



SAPIENCLOUD SOFTWARE LICENCE

If you do not wish to accept these terms and conditions, you must **not** click “I Accept” and you may **not** use the Software and System (defined below). Permission to use this Software and System is conditional upon you (“**User**”) agreeing to the terms and conditions set out below.

By clicking on the "I Accept" button below, User and Sapien Technology Pty Ltd ACN 606 708 570 ("**Licensor**") agree to the following terms and conditions:

1. **SOFTWARE.** In this agreement “**Software**” refers to those software applications of Licensor including all such software applications available through the SapienCloud website (as selected by User) and except where the context required otherwise, means those applications for which User, following the payment of licence fees, is granted a licence hereunder to use. Further, unless the context requires otherwise, “**Software**” includes all modifications, enhancements or updates thereto, or other related software code that may be provided by Licensor under separate maintenance and support agreements or otherwise, and includes all associated printed, online or electronic documentation relating to the Software (“**User Documentation**”). The term “**System**” refers to Licensor’s device facilities for provision to users generally (including User) of the services associated with the SapienCloud software to be accessed online by User in conjunction with the Software, pursuant to this Agreement.

2. **LICENCE.** Licensor grants to User, and User accepts, a non-exclusive, non-transferable limited licence to use the Software strictly in accordance with this agreement. The licence to use the Software and the System is limited to the period in respect of which the User has prepaid a subscription fee commencing on the date of this agreement and any extension thereto agreed by Licensor (“**Term**”) subject to User paying the applicable renewal fee. The number of individuals within the User’s organisation who may access and use the software shall be in accordance with the subscription level of User.

In addition, where permitted by the applicable subscription level, User may invite third party users to access and view User’s data held on the System and/or to upload data and photography onto the System, provided that such third parties agree to comply with the terms of this licence to the extent applicable to them prior to such access and use.

3. **INSTALLATION.** The Software may be installed on any device, subject to any compatibility limits as may be notified by Licensor from time to time including at its website at www.sapien.com.au. Upon installation of the Software, User shall be responsible for ensuring that the Software is used in accordance with the User Documentation. Licensor is not liable to install the Software or to provide any services or support in respect of the installation of the Software, except as expressly stated in this agreement or as otherwise agreed between the parties in writing.

4 **COPYRIGHT, USE AND OTHER LIMITATIONS.**(a) User acknowledges that the Software (including all User Documentation) and the System (to the extent protectable at law) are the subject of copyright and that all intellectual property rights (including but not limited to copyright) in and to the Software whether in its original form or as modified from time to time are owned by Licensor. User will not during or at any time after the expiry of termination of this agreement permit any act which infringes that copyright. (b) Without limiting (a), User must not copy, reproduce, translate, adapt, vary, modify, reverse engineer, decompile, or disassemble the Software, without the express consent of Licensor, except as expressly authorised by this agreement or as permitted under Pt III Div 4A of the *Copyright Act 1968 (Cth)*. (c) User must supervise and control the use of the Software and System in accordance with the terms of this agreement and must ensure that its employees, sub-contractors and other agents who have authorised access to the Software and System are made aware of the terms and conditions of this agreement. (d) User agrees and acknowledges that maintenance (whether scheduled or



unscheduled) may be performed in relation to the Software or System whether by Licensor or its hosting service provider. (e) User agrees and acknowledges that they must not (and it shall be in breach of this agreement to) use or access the Software or System for the purposes of determining its features, functions, benefits, or underlying code for the purpose of or assisting with the development or provision of a software or system that is competitive with the Software or System.

Licensor expressly excludes any warranty that the System or Software will be available at all times or that the use of the System or Software will be uninterrupted or error free. Licensor reserves the right to suspend the operation of the System or Software, including if required or requested to do so by its hosting service provider. Licensor shall not be liable in respect of any action or claim in relation to such unavailability or any claim for loss or damage arising therefrom.

In addition to the above, User agrees and acknowledges that User's use of the Software and System involves data supplied by User to which Licensor is granted access ("**User Data**") and will be subject to limitations in respect of the amount of data that can be stored for User. As at the date of this agreement that limit is 4GB per User. Licensor shall use reasonable endeavours to notify User if and when 80 per cent of any such capacity has been reached in respect of User. Once such 80 per cent capacity level has been reached, Licensor may at its election:

- (a) require some of User's User Data to be archived using either an archive system facilitated or proposed by Licensor;
- (b) facilitate the Software being substituted for alternative or upgraded software, on the terms and conditions of this agreement or such other terms as Licensor reasonably requires (it being agreed and acknowledged that such alternative software may incur an additional or a higher charge); or
- (c) if neither (a) nor (b) are feasible or agreed to by User, terminate the licence hereunder.

6. **ACCEPTABLE USE.** a) User must not use, or encourage, promote, facilitate or instruct others to use, the Software or System (including SapienCloud Site) for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive. Further prohibited uses and content include i) **Illegal Activities.** Any illegal activities, including advertising, transmitting, or otherwise making available gambling services or disseminating, promoting or facilitating child pornography. ii) **Harmful or Fraudulent Activities.** Activities that may be harmful to others, the Licensor's operations or reputation or engaging in other deceptive practices. iii) **Infringing Content.** Content that infringes or misappropriates the intellectual property or proprietary rights of others.

iv) **Offensive Content.** Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts sex acts. v) **Harmful Content.** Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

b) **No Security Violations.** User may not use the Software or System to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "system"). Prohibited activities include i) **Unauthorised Access.** Accessing or using any system without permission, including attempting to probe, scan, or test the vulnerability of a system or to breach any security or authentication measures used by a system. ii) **Interception.** Monitoring of data or traffic on a system without permission. iii) **Falsification of Origin.** Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route. This prohibition does not include the use of aliases or anonymous remailers. c) **No Network Abuse** User may not make network connections to any users, hosts, or networks unless User has permission to communicate with them. Prohibited



activities include i) **Monitoring or Crawling.** Monitoring or crawling of a system that impairs or disrupts the system being monitored or crawled. ii) **Denial of Service (DoS).** Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective. iii) **Intentional Interference.** Interfering with the proper functioning of any system, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques. iv) **Avoiding system Restrictions.** Using manual or electronic means to avoid any use limitations placed on a system, such as access and storage restrictions.

Licensor reserves the right to remove any User content that User may post at any time without notice to User but does not guarantee to monitor the System for any breaches of the above.

7. WARRANTIES.

- (a) User acknowledges that the Software and System is not guaranteed to be error free and further acknowledges that the existence of such error will not constitute a breach of this agreement.
- (b) During any agreed or mandated warranty period and upon User's request, Licensor will at no additional charge to User use best efforts to (i) correct promptly each non-conformance of the Software from the specifications in the User Documentation, or (ii) replace the non-conforming Software with conforming Software, or (iii) to the extent the above may not be reasonably obtained, Licensor may at its option, terminate this agreement and refund the amount paid by User for the Software. This warranty is void if the failure is due to abuse or other use of the Software not in conformance with the User Documentation or by unauthorised modification of the Software by or on behalf of User.
- (c) To the extent permissible at law, the remedy set out above will be User's sole and exclusive remedy, and Licensor's exclusive liability, for breach of the above warranty.
- (d) Licensor's warranties under this agreement are limited to those set out above, except if and to the extent only that any statute implies terms into this agreement which cannot lawfully be excluded, such terms will apply to this agreement, save that the liability of Licensor for breach of any such implied term will, to the extent permissible at law, be limited, at the option of Licensor to one or more of the following:
 - (i) if the breach relates to goods:
 - A. the replacement of the goods or the supply of equivalent goods;
 - B. the repair of such 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) if the breach relates to services:
 - A. the supplying of the services again; or
 - B. the payment of the cost of having the services supplied again.

Without limiting the foregoing, Licensor does not warrant the Software or System will meet User's commercial requirements.

8. NATURE OF SUPPORT SERVICES (a) Licensor shall perform such support services as it considers reasonable to ensure the adequate performance of the Software ("**Support Services**"). Such Support Services may, subject to the limitations set out in this Agreement, take the form of telephone advice. (b) Licensor shall provide the Support Services in response to a report by User of a suspected defect or error in the Software, that allegedly causes the Software to deviate from the Software's specifications. (c) Licensor may facilitate diagnostic



support through use of third party software called "TeamViewer". Once installed and operating on User's system TeamViewer will allow Licensor's support team to gain remote desktop access to User's system. (d) User agrees and acknowledges that:

- (i) the proposed use of TeamViewer will allow Licensor's support team to have access to User's information technology system in order for Licensor to provide the support referred to above;
- (ii) while Licensor has no reason to believe that there are any defects inherent in TeamViewer or likely to arise from its use, as TeamViewer is third party software, it cannot guarantee the same;
- (iii) to the extent permissible at law TeamViewer is supplied on an "as is" basis. Licensor will be under no liability to User in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the use of TeamViewer. User indemnifies Licensor and its officers, employees and agents from and against any loss or liability arising directly or indirectly out of the use of TeamViewer in accordance with this agreement; and
- (iv) subject to anything to the contrary in this or any other agreement between Licensor and User, Licensor reserves the right to cease provision of remote diagnostic support, to User or generally in its absolute discretion and whether by use of TeamViewer or otherwise.

The base level support provided hereunder may be augmented if the User obtains separate higher level support from the Licensor under the terms of a separate agreement.

9. SUPPORT AVAILABILITY (a) Licensor shall provide the telephone advice Support Services between 0900 hours and 1700 (EST) hours on any day except Saturday, Sunday or a public holiday in Melbourne, Victoria.

10. LIMITATIONS AND EXCLUSIONS. (a) Unless agreed by Licensor in accordance with clause 10(b), Support Services to be provided by Licensor under this agreement do not include:

- (i) correction of errors or defects caused by operation of the Software in a manner other than that currently specified by Licensor;
- (ii) correction of errors or defects caused by modifications, revision, variation, translation or alteration of the Software not authorised by Licensor;
- (iii) correction of errors or defects caused by the use of the Software by a person not authorised by Licensor;
- (iv) correction of errors caused in whole or in part by the use of computer programs other than the Software;
- (v) correction of errors caused by the failure of User to provide suitably qualified and adequately trained operating and programming staff for the operation of the Software;
- (vi) training of operating or programming staff;
- (viii) rectification of operator errors;
- (ix) rectification of errors caused by incorrect use of the Software;
- (x) rectification of errors caused by an equipment fault;
- (xi) equipment maintenance;
- (xii) diagnosis or rectification of faults not associated with the Software;
- (xiii) providing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Licensor;
- (xiv) correction of errors arising directly or indirectly out of User's failure to comply with this Agreement or any other agreement with Licensor; or
- (xiv) correction of errors or defects which are the subject of a warranty under another Agreement.



(b) If User so requests in writing, Licensor may at its option provide any of the services referred to in clause 10(a) in consideration for an additional charge for providing such services.

(c) If User so requests in writing, Licensor may at its option provide any of the services referred to in clause 10(a) in consideration for an additional charge for providing such services.

11.. UPDATES AND NEW RELEASES (a) The Support Services shall include the provision to User of any updates and new releases of the Software that may be created by Licensor during the Term and any renewal thereof. (b) Updates and new releases of the Software shall be provided by Licensor to User as they become available. (c) If User refuses to accept any update or new release of the Software, Licensor may decline to continue to provide any Support Services. (d) Where a User accepts an update or new release, this agreement applies in all respects to that update or new release to the extent that it is incorporated or replaces the Software.

12. SYSTEM SPECIFICATIONS. (a) Licensor may substitute the System or any component of the System or vary the configuration of the System at its discretion and without prior notification to User prior to or during the Term without consultation with User if, in the opinion of Licensor, such substitution will not cause a material degradation of the goods and services to be provided under this agreement. (b) Without limiting any other provision of this agreement, Licensor shall not be responsible for any loss or damage caused by factors beyond Licensor's reasonable control including, but not limited to, telecommunications failure or fault, defective equipment utilised by User or incorrect operation by User of its own access facilities.

13. OWNERSHIP AND USE OF DATA. Subject to any lien arising because of unpaid charges under this or any other agreement between Licensor and User. User acknowledges that the User Data to which Licensor is granted access remains the property of User. User agrees that Licensor may access and use User Data for the purposes of conducting, preparing and disseminating to third parties, analysis of the data of its users and the market in which User operates, provided that in doing so User is not identified.

14. DATA AUDIT. (a) Licensor shall on reasonable notice make the User Data and related data, documentation or records maintained on behalf of User available for inspection by User or User's auditors. (b) User may be required to pay Licensor an additional charge in respect of these services .

15. USER'S FACILITIES. (a) User shall be responsible for providing its own facilities (including terminal, general software, modern and telecommunications facilities) necessary for accessing the System.

(b) Licensor shall, upon request from User, supply such information and assistance as are reasonably required by User to enable User to prepare and install its own facilities. (c) Notwithstanding clause 15(b), Licensor accepts no responsibility for any deficiency in User access facilities.

16. PAYMENT User must pay any subscription fees for the use of the Software and System by the deadline stipulated by Licensor. Licensor may increase any fees for access to and use of the Software and System by giving 14 days' prior notice to User.

17. WARRANTY AND INDEMNITY. (a) Licensor warrants that it has the right to grant the licence of the Software granted in this agreement to User and subject to the clauses below, shall indemnify and hold harmless User from any claim made against User by a third party alleging that the Software infringes the copyright, or other proprietary right, of that third party. (b) Licensor shall not be liable to User for breach of warranty or indemnity if: (i) User does not notify



Licensor of the third party's claim or of infringement of copyright within 7 days of becoming aware of the claim or infringement; (ii) Licensor's ability to defend the claim has been prejudiced by User's non-compliance with any of the terms and conditions of this agreement; (iii) User does not give Licensor reasonable assistance in defending the claim; (iv) the claim has arisen because of the use of the Software in combination with equipment, materials or applications not supplied or approved by Licensor, or because of User's non-compliance with User Documentation; or (v) User does not permit Licensor to have control of the defence of the claim and all related settlement negotiations.

18. LIMITED LIABILITY. (a) Except as expressly provided to the contrary in this agreement to the maximum extent permitted by the Applicable Law referred to in clause 19, in no event whatsoever shall Licensor or its directors, employees, agents or sub-contractors be liable for any special, incidental, indirect or consequential damages whatsoever (including without limitation, damages for loss of profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use, or inability to use, the Software, the System or the provision of or failure to provide support and maintenance services, even if Licensor has been informed of the possibility of such damages. (b) User agrees that it has not relied on any representation made by Licensor which has not been stated expressly in this agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues, internet sites or publicity material produced by Licensor. (c) User shall at all times indemnify and hold harmless Licensor and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by: (i) a breach by User of its obligations under this agreement; or (ii) any wilful, unlawful or negligent act or omission of User.

19. APPLICABLE LAW. The Applicable Law is the laws for the time being in force of the State of Victoria, Australia and the Commonwealth of Australia. This agreement is governed by the Applicable Law without any reference to any conflict of laws and Licensor and User agree to submit to the jurisdiction of the Courts of the State of Victoria and the Commonwealth of Australia and the Courts of Appeal therefrom.

20. DISPUTES. If a dispute that is communicated to the other by written notice is not remedied or is not capable of remedy, then the parties agree to submit to mediation prior to the institution of court proceedings utilising the following procedure: (a) The parties will jointly appoint a mediator. If the parties cannot agree on a mediator, the parties agree that either of them may request the President for the time being of the Law Institute of Victoria, Australia to nominate a mediator; (b) The cost of the mediator will be shared equally between the parties; (c) If a settlement is reached at the mediation, written terms of settlement shall be entered into immediately upon conclusion of the mediation and shall override this agreement; (d) Each party will be entitled to legal representation at the mediation; (e) Statements made at, or documents produced specifically for the mediation, will not be admissible in any Court and neither party will be entitled to disclose the statements or documents to any third party (other than their legal representatives).

21. TERMINATION This agreement is effective until terminated in accordance with this clause This agreement will terminate immediately without the need for notice from Licensor if:

- (a) User breaches any term of this agreement;
- (b) without limiting (a) User breaches any term of this agreement and such breach is not rectified within 14 days from notice from Licensor to rectify;
- (c) User, being a corporation, becomes the subject of any insolvency proceedings;
- (d) User, being a firm or partnership, is dissolved;
- (e) User, being a natural person, dies;
- (f) User ceases or threatens to cease conducting its business in the normal manner;
- (g) User destroys, disposes of or loses custody of the Software for any reason or



- (h) The Software becomes the subject of a third party intellectual property infringement claim.

Those clauses of this Agreement that are capable of surviving termination shall do so, and termination pursuant to this clause will not affect any rights or remedies which Licensor may have otherwise under this Agreement or at law. If Licensor terminates this agreement Licensor may retain any fees paid by User.

22. UPON TERMINATION. If terminated in accordance with clause 21, in addition to the matters set out above, Licensor may:

- (a) User must cease all use of the Software and the System; (b) retain any moneys paid; (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged; (d) be regarded as discharged from any further obligations under this Agreement; and (e) pursue any additional or alternative remedies provided by law.

23. SUB-CONTRACTS Licensor may, without the consent of User, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of the Support Services.

24. JOINT AND SEVERAL LIABILITY. Where User comprises two or more persons, corporations or entities, these terms and conditions will be binding upon Users jointly and severally. In addition these terms and conditions will be binding upon User's legal personal representatives.

25. ASSIGNMENT. The benefit of this agreement may not be dealt with in any by User (whether by assignment, novation, sub-licence or otherwise) without Licensor's written consent. Licensor may assign, novate, sub-license or otherwise transfer its rights in respect of this agreement without the consent of the User.

26. ENTIRE AGREEMENT AND VARIATION. This Agreement constitutes the entire agreement between User and Licensor. The terms and conditions of this Agreement can only be varied by a document in writing supplied and signed by Licensor and accepted by User.

27. WAIVER. No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party. A waiver by Licensor pursuant to this clause will not prejudice its rights in respect of any subsequent breach of these terms and conditions by User.

28. SEVERANCE. If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted

29. INTERPRETATION. In these terms and conditions, unless the contrary intention appears: (a) words in the singular number include the plural and vice versa; (b) words importing a gender include any other gender; (c) a reference to a person includes bodies corporate and unincorporated associations and partnerships; (d) a reference to a clause is a reference to a clause or subclause of this Agreement; and (e) monetary references are references to Australian currency.