ASP End User Licence Agreement [EULA]

Please read this EULA carefully, as it sets out the basis upon which we license our Software (charged or free, and whether purchased direct from ASP or from one of our authorised Dealers/Resellers), including Software as a Service (SaaS), for use by you and your staff.

Before you download the Software from our website, or sign up for SaaS, or obtain the Software on physical media, whether charged or as a free trial, we will require you to give your express agreement to the provisions of this EULA by a check box or other form of acknowledgement.

1. Definitions

1.1 In this EULA, except to the extent expressly provided otherwise:

"**App Store**" means the online sales and distribution platform operated by a third party by means of which the User obtained the Software or some of the Software;

"**App Store Terms and Conditions**" means the terms and conditions of the App Store that set out any rights and/or obligations of the User in relation to the Software and/or any of the Services;

"**Charges**" means those amounts that the parties have agreed or agree in the future shall be payable by the User to the Licensor in respect of this EULA;

"**Effective Date**" means the date upon which the User expresses consent to this EULA by a check box or other form of acknowledgement prior to creating a SaaS account or downloading software from the Licensor's website or first using hardware devices containing ASP Software;

"**EULA**" means this end user licence agreement, including any amendments to this end user licence agreement from time to time;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hosted Services**" means the hosted services that are made available by the Licensor to the User as a service via the internet and may be accessed and used by means of the Software or SaaS;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Licensor**" means Grayline Holdings Pty. Ltd. trading as ASP Microcomputers of 14 Business Park Drive, Notting Hill 3168 Victoria Australia;

"**Maintenance Services**" means the supply to the User of Updates and Upgrades;

"**Minimum Term**" means, in respect of this EULA, the period of 12 months beginning on the Effective Date;

"**Platform**" means the platform managed by the Licensor and used by the Licensor to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"**Services**" means any services that the Licensor provides to the User, or has an obligation to provide to the User, under this EULA;

"**Software**" includes programs or Apps designed for use on a single CPU, Server or Site, firmware installed in hardware devices supplied by ASP or sourced from ASP and supplied by ASP's Dealers, and programs forming part of an ASP Software as a Service product. Software may be branded "ASP" or carry one of the product names used by ASP such as "ClickClock". Charging models for Software may include, as appropriate, free, per CPU, per Server, per Site installed, per terminal connected, per number of employees, or per SaaS user;

"**Source Code**" means the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software, or decompiled from them, but excluding interpreted code;

"**Support Services**" means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise;

"**Term**" means the term of this EULA, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"**Update**" means a hotfix, patch or minor version update to the Software;

"**Upgrade**" means a major version upgrade of the Software;

"**User**" means the person to whom the Licensor grants a right to use the Software under this EULA; and

"**User Data**" means all data, works and materials: uploaded to or stored on the Platform by the User; transmitted by the Platform at the instigation of the User; supplied by the User to the Licensor for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the User (but excluding analytics data relating to the use of the Platform and server log files).

2. Term

2.1 This EULA shall come into force upon the Effective Date.

2.2 This EULA shall continue in force indefinitely, subject to termination in accordance with Clause 17 or any other provision of this EULA.

3. App Stores

3.1 The User acknowledges that, in addition to this EULA, the App Store Terms and Conditions shall apply to the use of the Software sourced therefrom and the other matters contemplated in this EULA.

3.2 In the event of any conflict between this EULA and the App Store Terms and Conditions, the provisions of the former shall take precedence.

3.3 Those provisions of the App Store Terms and Conditions that impose obligations and/or liabilities on the User in relation to the Software and the Services excluding those relating to payments are hereby incorporated into this EULA for the benefit of the Licensor, and as such shall be enforceable by the Licensor against the User.

3.4 For the avoidance of doubt, the following matters shall be governed by the provisions of the App Store Terms and Conditions: the amounts payable by the User in respect of this EULA; the methods of payment to be used by the User; and any rights of the User to cancel this EULA and received any refunds of amounts paid in respect of this EULA.

3.5 The User acknowledges that the operator of the App Store has rights under the App Store Terms and Conditions which may affect the exercise of the User's rights under this EULA. Subject to Clause 16.1, the Licensor will not be in breach of this EULA as a result of, and will not be liable to the User in respect of any loss or damage arising out of, the operator's exercise of its rights under the App Store Terms and Conditions.

4. Licence

4.1 The Licensor hereby grants to the User from the date of supply of the Software to the User a non-exclusive, worldwide licence to use the Software on any device for which it has been designed subject to the limitations and prohibitions set out and referred to in this Clause 4.

4.2 The User may not sub-license and must not purport to sub-license any rights granted under Clause 4.1, save to the extent expressly provided otherwise in this EULA or a written agreement between User and Licensor.

4.3 Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any licence granted under this Clause 4 shall be subject to the following prohibitions:

(a) the User must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;

(b) the User must not alter, edit or adapt the Software; and

(c) the User must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.

4.4 The Licensor may set fees and/or rules, whether time limited or otherwise, for the use of the Software. The right of the User to use the Software will be dependent on the User complying with the conditions of such fees and/or rules.

5. Source Code

5.1 Nothing in this EULA shall give to the User or any other person any right to access or use the Source Code or constitute any licence of the Source Code.

6. Hosted Services

6.1 The Licensor hereby grants to the User a non-exclusive and worldwide licence to use the Hosted Services by means of the Software for internal business purposes of the User during the Term.

6.2 Except to the extent expressly permitted in this EULA or required by law on a non-excludable basis, the licence granted by the Licensor to the User under Clause 6.1 is subject to the same prohibitions as those relating to the licence of the Software and set out in Clause 4.3.

6.3 The Licensor shall use all reasonable endeavours to maintain the availability of the Hosted Services to the User at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.

6.4 The User must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

6.5 The User must not use the Hosted Services:

(a) in any way that is unlawful, illegal, fraudulent or harmful; or

(b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

6.6 All the limitations and exclusions of liability and warranties, and the special acknowledgements by the User, that are set out in this EULA and expressed to relate to the Software shall apply in respect of the Hosted Services in addition to the Software.

7. User Data

7.1 The User hereby grants to the Licensor a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the User Data to the extent reasonably required for the performance of the Licensor's obligations and the exercise of the Licensor's rights under this EULA. The User also grants to the Licensor the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this EULA.

7.2 The User warrants to the Licensor that the User Data when used by the Licensor in accordance with this EULA will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

8. Maintenance Services

8.1 The Licensor may from time to time during the Term provide the Maintenance Services to the User if the User has entered a Maintenance Contract with the Licensor.

8.2 The User must apply to the Software each Update and Upgrade made available by the Licensor through the Maintenance Services.

8.3 If the User does not apply an Update or Upgrade to the Software, then the User shall cease to have any right to use the Software until such time as it does so. The User acknowledges that the Licensor may use technical measures to enforce this Clause 8.3.

8.4 The User acknowledges that the supply and licensing of Upgrades may, at the discretion of the Licensor, be subject to additional payments and/or additional terms and conditions.

9. Support Services

9.1 From time to time during the Term the Licensor may provide Support Services to the User, but the Licensor shall have no obligation to do so under this EULA.

9.2 The Licensor shall make available to the User a helpdesk for the purpose of enabling the User to request and where relevant receive the Support Services.

9.3 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

9.4 The Licensor shall respond promptly to all requests for Support Services made by the User through the helpdesk.

9.5 The Licensor shall have no obligation to provide Support Services in respect of any issue caused by:

(a) any factor outside the scope of the Support Services;

(b) the improper use of the Software by the User; or

(c) any alteration to the Software made without the prior consent of the Licensor.

9.6 The User acknowledges and agrees that the Licensor gives no warranties or guarantees in relation to the outcome of the Support Services and, in particular, issues identified through the Support Services may only be resolved upon with an Update or Upgrade or, at the discretion of the Licensor, not at all.

10. Privacy policy

10.1 Any personal data that the User supplies to the Licensor under or in connection with this EULA shall be processed in accordance with the privacy policy of the Licensor, the current version of which can be viewed at https://asp.com.au/privacy-policy.

11. No assignment of Intellectual Property Rights

11.1 Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the User, or from the User to the Licensor.

12. Suspension of Services

12.1 The Licensor will suspend all services after a free trial period if offered. The Licensor may suspend the provision of any or all of the Services if any amount due to be paid by the User to the Licensor under this EULA is overdue and the Licensor has given to the User at least 14 days' written notice, following the amount becoming overdue, of its intention to do so, or a trial period has expired.

13. User indemnity

13.1 The User shall indemnify and shall keep indemnified the Licensor against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Licensor and arising directly or indirectly as a result of any breach by the User of this EULA.

14. Warranties

14.1 The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

14.2 The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not infringe the Intellectual Property Rights of any person.

14.3 If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this EULA infringes any person's Intellectual Property Rights, the Licensor may acting reasonably at its own cost and expense:

(a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or

(b) procure for the User the right to use the Software in accordance with this EULA.

14.4 The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

14.5 All of the parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

15. Acknowledgements and warranty limitations

15.1 The User acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

15.2 The User acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be entirely secure.

15.3 The User acknowledges that hardware incompatibilities with the Software may exist on User supplied or owned devices intended to run the Software or use SaaS and that the User is responsible for confirming the compatibility of such devices.

15.4 The User acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this EULA or in relation to the Software; and, except to the extent expressly provided otherwise in this EULA, the Licensor does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

16. Limitations and exclusions of liability

16.1 Nothing in this EULA will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law,

and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

16.2 The limitations and exclusions of liability set out in this Clause 16 and elsewhere in this EULA:

(a) are subject to Clause 16.1; and

(b) govern all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this EULA.

16.3 The Licensor will not be liable to the User in respect of any losses arising out of a Force Majeure Event.

16.4 The Licensor will not be liable to the User in respect of any loss of profits or anticipated savings.

16.5 The Licensor will not be liable to the User in respect of any loss of revenue or income.

16.6 The Licensor will not be liable to the User in respect of any loss of business, contracts or opportunities.

16.7 The Licensor will not be liable to the User in respect of any loss or corruption of any data, database or software.

16.8 The Licensor will not be liable to the User in respect of any special, indirect or consequential loss or damage.

16.9 The liability of the Licensor to the User under this EULA in respect of any event or series of related events shall not exceed the total amount paid and payable by the User to the Licensor under this EULA in the 12 month period preceding the commencement of the event or events.

16.10 The aggregate liability of the Licensor to the User under this EULA shall not exceed the greater of the total amount paid and payable by the User to the Licensor under this EULA.

17. Termination

17.1 The Licensor may terminate this EULA by giving to the User not less than 30 days' written notice of termination, expiring at the end of any calendar month.

17.2 The User may terminate this EULA by giving to the Licensor not less than 30 days' written notice of termination, expiring at the end of any calendar month.

17.3 Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

(a) the other party commits any material breach of this EULA, and the breach is not remediable;

(b) the other party commits a material breach of this EULA, and the breach is remediable but the other party fails to remedy the breach within the period of 30 day following the giving of a written notice to the other party requiring the breach to be remedied; or

(c) the other party persistently breaches this EULA (irrespective of whether such breaches collectively constitute a material breach).

17.4 Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this EULA); or

(d) if that other party is an individual:

(i) that other party dies;

(ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

(iii) that other party is the subject of a bankruptcy petition or order.

17.5 The Licensor may terminate this EULA immediately by giving written notice to the User if:

(a) any amount due to be paid by the User to the Licensor under this EULA is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

(b) the Licensor has given to the User at least 30 days' written notice, following the failure to pay, of its intention to terminate this EULA in accordance with this Clause 17.5.

18. Effects of termination

18.1 Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3, 6.6, 8.4, 13, 16, 18, 19, 20 and 21.

18.2 Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.

19. General

19.1 No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.

19.2 If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

19.3 This EULA may not be varied except by a written document signed by or on behalf of each of the parties.

19.4 The User hereby agrees that the Licensor may assign the Licensor's contractual rights and obligations under this EULA to any successor to all or a substantial part of the business of the Licensor from time to time OR any third party, providing that, if the User is a consumer, such action does not serve to reduce the guarantees benefiting the User under this EULA. Save to the extent expressly permitted by applicable law, the User must not without the prior written consent of the Licensor assign, transfer or otherwise deal with any of the User's contractual rights or obligations under this EULA.

19.5 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

19.6 The EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

19.7 This EULA shall be governed by and construed in accordance with Australian law.

19.8 The courts of the State of Victoria or Commonwealth of Australia (as appropriate) shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

20. Export control

20.1 The User acknowledges that materials and/or information supplied to the User under this EULA may be subject to the Export Laws.

20.2 The User must comply with the Export Laws insofar as they affect materials and information supplied to the User under this EULA.

20.3 Without prejudice to the generality of Clause 20.2, the User:

(a) must not import, export, supply, disclose, transfer or transmit any materials or information supplied to the User under this EULA if such import, export, supply, disclosure, transfer or transmission would contravene any embargo or exclusion list applying under the Export Laws; and

(b) must, where applicable, obtain all licences and consents required under the Export Laws for any import, export, supply, disclosure, transfer or transmission by or on behalf of the User of materials or information supplied to the User under this EULA.

21. Interpretation

21.1 In this EULA, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

21.2 The Clause headings do not affect the interpretation of this EULA.

21.3 References in this EULA to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

21.4 In this EULA, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EULA ENDS – Version 4 – June 2024