment to operate and access the Software;

- (iii) comply with any instructions or advice we provide in relation to the operation of the Equipment, and otherwise use the Equipment in accordance with the manufacturers' instructions;
- (iv) take reasonable care of the Equipment, including keeping it secure and protecting it from loss and damage;
- (v) not make any unauthorised changes or modifications to the Equipment;
- (vi) insure the Equipment against loss or damage for its full new replacement value;
- (vii) promptly notify us if the Equipment is lost or damaged;
- (viii) reimburse us the cost of repairing or replacing any lost or damaged Equipment;
- (ix) return the Equipment to us at the end of the Term or other period set out in the Order;
- (x) give us reasonable access to the Equipment at all times, including to collect the Equipment at your cost if you fail to return it;
- (xi) take such steps as we reasonably request to enable us to register, protect, perfect, record or secure an encumbrance over the Equipment
- (xii) not grant any encumbrance over or in relation to the Equipment; and
- (xiii) not attempt to copy, transfer, reverse-engineer or remove any data from the Equipment.

8. Fee

- (a) In return for use of the Software and any Equipment under this agreement, you must pay us the Fee.
- (b) The Fee is payable in advance on a monthly basis, or on such other basis as set out in the Order. There are no refunds or credits for partial months or early termination, or where your Use Limits change during a month.
- (c) The Fee is expressed exclusive of Australian GST unless otherwise indicated, and exclusive of all other taxes, levies or duties imposed by taxing authorities. GST (and any

other applicable taxes, levies or duties) are payable in addition at the then-prevailing rate.

- (d) Where the Fee is not paid by the due date for payment, we may (without limiting our other rights):
 - (i) charge interest on the overdue amount at the rate of 2% per month; and
 - (ii) suspend or restrict your access to some or all of the Software, until the overdue Fee is paid.

9. Fee variation

- (a) If the Term set out in the Order is longer than 12 months, we may change the Fees on each anniversary of the start date of the Term in line with the change in CPI over the previous 12 months.
- (b) If no Term is specified in the Order, we may change the Fees by giving you at least 90 days' notice period to the next renewal of the Term. The new Fees will take effect from the next renewal of the Term.

10. Contacts

- (a) The contact details for your personnel involved in managing this agreement are set out in the Order, and ours are on our website. Each party must promptly update those details if they change.
- (b) The parties will endeavour to maintain open communication and to resolve any problems or concerns in relation to this agreement by direct communications between their respective personnel.

11. Confidentiality and IP Rights

- (a) Each party will keep the other's Confidential Information confidential and not use or disclose it other than as necessary to perform this agreement or required by law.
- (b) You agree and acknowledge that, as between you and us, we own the IP Rights in the Software, including any enhancements or customisations. This agreement does not transfer any of our IP Rights to you or any other person.
- (c) The Software, our website, and our trading and product names are protected by copyright and trade mark law. We reserve

all rights not expressly granted in this agreement.

- (d) To the extent permitted by law, you must not modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the Software, or attempt to do so. You must not, and must ensure your personnel do not, attempt to gain unauthorised access to the Software or our website.
- (e) You agree that we may refer to you as a client of Chronosoft on our website and in our marketing collateral, and use your trade marks for that purpose.
- (f) Without our express prior written consent, you undertake that you will not and will not permit any person to:
 - (i) copy or reproduce, or create an adaptation or translation of, all or part of the Software in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Software in accordance with this agreement;
 - (ii) incorporate all or part of the Software in any other webpage, site, application or other digital or non-digital format. For the avoidance of doubt, you may incorporate images of the Software into hard or soft copy documents for training or communication purposes;
 - (iii) (subject to other rights explicitly granted under this agreement) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Software on any medium;
 - (iv) do anything that infringes the IP Rights of any third party; or
 - (v) attempt to do any of the above.
- (g) If you become aware of any infringement or threatened infringement of our IP Rights, you must give us notice which includes full particulars of the infringement. We may, in our absolute discretion, institute and prosecute an action against the infringer.
- (h) You must each execute all documents and do all things reasonably requested by us to aid

and co-operate in the prosecution of any actions brought by us under this clause.

12. Liability

- (a) Software and other services we supply under this agreement will be supplied with due care and skill.
- (b) You acknowledge the Software is provided on an “as-is” basis.
- (c) To the extent permitted by law, we exclude any guarantee, representation or warranty about the Software or service under this agreement which is not expressed in this agreement.
- (d) Except as otherwise set out in this clause 12, the parties agree they have no liability to one another, whether in contract, negligence or otherwise, for any loss or damage which is indirect, incidental, special, consequential or exemplary, or which is a loss of profits, revenue, goodwill, opportunity, data or information. These exclusions apply even if a party knew or should have known that the other party might suffer loss.
- (e) Wherever possible, our liability will not exceed providing the Software, Equipment and/or services to you again.
- (f) If any term is implied by law in this agreement and cannot be excluded, then each party limits its liability under that term to the maximum extent permitted by law.
- (g) The limitation in clause 12(d) shall not apply to any damages howsoever suffered by us arising out of your breach of clause 14.
- (h) Our liability is reduced to the extent that any acts or omissions by you or a third party contribute to the loss or liability, and to the extent of any statutory limitation of liability.
- (i) Except as otherwise set out in this clause 12 and without limiting clause 12(d), a party’s liability to the other in relation to this agreement, whether in contract, negligence or otherwise, will not exceed the amounts paid or payable under this agreement in the 12 months prior to the liability accruing. This clause does not limit your liability to pay the Fee.

13. Suspension and termination

13.1 Suspension

If you breach this agreement, without limiting our other rights, we may suspend or restrict your access to some or all of the Software until the breach has been remedied.

13.2 Termination

Either party may terminate this agreement immediately by giving the other party written notice if the other party:

- (a) is or becomes bankrupt or insolvent; or
- (b) materially breaches this agreement and, where the breach is capable of being remedied, fails to remedy the breach within 30 days of being notified to do so.

14. Security

- (a) You shall use proper security measures in connection with your use of the Software. This shall include (but not be limited to) the following:
 - (i) Setting strong passwords and access control mechanisms;
 - (ii) Safeguarding access to all logins and passwords (preferably with an industry-grade two-factor or hardware authentication system);
 - (iii) Verifying the trustworthiness of persons with account access information;
 - (iv) Performing regular checks on user accounts;
 - (v) Implementing appropriate policies and procedures to safeguard access within your organisation;
 - (vi) Undertaking adequate security training with all Users; and
 - (vii) Implementing any relevant procedures recommended by a government authority or regulator.
- (b) You shall notify us within 48 hours if you learn of any security breach relating to the Software. If the breach involves Personal Information being accessed or disclosed without authorisation or lost, you shall notify us within 3 hours of the breach (suspected or confirmed) coming to your attention. You shall aid us fully in any subsequent

investigation or legal action taken as a result of the breach.

- (c) It is your responsibility to protect your systems and the areas of the Software which are under your control from Malicious Code.
- (d) You are responsible for the security of any and all internet connections used to access the Software, and the security of any device on which the Software is accessed.
- (e) While we will take reasonable measures to secure the Software and the infrastructure on which the Software runs from cyber-attacks and Malicious Code, new attack vectors and exploits are created or used by malicious actors every day. By using the Software, you acknowledge that we cannot be expected to anticipate these new vectors but can only employ industry-standard measures to mitigate the risks. Where we are actively employing measures to combat cyber-crime and an exploit or data loss occurs, you agree to hold us completely harmless for any consequences of same.

15. Privacy

- (a) Each party will comply with its obligations under applicable Privacy Law.
- (b) Without limiting clause 15(a), to the extent Customer Data includes Personal Information, you warrant that you have all required consents and authorisations to provide that Personal Information to us for the purposes of this agreement.

16. Third Party Content and Services

16.1 Accessing Linked Content and Services

- (a) The Software may permit you to link to or access other websites, services or resources. When you access third party resources, you do so at your own risk. These other resources are not under our control, and you acknowledge that we're not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any link or integration to third party services does not imply our endorsement or any association between us and their operators.
- (b) You further acknowledge and agree that we will not be responsible or liable, directly or indirectly, for any damage or loss caused (or

alleged to be caused) by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.

16.2 Third Party Integrations

- (a) As part of the Software, we may offer augmented functionality through interfacing, providing or obtaining data, or otherwise co-operating with a third party and their software and/or services (**Integration**).
- (b) The Software currently integrates with several third parties for enhanced functionality, including Integrations to permit interfacing with weather, SMS and other data.
- (c) These Integrations may have access to Customer Data. By opting-in to an Integration, you authorise us to provide any Customer Data to the relevant third parties for the purpose of facilitating access to that Integration.
- (d) You acknowledge and agree that the third parties who control the Integrations may:
 - (i) Use Customer Data to improve their products and services;
 - (ii) To the extent permitted by law, use, sell, license, distribute and disclose de-identified and/or aggregated data; and
 - (iii) Perform fraud screening, verify identities and verify data for use across their network.
- (e) While we offer the Integrations and may have agreements with the third parties to whom they relate, we only have control over the Integrations to the extent permitted by our Software.

17. Force Majeure

- (a) We shall have no liability to you under this agreement if we are prevented from or delayed in performing our obligations under this agreement by events beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or

governmental order, rule, regulation or direction, accident, failure of hardware or software, fire, flood, storm or default of suppliers or sub-contractors.

- (b) Where possible, we will notify you of such an event and its expected duration.

18. Dispute Resolution

- (a) If any dispute arises between the parties, the parties must attempt in good faith to resolve the dispute by correspondence by providing written notice to the other party via email describing the facts and circumstances (including any relevant documentation) of the dispute and allowing the receiving party 30 days in which to respond to or settle the dispute.
- (b) If a dispute is not resolved within the time allowed under clause 18(a) or such other time agreed between the parties, the parties agree that the dispute will be referred to, and finally resolved by, arbitration in accordance with this clause 18.
- (c) The dispute will be finally resolved in accordance with the UNCITRAL Arbitration Rules in force at the time of the dispute as follows:
 - (i) the arbitration shall be administered by the Australian Centre for International Commercial Arbitration (**ACICA**);
 - (ii) the appointing authority shall be ACICA;
 - (iii) the number of arbitrators will be 1;
 - (iv) the place of arbitration will be Brisbane, Australia; and
 - (v) the language of the arbitration will be English.
- (d) Any arbitral award will be final and binding upon the parties.

19. Other terms

- (a) Clauses 11, 12, 15, 18 and 19 survive the termination or expiry of this agreement.
- (b) The Order and these terms comprises the entire agreement between the parties concerning the Software. Any prior negotiations or documents are superseded by this agreement. In the event of any inconsistency between the Order and these terms, the Order takes precedence.

- (c) Except as otherwise provided for in this agreement, this agreement can only be varied by a document signed by both parties.
- (d) Each party represents and warrants to the other that:
 - (i) It is duly organised, validly existing and in good standing under the laws in which it is incorporated;
 - (ii) It has the corporate power to execute and enter into this agreement;
 - (iii) It has not induced the other into signing this agreement with false or inaccurate information;
 - (iv) It will comply with all applicable laws and regulations; and
 - (v) This agreement constituted valid, binding and legal obligations which are enforceable and do not breach its constitution, obligations or any other instrument.
- (e) You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this agreement.
- (f) We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under this agreement.
- (g) The parties are independent contractors. This agreement is not intended to create a partnership, joint venture or agency relationship between the parties.
- (h) Any communication under or in connection with this Agreement shall be made in writing via email. Any and all correspondence, including notices, delivered under this agreement shall, in the absence of any provisions to the contrary (or unless otherwise agreed) be governed by the *Electronic Transactions (Queensland) Act 2001* (Qld).
- (i) Each party must pay its own costs of negotiating, signing and performing this agreement.
- (j) Queensland law applies to this agreement and the parties submit to the jurisdiction of the courts of Queensland.