

SOFTWARE LICENCE AND SUPPORT AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 20____ .
(the “**Commencement Date**”) is

BETWEEN: AREANET PTY LTD (trading as “SmarterSoft”) (name)

84 114 634 561 / 114 634 561 (ABN/ACN)

Level 33, 264 George Street Sydney, NSW 2000, (address)
Australia

(the “**Licensor**”);

AND: _____ (name)

(the “**Licensee**”).

RECITALS:

- A. The Licensor is the sole owner of 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 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, revocable licence to the Licensee to use the Software and Materials on and from the date of this Agreement for the Permitted Purpose (as per Part B of Schedule One).
- 1.2. The Licensee may not assign the Licence.
- 1.3. The Licensee may not sublicense the Licence.
- 1.4. The Licensee is not permitted to adapt/modify the code to the Software.
- 1.5. The Licensee is not permitted to reverse engineer, disassemble or otherwise endeavour to obtain the Source Code to the Software.
- 1.6. The Licensee is limited to use the Software as per Part C of Schedule One. If the Licensee wishes to use the Software over a limit, the Licensee must obtain the

Licensee Initial: _____

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Licensor's permission in writing and the Licensor reserves the right to charge additional Licence Fees and/or IT Infrastructure Fees.

2. TERM OF LICENCE

- 2.1. The parties agree that the Licence commences on the Commencement Date of this Agreement and expires on the date specified in Part G of Schedule One, unless terminated by either party as set out in this Agreement.

3. LICENCE FEE & IT INFRASTRUCTURE FEE

- 3.1. The Licensee must pay the Licence Fee and IT Infrastructure Fee as set out in Part E of Schedule One.
- 3.2. The Licensee is not obliged to pay any fee due unless it has received a valid Tax Invoice from the Licensor.
- 3.3. Licence Fees and IT Infrastructure Fees commence on the first Software Acceptance Date.
- 3.4. Quarterly invoicing for Licence Fees and IT Infrastructure Fees is the default regimen, however the Licensor may request annual upfront payment. If paying quarterly, Tax Invoices shall be issued by the Licensor on (or after) the first Business Day of each quarter for the upcoming quarter, or if paying annually, Tax Invoices shall be issued by the Licensor on the first Software Acceptance Date (or after) for the upcoming year, and on each subsequent anniversary of that date.
- 3.5. Any adjustments to Licence Fees or IT Infrastructure Fees must be agreed in writing between parties.

4. INTELLECTUAL PROPERTY

- 4.1. The Licensee acknowledges and agrees that AREANET PTY LTD (trading as SmarterSoft), is the sole owner of all Intellectual Property Rights in the Software and the Materials. This includes any Intellectual Property Rights and copyright within any Software customisation, configuration, plan, design, document, Source Code or creative product that has been created for the Licensee, as and when it is created.
- 4.2. The Licensee must not alter, remove or obscure any trademark or copyright symbol or legend or other proprietary mark on the Software and the Materials.
- 4.3. All original and any copies of the Software and the Materials, including translations, compilations, partial copies, modifications, and updates, always remain the sole property of the Licensor.
- 4.4. All Intellectual Property Rights contained within Content vests in the Licensee or the Content's legal owner.
- 4.5. Upon request by the Licensee, the Licensor shall enable the Content to be exported by the Licensee in a non-proprietary electronic format that is convenient to the

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Licensor. For the avoidance of doubt, this means the comma separated variable (CSV) data format.

5. CONFIDENTIAL INFORMATION

- 5.1. The Licensee acknowledges and agrees that the Software and Materials contain Confidential Information belonging to the Licensor. The Licensee agrees not to provide or to otherwise make available in any form the Software and/or Materials, or any portion thereof, to any third party without the prior written consent of the Licensor. The Licensee further agrees to treat the Software and Materials with at least the same degree of care with which the Licensee treats its own Confidential Information and in no event with less care than is reasonably required to protect the confidentiality of the Licensor.
- 5.2. The Licensee agrees to disclose the Software and Materials only to its Employees and Contractors who need access so that the Licensee can exercise its rights and obligations under this Agreement.
- 5.3. If the Licensee requires a Contractor be given a high level of access to the Software or Materials (for example 'super admin' access), the Licensee must first request such access from the Licensor. At such a time, the Licensor may request a signed deed of confidentiality from the Contractor prior to access being granted or refuse access. If the Licensor becomes aware that a Licensee's Contractor has been given a high level of access without notification, the Licensor may terminate the Contractor's access immediately and without Notice.
- 5.4. The Licensor shall ensure its Employees and Contractors keep confidential all Confidential Information disclosed by the Licensee. The Licensor shall not disclose such information without the Licensee's prior written approval.
- 5.5. All Confidential Information must be held as confidential by the parties for a period of not less than 2 years from first receiving it.
- 5.6. In the event that this Agreement is terminated as per clause 12, the Licensee must return all Confidential Information issued by the Licensor within 30 calendar days from the date of termination. At such a time, the Licensor shall also return to the Licensee all Confidential Information issued by the Licensee.

6. ACCEPTANCE TESTING & RELEASE MANAGEMENT

- 6.1. The Licensor shall install the Software on the IT Infrastructure and shall require the Licensee to conduct all relevant Acceptance Testing activities at its own cost. For the avoidance of doubt, this means the Licensee must supply all human labour, technical resources and consumable items required to complete Acceptance Testing activities.

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- 6.2. The Licensee must inform the Licensor by Notice (or via email to an authorised Licensor consultant) when Acceptance Testing is commencing and when Acceptance Testing is complete.
- 6.3. The Licensee is responsible for Acceptance Testing the functionality of the Software at their own cost. This includes the testing of any migrated data.
- 6.4. If requested, the Licensee must allow the Licensor to be present during any Acceptance Tests and/or be granted access to any Acceptance Testing plans or process documentation.
- 6.5. The parties agree that the Acceptance Tests to be performed for the Software are to be set by the Licensee and may contain elements outlined in Schedule Two, including functionality, compatibility, resilience, reliability and performance level testing. All Acceptance Tests are to be based on the agreed project scope.
- 6.6. If a Software Defect is encountered during Acceptance Testing, the Licensor shall correct any such defect at its cost (as is deemed reasonable by the Licensor).
- 6.7. Where there is a delay due to the Licensor correcting Software Defects or responding to scope changes requested by the Licensee during Acceptance Testing, the Licensee agrees to extend any period for Acceptance Testing to accommodate such delays. Any additional costs arising directly or indirectly from such delays must be borne by the Licensee.
- 6.8. Scope changes identified during periods of Acceptance Testing shall be treated as variations and as such, may incur an additional cost to the Licensee.
- 6.9. The Licensor shall provide the Licensee with an option to upgrade the Software to the latest version not more than 2 times a year. The schedule for release management is negotiable, however the Licensee acknowledges that security related upgrades are of higher urgency. Each release of the Software shall require the Licensee to undertake separate Acceptance Testing.
- 6.10. The Licensor will charge for any time and effort required to facilitate Software upgrades including the setup of test environments, conducting any test activities, and performing deployments. The cost of these activities shall be communicated in advance to the Licensee by the Licensor and agreed upon by both parties before commencement.
- 6.11. Where an upgrade or enhancement to the Software occurs during the term of this Agreement, the Licensee agrees:
 - (a) to adequately test the upgrade or enhancement at their own cost; and
 - (b) use the approach indicated in clause 11 to manage and communicate testing related work; and

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- (c) that Software Acceptance of the upgrade or enhancement shall occur at the completion of their testing.
- 6.12. The parties agree to resolve any disputes related to Acceptance Testing 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 Materials to the Licensee.
- 7.2. The Licensor represents and warrants that the Licensee's use of the Software and Materials shall not infringe the rights, including Intellectual Property Rights, of any third party.
- 7.3. From the first Software Acceptance Date for the Software, the Licensor shall provide a 90 calendar day warranty against Software Defects within the Software. Software Defects directly introduced by the Licensor as part of an upgrade or enhancement to the Software are also covered by their own 90 calendar day warranty against Software Defects which commences on the Software Acceptance Date of the upgrade or enhancement. In such cases, the warranty shall be limited to the scope of that particular upgrade or enhancement only.
- 7.4. Where a Software Defect exists and a warranty against Software Defects applies:
 - (a) Software Defects shall be fixed at the Licensor's expense; and
 - (b) The Licensor shall begin investigating the Software Defect within a reasonable time from receipt of the Licensee's formal notification to the Licensor of the Software Defect which shall include technical details clearly explaining the Software Defect; and
 - (c) The Licensor shall inform the Licensee as soon as possible of the expected timeframe and plan to rectify the Software Defect and its likely impact.
- 7.5. Once a warranty against Software Defects period has elapsed, the rectification of Software Defects within the Software shall no longer be at the Licensor's expense, unless the Software Defect is wholly contained within the core Source Code of the Software. Under such a situation, the Licensor is responsible for the rectification of the Software Defect with the fix being included in a future Software upgrade.
- 7.6. Third party licensed components which may be included within the Software are excluded from the Licensor's warranty against Software Defects, but in such a case any warranties against Software Defects which may be provided by that third party apply to the Licensee.

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- 7.7. Unless otherwise agreed in writing, all warranties, including the warranty against Software Defects, shall immediately become void should the Licensee be granted any electronic access to:
- (a) the location of the Software's Source Code or IT Infrastructure; or
 - (b) administrative areas of the Software that allows the Licensee to make structural changes to the Software.
- 7.8. Unless otherwise agreed in writing, the Licensor does not provide any SLA guarantees. In certain circumstances, service level measures that may exist in SLAs between the Licensor and its suppliers shall be passed onto the Licensee. Should the Licensee require a specific SLA regarding:
- (a) the availability or recoverability of the Software; or
 - (b) the Licensor's Support Request response or resolution times,
- these may be separately negotiated between parties.
- 7.9. To the full extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions, including without limitation implied warranties as to the merchantability and fitness for purpose of the Software and Materials.
- 7.10. Where the Licensor has agreed to install or install and Acceptance Test the Software, to the full extent permitted by law the Licensor makes no representation or gives any warranty in respect of the provision of the services except that it shall carry out the service competently, professionally and to the best of its ability having regard to the terms of this Agreement.

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 agrees to use the Software and Materials solely for purposes internal to the Licensee's organisation and must not attempt to sell, distribute, sublicense, charge, mortgage or otherwise encumber the Software and Materials to any third party, in whole or in part, in any form, whether modified or unmodified for any reason whatsoever.
- 8.3. The Licensee agrees to not to decipher, decompile, disassemble or reverse engineer any of the Software and Materials for any reason.
- 8.4. The Licensee acknowledges that, subject to clause 1 and 4, it has no Intellectual Property Rights in the Software and/or the Materials.
- 8.5. For the purposes of installing the Software, the Licensee must 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 obligations under this Agreement. The

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Licensee acknowledges that such access may cause interruption and disruption to its business whilst such installation is being carried out.

- 8.6. Where the Licensor has agreed to Acceptance Test the Software pursuant to clause 6, the Licensee undertakes to give free and reasonable access to the Licensor to enable the Licensor to perform its obligations under this Agreement.
- 8.7. The Licensee acknowledges that the Licensor gives no guarantee as to the accuracy or completeness of the Software and Materials nor that they are free from error.
- 8.8. The Licensee is solely responsible for its use, supervision, management and control of the Software and the Materials.
- 8.9. The Licensee must exercise all reasonable efforts to ensure that the Software and Materials are at all times protected from access, use, misuse, damage and/or destruction by any person not authorised by either the Licensor or the Licensee.
- 8.10. The Licensee must notify the Licensor immediately if it becomes aware of any unauthorised use, access or attempt to use or access the Software and/or Materials by any person not authorised by either the Licensor or the Licensee.
- 8.11. The Licensee agrees to use the Software only for lawful purposes.
- 8.12. The Licensee is wholly responsible for all Content howsoever entered or uploaded into the Software by the Licensee. It is the Licensee's responsibility to ensure that all Content it loads into the Software is free from computer viruses, spyware, malware or other harmful electronic computer programs and complies with all applicable legislations, regulations, by-laws, ordinances or codes of conduct within the legal jurisdiction applicable to the Licensee.
- 8.13. The Licensee agrees not to use the Software to enter or upload Content which is illegal, false, misleading or deceptive, abusive, sexually explicit, defamatory, obscene or otherwise objectionable or invasive of another's right of privacy.
- 8.14. The Licensee acknowledges that fees associated with the IT Infrastructure on which the Software operates are separate to the Licence Fees and are set out in in Part E of Schedule One. Should the operational or security requirements of the Software outgrow the IT Infrastructure allocated to it, the Licensee consents to upgrade the IT Infrastructure at an additional cost, or risk degradation in the performance, security and/or availability of the Software.
- 8.15. For the term of this Agreement, the Licensee must allow the Licensor to display references and/or images acknowledging the Licensor's Intellectual Property in generally visible areas of the Software, including in any electronic messages sent by the Software. Additionally, the Licensee agrees to allow these references to be web links.

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9. LIABILITY & INDEMNITY

- 9.1. To the full extent permitted by law, neither party will be liable to the other for, and no measure of loss or damages will, under any circumstances, include special, indirect, consequential, incidental or punitive damages, or loss of profits, revenue, bargain, anticipated savings, or any other commercial or economic loss whether in an action in contract, tort (including without limitation, negligence and product liability), statute or otherwise, whether or not such loss or damage was foreseeable and even if one party advised the other of the possibility of the loss or damage.
- 9.2. The liability of the Licensor, whether in an action in contract, tort (including without limitation, negligence and product liability), statute or otherwise, is limited in the aggregate at the Licensor's sole discretion to:
 - (a) the replacement of the Software and/or Materials; or
 - (b) the payment of the cost of having the Software and/or Materials resupplied; or
 - (c) an amount equal to the Licence Fees paid by the Licensee to the Licensor for the 12 month period preceding the date on which the cause of action arose.

10. SOURCE CODE IN ESCROW

- 10.1. The Licensor's default position is to not place the Source Code for the Software in escrow. Should the Licensee require the Source Code in escrow, the full cost of setting up and maintaining the escrow account must be borne by the Licensee.

11. SUPPORT

- 11.1. The parties agree that general Support for the Software shall be provided by the Licensor under these terms and conditions:
 - (d) Support for the Software is available during normal Business Hours; and
 - (e) the Licensee agrees to pre-purchase Support Blocks for use toward all Support activities; and
 - (f) Support Blocks are non-refundable but do not expire and are available in various sizes as described in Part H of Schedule One; and
 - (g) the method to engage Support is via logging a Support Request on the Licensor's website (a login may be provided separately); and
 - (h) the Licensee must use the following table as a guide for judging the priority of a Support Request:

Priority Level	Description	Use For
P1	Critical importance Time urgent	Total outage, or a critical system failure in the Software (in its live production environment) resulting in most

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	In the absence of any written SLA, the Licensor shall perform their best efforts to respond to valid P1 Support Requests within 2 hours of being logged, with a target resolution of 8 hours. Response and resolution times must consider Business Hours and do not constitute a service level guarantee.	or all users being unable to perform their work. No work around exists.
P2	High importance Time sensitive In the absence of any written SLA, the Licensor shall perform their best efforts to respond to valid P2 Support Requests within 8 hours of being logged, with a target resolution of 24 hours. Response and resolution times must consider Business Hours and do not constitute a service level guarantee.	Software bugs, defects, errors, slow performance or a partial outage of the Software (in its live production environment) resulting in a small number of overall users being unable to perform their work. A work around may exist.
P3	Medium importance Non-urgent	All non-urgent items must be logged with this Priority Level. This includes software bugs, defects, errors, or performance issues which have a minor impact to Software's operation. All requests for upgrades, new enhancements, understanding or consulting activities fall into this Priority Level.
P4	Low importance Non-urgent (the default option)	Anything that doesn't fit into the other priorities or anything related to a non-production environment.

- (i) once a Support Request is received, the Licensor shall respond in order of their logged Priority Level and may reclassify them as deemed appropriate. Any Support Request received which does not have an indicated Priority Level shall be treated as P4 (the default); and

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- (j) the Licensee approves the Licensor to commence work immediately on any Support Request received (unless otherwise indicated in writing by the Licensee); and
 - (k) should the Licensee have current Support Block credit, all time spent on the Support Request shall be deducted from that Support Block; and
 - (l) where a Support Request is deemed by the Licensor to require considerable effort, or where the Licensee does not have enough current Support Block credit, the Licensor shall contact the Licensee with the analysis to date to discuss the best approach forward, which may include issuing a formal quotation, or requesting a new Support Block to be purchased prior to commencing; and
 - (m) the Licensee is required to maintain a positive balance of Support Block hours for the term of the Agreement; and
 - (n) for Support Requests relating to larger work items, the Licensor may require signage and acceptance of a written proposal, plan or quotation issued to the Licensee for that defined scope of works prior to commencing; and
 - (o) on the Licensee's specific request, the Licensor may perform Support Requests outside of Business Hours. All such requests are subject to the Licensor's availability and attract a 1.5 x multiplier of the actual hours spent. A minimum of two (2) hours of work shall be billed per request; and
 - (p) all Support is billable, at minimum, in 30-minute increments; and
 - (q) any unused Support Block hours remaining at the expiry of this Agreement shall carry over to the next agreement between parties (if one exists).
- 11.2. The parties agree that in-person Support for the Software shall be provided by the Licensor under these terms and conditions:
- (a) all Visits must first be approved in writing by the Licensee; and
 - (b) all requests for Visits are subject to the Licensor's availability; and
 - (c) all working time performed as part of a Visit during normal Business Hours is billable; and
 - (d) Visits outside of normal Business Hours attract a 2.0 x multiplier of the actual hours spent; and
 - (e) reasonable travel time to and from the Visit location is billable; and
 - (f) necessary travel expenses, including, but not limited to road toll fees, taxis, bus fares, train fares, shuttle services, ferry fares, air fares (comparable economy class) and parking fees shall be added to invoices the Licensor issues to the Licensee at their cost to the Licensor; and

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- (g) necessary accommodation and meal expenses for regional site Visits outside of Sydney shall also be added to invoices the Licensor issues to the Licensee at their cost to the Licensor. The combined maximum allowance for such accommodation and meals shall be \$380 (GST inclusive) per person, per day; and
- (h) a minimum of four (4) hours of work shall be billed per Visit instance, per person.

12. TERMINATION

- 12.1. Either party may terminate this Agreement upon not less than 90 calendar days prior Notice to the other party stating such party's intention to terminate this Agreement.
- 12.2. Upon termination, any outstanding Licence Fees and IT Infrastructure Fees will become immediately due and payable and any Licence Fees or IT Infrastructure Fees already paid will not be refunded to the Licensee.
- 12.3. Should termination of this Agreement be initiated by the Licensee, or brought about by a breach of this Agreement by the Licensee under clause 12.4 (a), at the Licensor's sole discretion, a minimum of 50% of all remaining Licence Fees and IT Infrastructure Fees expected to be due up until the date specified in Part G of Schedule One will become immediately due and payable. This is to compensate the Licensor for any fixed costs, and/or any unrecovered value provided to the Licensee as part of their Software's implementation.
- 12.4. 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 Fourteen (14) 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 becomes insolvent; and/or
 - (c) ceases to carry on its business; and/or
 - (d) has an effective change in the control of or ownership of its business.
- 12.5. Subject to clause 12.6, on termination the parties agree that all rights granted to the Licensee under this Agreement will cease immediately and the Licensee must return all Software and Materials provided under this Agreement. If requested by the Licensor, the Licensee must 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.

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12.6. Following termination, the parties agree that the provisions set out in clauses 5 (CONFIDENTIAL INFORMATION), 7 (LICENSOR REPRESENTATIONS & WARRANTIES), 8 (LICENSEE WARRANTIES, OBLIGATIONS & ACKNOWLEDGEMENTS), and 9 (LIABILITY & INDEMNITY) will continue to be binding.

13. NOTICES

13.1. Any Notice given pursuant to this Agreement must be in writing by an officer of the sender, addressed to the recipient at the address, facsimile number or email address set out in Part F of Schedule One 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 shall be heard in New South Wales and the parties submit to the jurisdiction of those Courts.

15.2. **(Relationship)** Nothing in this Agreement shall 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 shall 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.

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15.6. **(Quoted Prices and Adjustments)** Unless otherwise indicated, all prices in this Agreement are in \$AUD and are stated exclusive of GST. Effective on each July 1st of the term of this Agreement, all prices are subject to an annual review and adjustment as per the CPI figure (accumulated 12 months to June quarter) published by the Australian Bureau of statistics and/or changes in the Licensor's cost structure, including labour and other fixed costs.

16. INTERPRETATION

16.1. Definitions

"Acceptance Tests/Testing" a series of tests agreed to by parties of which their combined effort and outcome determine Software Acceptance. Acceptance Testing may occur on initial installation of the Software and on subsequent releases of upgrades or enhancements to the Software.

"Agreement" means this licence agreement including the Schedules and any amendments in writing.

"Business Day" means any day which is not a Saturday, Sunday or public holiday in the State of New South Wales, Australia.

"Business Hours" means the hours from 8:30AM to 5:30PM on a Business Day in the Sydney time zone.

"Confidential Information" means all information in whatsoever form that is:

- (a) specifically marked or identified as "confidential", "secret", "not to be disclosed," "commercially sensitive," "private" or similar; or
- (b) is designated, described, or referred to by the discloser as being confidential; or
- (c) due to the circumstances surrounding disclosure, or because of the nature of the information, ought in good faith to be reasonably understood as confidential,

but Confidential Information does not include information that is generally available to the public, was already known to either party at the time of disclosure, is independently created by either party without reference to Confidential Information or is obtained by either party from a third party who has the right to transfer or disclose it.

"Content" means any data, text, photos, videos, graphics, illustrations, documents or other electronic computer files entered or uploaded by the Licensee into the Software.

"Contractor" means any natural person who is not an Employee of the party, or any business or entity engaged by the party.

"Employee" means any natural person who is directly employed by the party in a full time or part time capacity and/or as a director.

"GST" means Goods and Services Tax (10% in Australia).

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“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.

“IT Infrastructure” means the composite computer hardware, software, network resources and other services required for the existence, operation and management of the Software.

“IT Infrastructure Fees” separate to Licence Fees, means the ongoing fees applicable to the procurement and management of the IT Infrastructure as necessary to ensure the security, performance, availability and other operational requirements of the Software.

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

“Licence Fees” separate to IT Infrastructure Fees, mean the ongoing fees payable by the Licensee to the Licensor for use of the Software.

“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.

“Production Transition and Deployment” means the planning and execution of the transition of the Software into its live production environment for ongoing production operation and use by the Licensee.

“SLA” means Service Level Agreement, a defined set of service level measures that guarantee the specific performance of the Software and/or the Licensor’s support for the Software.

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

“Software Acceptance” means the Licensee formally agrees that:

- (a) no material remains to be delivered by Licensor to the Licensee; and
- (b) the Software has been satisfactorily delivered and meets all of the Licensee’s requirements.

In special situations, Software Acceptance may occur even if there are additional items for the Licensee to complete. In such a case, these outstanding items shall be agreed between parties and documented in writing at the time of Software Acceptance.

“Software Acceptance Date” means the date on which Software Acceptance occurs. It is the date on which the first of one of the following occurs:

- (a) the Licensee completes an acceptance certificate as per Schedule Three in relation to the Software (or any upgrade or enhancement to); or

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- (b) the Licensee responds in writing that the Software (or any upgrade or enhancement to) is accepted; or
- (c) Production Transition and Deployment of the Software (or any upgrade or enhancement to) is completed; or
- (d) within four (4) weeks of the Software (or any upgrade or enhancement to) being made available for Acceptance Testing to the Licensee (unless otherwise agreed in writing).

“Software Defect” means a genuine error, malfunction, fault or failure within the Source Code or operating environment of the Software, which prevents the Software from operating as intended. If the Software is accessed via a web browser, a single latest versioned web browser shall be agreed between parties to use when identifying Software Defects. The final determination of whether a Software Defect is genuine or not is at the Licensor’s discretion and errors, faults or failures which are attributable to IT Infrastructure not within the direct management of the Licensor are excluded.

“Source Code” means all of the computer programming code, database code, executables, binaries, configuration files, configuration data and other electronic files required by the Software to operate.

“Support” means:

- (a) any technical assistance provided to the Licensee for the purposes of troubleshooting and/or correcting Software Defects or other issues with the Software; or
- (b) any consultative services provided to help enhance or improve the Software; or
- (c) any technical maintenance required to ensure the correct day-to-day operation of the Software; or
- (d) any other assistance provided to help the Licensee that is related to the Software or Materials, including, but not limited to, training and documentation.

“Support Block” means an allotment of work (in hours) prepaid by the Licensee to the Licensor for the Support of the Software.

“Support Request” means a request issued by the Licensee to the Licensor requesting Support of any kind to be performed.

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

“Visit” means any trip, callout or meeting that the Licensee requests of the Licensor which does not occur at the Licensor’s own business premises.

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

SIGNED BY THE LICENSEE

SIGNED BY THE LICENSOR

Licensee signature (authorised officer)

Licensor signature (authorised officer)

Print name

Print name

In capacity of:

- Director
- Secretary
- Partner
- Owner
- Manager
- Other, please specify:

In capacity of:

- Director
- Secretary
- Partner
- Owner
- Manager
- Other, please specify:

Date: ____/____/____

Date: ____/____/____

In the presence of:

In the presence of:

Signature of witness

Signature of witness

Print name

Print name

SOFTWARE LICENCE AND SUPPORT AGREEMENT

SCHEDULE ONE

PART A – MATERIALS (Definition)

The SmarterSoft Platform user guide and other documentation and manuals as supplied by AREANET PTY LTD (trading as SmarterSoft).

PART B – PERMITTED PURPOSE (Definition)

The Licensee is restricted to use the Software for the following purpose (indicate any functional or scope limitations):

Four horizontal lines for text entry.

PART C – USAGE

The Licensee’s use of the Software is restricted as below (indicate any active user login limits, concurrent access limits, external user access limits, bandwidth limits, storage limits, IP range limits, or other technical limitations etc):

- SMS Limits – 100 SMSs/month (additional payment required after this limit)
Email Limit – 10,000 Emails/month (additional payment required after this limit)
Additional test, train or dev environments incur additional costs (quoted on request)

PART D – SOFTWARE (Definition)

The SmarterSoft Platform and any customisations as supplied by AREANET PTY LTD (trading as SmarterSoft). The SmarterSoft Platform is a dynamic data management platform, managed by SmarterSoft and hosted on Amazon Web Services (Asia Pacific, Sydney). The SmarterSoft Platform is custom configured for each Licensee. The Licensee’s instance of the SmarterSoft Platform is:

Name:
URL:

SOFTWARE LICENCE AND SUPPORT AGREEMENT

PART E – LICENCE FEE/S & IT INFRASTRUCTURE FEE/S (clause 3 & clause 8.14)

License Fee (XX active users) \$XXXX/month + GST

 Additional users \$20/user/month + GST

 Infrastructure Fee (“Enhanced Security”) - \$200/month + GST.

The amounts stated above:

- Are in \$AUD
- Exclude GST
- Are contingent upon PART B – PERMITTED PURPOSE and PART C – USAGE

PART F – NOTICES (clause 13)

The Licensor:

Attention: Directors

 Email: directors@smartersoft.com.au

 Facsimile: Not provided

 Address: Level 33, 264 George Street
 Sydney, NSW 2000, Australia

The Licensee:

SOFTWARE LICENCE AND SUPPORT AGREEMENT

Attention:

Email:

Facsimile:

Address:

PART G – TERM EXPIRY (clause 2)

The Licence to the Software and Materials expires at 5pm (Sydney time) on:

the _____ day of _____ 20 _____

Licensee Initial: _____

SOFTWARE LICENCE AND SUPPORT AGREEMENT

PART H – SUPPORT BLOCKS

The Licensee may choose to purchase from the following schedule of Support Blocks (pricing is subject to an annual review each July 1st):

Hours	Discount*	Price (ex GST)
25	--	\$5,500
50	5.0%	\$10,450
100	7.5%	\$20,350
150	10.0%	\$29,700
200	12.5%	\$38,500

* These are based on a General Rate of \$220/hr +GST

SOFTWARE LICENCE AND SUPPORT AGREEMENT

SCHEDULE TWO

Acceptance Testing of Licensed Software (clause 6)

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

Acceptance criteria:

Period/time for Acceptance Tests:

Other (if any):

Licensee Initial: _____

SOFTWARE LICENCE AND SUPPORT AGREEMENT

SCHEDULE THREE

Certificate of Acceptance (clause 6.12)

Licensor Name:	
Licensor's Address:	
Licensee Name:	
Licensee's Address:	
Licensee's Premises:	
Software Name:	
Software URL:	

On this date, the _____ day of _____ 20____ (the **"Software Acceptance Date"**) the Software licensed by the Licensor to the Licensee has been accepted by the Licensee as follows:

Acceptance Test	Accepted: Yes/No/See Conditions

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

Certifier's details:

Date of Certification:	
Name of Certifier:	
Organisation:	
Signature:	

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

Licensee Initial: _____