

1 DEFINITIONS AND INTERPRETATION

The following words have these meanings in this Agreement:

- 1.1. **"Agreement"** means the agreement constituted by:
 - 1.1.1. the Registration Form;
 - 1.1.2. these Terms and Conditions;
 - 1.1.3. any modifications or variations of these Terms and Conditions, agreed in writing.
- 1.2. **"Business Day"** means any day other than a Saturday, Sunday or public holiday in Melbourne, Australia.
- 1.3. **"Business Hours"** means 9am to 5pm (inclusive) Australian Eastern Standard or Summer Time on a Business Day.
- 1.4. **"Client"** means the Company or Office stated on the Registration Form and its successors and permitted assigns.
- 1.5. **"Client Data"** means all data provided by you or any Licensed Office and entered on Our Site as part of your use of the Software/Module.
- 1.6. **"Confidential Information"** means the confidential information of a party which relates to the subject matter of this Agreement and includes:
 - 1.6.1. the design, specifications, and content of the Software/Module and the Documentation;
 - 1.6.2. the personal policies or business strategies of the Client or Pangaea;
 - 1.6.3. the terms upon which the Software/Module and the Services are supplied to the Client under this Agreement, but excludes information which is lawfully in the public domain at the commencement of the Term, or lawfully enters the public domain during the Term.
- 1.7. **"Documentation"** means the manuals and other materials published electronically or in hardcopy, by Pangaea, to assist Users in using the Software/Module, as amended from time to time by us.
- 1.8. **"Downtime"** means any interruption of 90 seconds or more in the availability of any application made available through the Services.
- 1.9. **"Fees"** means the Set-up Fee, Licence Fee, Shipment Fee and the Support Fee.
- 1.10. **"GST"** means the goods and services tax created under GST Legislation in Australia.
- 1.11. **"Initial Term"** means the period commencing from when a correctly completed Registration Form, appropriately authorised, is received by Pangaea, for the duration as specified on the Registration Form.
- 1.12. **"Licensed Office"** means an office and employees of the Client whose use of the Software/Module and the Documentation is authorised by the Client, within the office specified on the Registration Form.
- 1.13. **"Licence Fee"** means the fee payable for the licence of the Software/Module specified on the Registration Form.
- 1.14. **"Module"** means an additional component developed by Pangaea that provides specific additional features to the Software which can be connected to or disconnected from the Software.
- 1.15. **"Our Site"** means the web site posted by us on the Internet from which the Software/Module and the Documentation may be accessed, as varied by us and notified to you from time to time.
- 1.16. **"Pangaea"** means Pangaea Software Pty Ltd ABN 43 117 352 753, its successors and permitted assigns.
- 1.17. **"Party"** means Pangaea and the Client.
- 1.18. **"Registration Form"** means the Form completed, signed and submitted to Pangaea by the Client via either on-line, facsimile, email or post.
- 1.19. **"Services"** includes the following:
 - 1.19.1. accommodating the Software/Module and Client Data on Our Site;
 - 1.19.2. subject to the terms of this Agreement, ensuring that the Software/Module operates on Our Site;
 - 1.19.3. subject to the terms of this Agreement, providing you with access to Our Site for the purpose of operating the Software/Module and accessing the Documentation and uploading Client Data; and
 - 1.19.4. electronic delivery of updated versions and enhancements of the Software/Module and the Documentation as made available by us;
 - 1.19.5. the maintenance of a Help file and Documentation and providing access for Licensed Offices to that Help file and Documentation to assist them in using the Software/Module.
- 1.20. **"Set-up Fee"** means the one off fee specified on the Registration Form payable upon the purchase of a Pangaea Software Licence or Module.
- 1.21. **"Shipment Fee"** means the fee specified on the Registration Form payable per order or part-order recorded in the Software by the Licence holder or nominated User.
- 1.22. **"Software"** means the Pangaea Software, including all modifications, updates, enhancements and new releases made available to the Client from time to time.
- 1.23. **"Support Fee"** means the fee specified on the Registration Form payable for the provision of support calls, online or email services during Business Hours.

- 1.24. **“Term”** means the Initial Term, plus any extensions which will be for the period specified on the Registration Form. All Terms expire at 2400 Universal Time Coordinated (UTC) on the last day of the calendar month.
- 1.25. **“Users”** means a person authorised by a Licensed Office and registered on the Software.
- 1.26. Reference to one gender mean and include references to all other genders.
- 1.27. A reference to a defined term includes all parts of speech incorporating that defined term.
- 1.28. If the time for compliance with any obligation falls on a day which is not a Business Day, then the time for compliance with that obligation is extended to the next Business Day.
- 1.29. If there is any discrepancy or ambiguity between the Registration Form and these Terms and Conditions, then the Registration Form prevails.

2 TERM

- 2.1 The Initial Term will be automatically extended in accordance with information detailed on the Registration Form. All Terms complete at 2400 hours Universal Time Coordinated (UTC) on the last day of the calendar month of the Term.

3 LICENCE OF SOFTWARE/MODULE

- 3.1 In consideration of the payment of the Licence Fee we grant the Office nominated on the Registration Form a non-exclusive non-transferable licence to use the Software/Module and the Documentation provided that such use is in accordance with this Agreement.
- 3.2 Your right to use the Software/Module and the Documentation is limited as follows:
 - 3.2.1 the Software/Module may only be used in the manner described in the Documentation;
 - 3.2.2 you may not make or allow any other person to make a copy of the Software/Module or the Documentation, or any part of them;
 - 3.2.3 you may not use any part of the Software/Module on behalf of another person, or allow any person who is not a Licensed User to use the Software/Module or the Documentation;
 - 3.2.4 you are able to provide access to the Software/Module and Documentation for Agents, Importers or Exporters specifically nominated by a Licensed Office;
 - 3.2.5 you may not assign or transfer the Licence to any other person other than within provisions of Clause 1.4;
 - 3.2.6 you must not make or attempt to make or allow to be made any alteration to the Software/Module or the Documentation or attempt or allow any other person to attempt to decompile or reverse engineer or any part of the Software/Module.

4 SERVICES

- 4.1 Subject to payment of the Licence Fee we will provide you with the Services throughout the Term.
- 4.2 We will provide you with updates of all core applications that form part of the Software/Module as and when they become available.
- 4.3 Subject to payment of the Support Fee, we will provide telephone, online or email support during Business Hours. However, should you request us to provide Support Services outside Business Hours we will use our best efforts to do so, provided you pay us at our current time and materials rates for professional fees and out of pocket expenses in providing those Services.

5 SERVICE LEVEL AGREEMENT

- 5.1 We must use all reasonable endeavours to ensure that the Software/Module, the Documentation and Client Data are available to Licensed Offices via the Internet on a 24 hour, 7 day a week basis. We undertake to respond to unplanned outages within 1 hour during Business Hours and within 3 hours from notification outside Business Hours.
- 5.2 You acknowledge that in order to maintain and upgrade our IP network infrastructure, we perform scheduled maintenance on our equipment from time to time. We will make all commercially reasonable efforts to provide you with reasonable prior notice of all scheduled and emergency maintenance procedures.
- 5.3 We do not and cannot control the flow of data to or from our Internet Data Centre and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times actions or inactions caused by these third parties can produce situations in which your connection to the Internet may be impaired or disrupted. Although we will use commercially reasonable efforts to take actions we deem appropriate to remedy and avoid such events, we cannot guarantee that they will not occur and you release us from all liability resulting from or related to such events.

- 5.4 Subject to clauses 9.3 and 13 we guarantee a minimum uptime of Services per month of 97%. If we fail to meet this target, we will grant you a one-off credit equivalent to 5% of the monthly Licence Fee.
- 5.5 At your request, we will investigate any report of Downtime, and attempts to remedy any Downtime as soon as possible. If we reasonably determine that all facilities, systems and equipment are functioning properly, and that Downtime arose for some other cause, we will continue to investigate the Downtime at your request only, and provided you pay us at our then current prevailing time and materials rate.
- 5.6 The conditions set out in this clause 5 will be the Client's sole remedy and Pangaea's sole obligation in respect of Downtime.

6 BACKUPS

- 6.1 Backup generally occurs daily between 1600 and 0800 AEST the following day.
- 6.2 We give no warranty that backups will be complete and/or accurate. Pangaea accepts no responsibility for any loss or damage incurred by you as a result.
- 6.3 You acknowledge that upon termination or expiry of this Agreement, it will not be possible for Pangaea to selectively delete the Client Data from its backup sets, and any Client Data stored on Pangaea backup media will "age" out over the period of the normal tape rotation.

7 FEES AND PAYMENT

- 7.1 You must pay the Fees in the amounts and at the times set out on the Registration Form.
- 7.2 The once-off Set-up Fee is payable at the commencement of the Initial Term for each Licensed Office.
- 7.3 The payment of the Licence Fee will entitle the Licensed Office to use the Software/Module and the Documentation in accordance with this Agreement.
- 7.4 Upon renewal of this Agreement in accordance with clause 2.1, you must pay applicable Fees for the period of the extended Term.
- 7.5 You acknowledge that we will not be obliged to refund any portion of a Fee if this Agreement is terminated before the end of the Term or Initial Term for any reason.
- 7.6 Shipment Fees and Support Fees will be charged at the rate specified on the Registration Form and payments are to be made in accordance with the details specified on the Registration Form.
- 7.7 We reserve the right to make reasonable adjustments to our Fees or apply additional charges, as we deem necessary, at any time. The latest Fees and charges are detailed in our Registration Forms which can be downloaded from the Pangaea website.

8 YOUR OBLIGATIONS

- 8.1 You warrant to us that:
- 8.1.1 you have cleared all rights required to place all of Client Data on Our Site, and that the storage and hosting of Client Data on Our Site will not cause us to breach any person's rights or any laws;
- 8.1.2 that in accessing Our Site and using the Software/Module and the Documentation you will not infringe the rights of any person, or breach any laws;
- 8.1.3 All of your obligations under clause 8.1 apply in respect of your own conduct, acts or omissions, and the conduct, acts and omissions of all Licensed Offices and Users.
- 8.2 You must indemnify and continue to indemnify us against all actions, claims, proceedings or liabilities which we may in any way incur by reason of:
- 8.2.1 any breach by you or any Licensed Office or any User of this Agreement including a breach of any warranty under this Agreement; or
- 8.2.2 your negligence or the negligence of your nominated Users or any Licensed Office in connection with this Agreement.

9 WARRANTIES

- 9.1 We warrant that:
- 9.1.1 we will provide the Services to you in a professional and businesslike manner, and in accordance with our obligations under this Agreement; and
- 9.1.2 the Software/Module will perform substantially in accordance with the specifications set out in the Documentation. If at any time during the Term or Initial Term you believe that there is a defect in the Software/Module or the Documentation such that either one of them does not comply with the specifications, you must notify us of that perceived defect. We must then investigate the perceived defect and upon verification of that defect, rectify or cause that defect to be rectified without any additional charge to you.

- 9.2 We do not warrant that:
 - 9.2.1 the provision of the Services or any part of them will be continuous or uninterrupted;
 - 9.2.2 the data transmitted or received by you through the use by you of the Software/Module or the Services will be accurate or virus free;
 - 9.2.3 the Software/Module is free from defects;
 - 9.2.4 Licensed Offices will have continuous access to Our Site or to the Software/Module; or
 - 9.2.5 Client Data is secure from interference by third parties.
- 9.3 You acknowledge that:
 - 9.3.1 performance of the Software/Module and the Services depend on a number of factors outside our control, including traffic on, and technical difficulties with, the Internet; and
 - 9.3.2 Our Site is secure within certain technical boundaries which you have considered and you agree that all liability which you or any third party may incur which is caused wholly or partly by one or more of these factors is your responsibility.

10 LIABILITY

- 10.1 To the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations which are not expressly set out in this Agreement are expressly excluded from this Agreement.
- 10.2 Any liability which might be imposed by law on us which cannot be legally excluded is, where permitted by law, limited solely to the performance of Services again, the resupply of goods, or the cost of re-performing, repairing or re-supplying goods or Services.
- 10.3 Notwithstanding any other provision of this Agreement or law, we will not be liable to you or any person claiming through you for any special, indirect, or consequential loss which may arise directly or indirectly out of this Agreement, the provision of any Services, or any failure by us to comply with this Agreement.
- 10.4 You warrant that you have not relied on any representation made by us which has not been stated expressly in this Agreement, or as to any profits or benefits which you may obtain from entering into this Agreement, and that you have relied on your own skill and judgment in deciding to enter into this Agreement.

11 DEFAULT AND TERMINATION

- 11.1 In addition to any entitlement to Fees we:
 - 11.1.1 are entitled to recover an amount equal to our reasonable legal costs (on a solicitor/client basis), and expenses incurred in recovering those Fees, plus, interest at the rate fixed from time to time under the Penalty Interest Rates Act 1982 (Vic) on any overdue Fees; and
 - 11.1.2 may (without prejudice to our other rights and remedies under this Agreement, and at law) if you fail to make any payment in accordance with this Agreement, suspend or terminate any or all of our obligations under this Agreement until payment is made in full.
- 11.2 If either Party goes into liquidation, is declared bankrupt, or has a receiver or receiver and manager appointed to its affairs, or enters into voluntary administration, then this Agreement will terminate.
- 11.3 If either Party commits a material breach of its obligations under this Agreement and then fails to remedy that breach within 14 days of notification from the other Party, then the Party giving notice may at its election terminate this Agreement by further written notice.
- 11.4 If the Client notifies Pangaea in writing of their notice to terminate the agreement prior to the completion of the Term or Initial Term of the agreement, as specified on the Registration Form, the agreement will be terminated. The Client will be required to pay all Fees due for the Term or Initial Term of the agreement in full, in accordance with payment details specified on the Registration Form.

12 CONFIDENTIALITY

- 12.1 The Parties will maintain as confidential all Confidential Information belonging to the other Party that may be provided to them. In our case this includes all Confidential Information that may be contained in Client Data. The Parties will further ensure that any employee or agent who needs to know any Confidential Information will be placed under a similar obligation of confidentiality directly to the Party disclosing the Information. The obligations under this clause will survive termination of this Agreement for any reason.

13 CIRCUMSTANCES BEYOND CONTROL

- 13.1 We will not be liable for any failure or delay in performing our obligations under this Agreement which is due to circumstances beyond our reasonable control, including acts of any government authority, war, sabotage, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or delay in telecommunications or third party services, failure of third party software or inability to obtain power.

14 GOODS AND SERVICES TAX

- 14.1 Where either Party is entitled to any payment (whether by way of damages, indemnity, set-off, reimbursement or otherwise) from the other Party in relation to anything done or omitted to be done under this Agreement, that Party will also be entitled to recover the amount of the GST on any Supply made by that Party.

15 GENERAL

- 15.1 You may not assign or sub-licence your rights or obligations under this Agreement without our consent.
- 15.2 We may assign or subcontract our rights or obligations under this Agreement by written notice to you.
- 15.3 The Law of Victoria, Australia governs this Agreement and the transactions contemplated by it.
- 15.4 Any notices to be served under this Agreement may be served upon a Party at the address listed on the Registration Form and may be served by hand, post, facsimile or electronic mail. In the case of a facsimile or electronic mail transmissions, notices will be deemed served at the time of dispatch by the sending Party if and only if no notice of default of transmission is received within 24 hours of dispatch. Change of address, facsimile number or email address must be notified in the same manner as service of notices.
- 15.5 This Agreement alone constitutes the entire agreement between us in relation to the provision of the Software/Module, the Documentation and the Services, and supersedes and overrides all prior discussions between the Parties and their respective employees and agents.
- 15.6 If any provision of this Agreement is found to be unlawful, void or unenforceable, then that provision will be severed from this Agreement and will not affect the validity and enforceability of the remaining provisions.
- 15.7 This Agreement is subject to the Terms and Conditions applicable at the date of completion of the Registration Form. The Pangaea Terms and Conditions will be updated from time to time and the latest set of Terms and Conditions is available on our website at www.pangaeaworld.com and any extension to the Term or Initial Term is subject to the latest Terms and Conditions.