

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 14, 309 Kent St (address)
Sydney NSW, 2000, Australia

(the “**Licensor**”);

AND: _____ (name)

(the “**Licensee**”).

RECITALS:

- A. The Licensor is the 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.
- 1.2. The Licensee may not assign the Licence.
- 1.3. The Licensee may not sublicense the Licence. The Licensee is not permitted to adapt/modify the code to the Software.
- 1.4. The Licensee is not permitted to reverse engineer, disassemble or otherwise endeavour to obtain the source code from the object code.
- 1.5. The Licensee is limited to Use the Software as per Part C of Schedule One. If the Licensee wishes to Use the Software over a limit, the Licensee shall obtain the

Licensee Initial: _____

SOFTWARE LICENCE AND SUPPORT AGREEMENT

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 shall 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 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 trade mark 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 shall always vest in the Licensee or the Content's legal owner.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

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 Licensor.

5. CONFIDENTIAL INFORMATION

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

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

5.3. If a Contractor requires a higher 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.

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 shall 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 13 (TERMINATION), the Licensee shall 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.

6.2. The Licensee shall inform the Licensor by Notice when Acceptance Testing is commencing and/or is complete.

6.3. If requested, the Licensee shall allow the Licensor to be present during any Acceptance Tests and/or be granted access to any Acceptance Testing plans or process documentation.

6.4. 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.

6.5. The Licensee shall supply all consumable items such as printer paper, printer cartridges, and discs as are reasonably required to support Acceptance Testing

SOFTWARE LICENCE AND SUPPORT AGREEMENT

- activities. If any such items are required over and above a reasonable amount, the parties agree to determine at such time which party shall provide the additional items.
- 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 from such delays shall 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. Where the Licensee has conducted Acceptance Testing and has provided Notice that such testing is complete, the Licensee shall issue a Certificate of Acceptance in the form set out in Schedule Three as soon as practicable and in any case within 21 working days from Acceptance Testing commencing. If the Certificate of Acceptance is not issued within this period, the Licensee shall be taken to have accepted the Software.
- 6.10. The Licensor shall provide the Licensee with an option to upgrade the Software to the latest version not more than 3 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.
- 6.11. 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 12 (SUPPORT) to manage and communicate testing related work; and
 - (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 15.

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 Licensee's Use of the Software and Materials shall not infringe the rights including Intellectual Property Rights of any third party.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

- 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.
- 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.
- 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.

SOFTWARE LICENCE AND SUPPORT 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 shall 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, it has no Intellectual Property Rights in the Software and/or the Materials.
- 8.5. For the purposes of installing the Software, the Licensee shall 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 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 the use, supervision, management and control of the Software and the Materials.
- 8.9. The Licensee shall ensure that the Software and Materials are at all times protected from access, use or misuse and damage and destruction by any person not authorised by either the Licensor or the Licensee and the Licensee shall notify the Licensor immediately if it becomes aware of any unauthorised use of the Software and/or Materials.
- 8.10. The Licensee agrees to use the Software only for lawful purposes.
- 8.11. 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.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

- 8.12. 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.
- 8.13. The Licensee acknowledges that fees associated with the IT Infrastructure on which their Software operates are separate to the Licence Fees and are set out in in Part E of Schedule One. Should the operational 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 and/or availability of the Software.
- 8.14. The Licensee recognises that Licensor regards the Software and Materials as its proprietary information and as confidential trade secrets of great value. 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.
- 8.15. For the term of this Agreement, the Licensee shall allow the Licensor to display references acknowledging the Licensor's Intellectual Property in generally visible areas of the Software, including in any electronic messages sent by the Software. Where the Software is Internet based, the Licensee agrees to allow these references to be web links.

9. LIMITATION OF LIABILITY

- 9.1. To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions, including without limitation implied warranties as to the merchantability and fitness for purpose of the Software and Materials.
- 9.2. To the extent that any liability of the Licensor under *Competition and Consumer Act 2010 (Cth)* cannot be excluded, the Licensor's liability is limited to replacing the Software and/or Materials.
- 9.3. Where the Licensor has agreed to install or install and Acceptance Test the Software, to the fullest extent permitted by law the Licensor makes no representation or gives any warranty in respect of the provision of the services except that it shall carry out the service competently, professionally and to the best of its ability having regard to the terms of this Agreement.
- 9.4. To the fullest extent permitted by law, the Licensor excludes all liability for indirect and consequential loss including without limitation the loss or corruption of the Software,

SOFTWARE LICENCE AND SUPPORT AGREEMENT

loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement or the provision of any services by the Licensor.

10. INDEMNITY

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

11. SOURCE CODE IN ESCROW

11.1. The Licensor's default position is to not place the source code for the Software in escrow. Should the Licensee require source code escrow, the full cost of setting up and maintaining the escrow account shall be borne by the Licensee.

12. SUPPORT

12.1. The parties agree that general Support for the Software shall be provided by the Licensor under these terms and conditions:

- (a) Support for the Software is available during normal Business Hours; and
- (b) the Licensee agrees to pre-purchase Support Blocks for use toward all Support activities; and
- (c) Support Blocks are non-refundable but do not expire and are available in various sizes as described in Part H of Schedule One; and
- (d) the method to engage Support is via logging a Support Request on the Licensor's website (a login may be provided separately); and
- (e) 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 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	Total outage, or a critical system failure in the Software (in its live production environment) resulting in most or all users being unable to perform their work. No work around exists.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

	must consider Business Hours and do not constitute a service level guarantee.	
P2	<p>High importance Time sensitive</p> <p>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.</p>	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	<p>Medium importance Non-urgent</p>	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	<p>Low importance Non-urgent (the default option)</p>	Anything that doesn't fit into the other priorities or anything related to a non-production environment.

- (f) 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
- (g) The Licensee approves the Licensor to commence work immediately on any Support Request received (unless otherwise indicated in writing by the Licensee); and
- (h) should the Licensee have current Support Block credit, all time spent on the Support Request shall be deducted from that Support Block; and

SOFTWARE LICENCE AND SUPPORT AGREEMENT

- (i) 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
 - (j) the Licensee is required to maintain a positive balance of Support Block hours for the term of the Agreement; and
 - (k) 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
 - (l) 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
 - (m) all Support is billable, at minimum, in 30-minute increments.
- 12.2. 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
 - (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.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

13. TERMINATION

- 13.1. 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.
- 13.2. Upon termination, any outstanding Licence Fees and IT Infrastructure Fees shall become immediately due and payable and any Licence Fees or IT Infrastructure Fees already paid shall not be refunded to the Licensee.
- 13.3. Should termination of this Agreement be initiated by the Licensee, or brought about by a breach of this Agreement by the Licensee under clause 13.4 (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 shall 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.
- 13.4. 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 any of them or becomes insolvent; and/or
 - (c) ceases to carry on its business or where there is any effective change in the control of or ownership of that business.
- 13.5. Subject to Clause 13.6, on termination the parties agree that all rights granted to the Licensee under this Agreement shall cease immediately and the Licensee shall return all Software and Materials provided under this Agreement. If requested by the Licensor, the Licensee shall 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.
- 13.6. 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 (LIMITATION OF LIABILITY) shall continue to be binding.

14. NOTICES

- 14.1. Any Notice given pursuant to this Agreement must be in writing, signed by an officer of the sender, addressed to the recipient at the address, facsimile number or email

SOFTWARE LICENCE AND SUPPORT AGREEMENT

address set out below or to such other address, facsimile number or email address as a party may from time to time notify in writing to the other:

15. DISPUTE RESOLUTION

- 15.1. 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.
- 15.2. 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.

16. GENERAL PROVISIONS

- 16.1. **(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.
- 16.2. **(Relationship)** Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture or agency between the parties.
- 16.3. **(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.
- 16.4. **(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.
- 16.5. **(Implied Terms)** Any implied term under law that can be excluded is hereby expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.
- 16.6. **(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.

17. INTERPRETATION

- 17.1. Definitions

SOFTWARE LICENCE AND SUPPORT AGREEMENT

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

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

“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 individual person who is not a direct full time or part time employee of the Licensee or any business or entity other than the Licensee.

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

“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.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

“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; or
- (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.

“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.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

“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.

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

“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.

SOFTWARE LICENCE AND SUPPORT AGREEMENT

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:

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 input.

PART C – USAGE (Definition)

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):

Four horizontal lines for text input.

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 FEES (Clause 3 & Clause 8.13)

The amounts stated above:

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

PART F – NOTICES (Clause 14)

The Licensor:

Attention: Directors

Email: directors@smartersoft.com.au

Facsimile: Not provided

Address: PO BOX 1882, Bondi Junction, NSW 1355, Australia

The Licensee:

Attention: _____

Email: _____

Facsimile: _____

Address: _____

PART G – TERM EXPIRY (Clause 2)

The Licence to the Software and Materials expires 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	5.0%	\$4,868.75
50	7.5%	\$9,481.25
100	10.0%	\$18,450.00
150	12.0%	\$27,060.00
200	12.0%	\$36,080.00

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.