

ThorApps Licence Agreement

SOFTWARE LICENCE AGREEMENT

IMPORTANT: THIS SOFTWARE LICENCE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND THORAPPS. READ IT CAREFULLY BEFORE DOWNLOADING THE SOFTWARE. IT PROVIDES AN AGREEMENT TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY DOWNLOADING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN SELECT THE "CANCEL" BUTTON AND DO NOT DOWNLOAD THE SOFTWARE. THIS AGREEMENT DOES NOT SUPERSEDE ANY PRE-EXISTING AGREEMENT UNLESS THE PARTIES EXPRESSLY AGREE OTHERWISE IN WRITING.

1. Definitions

1.1 In this Agreement, the following terms shall have the following meanings:-

"Agreement" - this agreement that you and ThorApps are now entering into for the licensing by ThorApps to you of the Software on the terms and conditions set out herein.

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

"Click Acceptance" - the act of clicking the accept button at the end of this Agreement signifying your acceptance of this Agreement as the exclusive basis on which and subject to which you may use the Software.

"Intellectual Property Rights" - all copyrights, patents, database rights, trademarks and service marks, together with all trade secrets, know-how, confidential information and other intellectual and industrial property rights in all parts of the world.

"Licence Fee" - the fee agreed between you and ThorApps or the Reseller in writing that you pay either to ThorApps or to the Reseller for use of the Software under this Agreement.

"Farm" – a collection of SharePoint servers or SQL servers that work in concert to provide a set of services that support a single site.

"Operating System" – a set of programs that is responsible for managing the resources of a computer.

"Reseller" – an entity appointed by ThorApps to resell the Software.

"Pre-existing Agreement" – a prior agreement entered into between you and either ThorApps or a Reseller in relation to the Software.

"Software" - the software provided by ThorApps or the Reseller by download to you including any update or replacement provided to you by ThorApps or the Reseller under a maintenance/support agreement together with any manuals or other materials supplied by ThorApps or the Reseller ancillary thereto.

"Software Licence Key" – a software key provided to you to enable use of the Software in respect of the Software or the Trial Version.

“ThorApps” means the Bear Entrepreneurial Group Pty Ltd trading as ThorApps.

“Trial Version” means a version of the Software, so identified, to be used only to review, demonstrate and evaluate the Software for a limited time period. The Trial Version may have limited features, may lack the ability for the end-user to save the end product, may be restricted to a certain number of servers, and will cease operating after a predetermined amount of time due to an internal mechanism within the Trial Version.

2. Licence

2.1 Subject to Click Acceptance by You of this Agreement, ThorApps hereby grants to you a non-exclusive, non-transferable licence to use the Trial Version or Software for a period agreed between you and ThorApps or the Reseller in writing.

2.2 You are licensed to use the Software on a single Farm unless payment agreed between the parties in writing is received for the Software to be used on additional specified Farms.

2.3 In the event of the Trial Software being used for an agreed period, a temporary Software Licence Key will be provided to you for such use.

2.4 Subject to the payment of the Licence Fee, a perpetual Software Licence Key will be provided for the Software. Where such Licence Fee is periodic, a periodic Software Licence Key will be provided, such key being renewed on the payment of the Licence Fee for each such period.

2.5 In the event that you do not pay ThorApps or the Reseller the agreed Licence Fee within the specified period, your right to use the Trial Version or the Software will cease on expiry of the Software Licence Key.

2.6 You may not provide the Trial Version or the Software to a third party to use on your behalf (or for any other purposes) without ThorApps prior written permission and subject to such written undertakings from such third party as ThorApps may require.

2.7 You shall not, except to the extent permitted by law, modify, disassemble, decompile or reverse engineer the Trial Version or the Software or permit whether directly or indirectly any third party to do any of the foregoing.

2.8 Any use of the Software otherwise than in accordance with this Clause 2 shall be subject to ThorApps prior written consent and any reasonable additional licence fee which ThorApps determines.

3. Confidentiality, Copying and Intellectual Property Rights

3.1 You acknowledge that the ideas and expressions contained in the Software (and any modifications thereof or updates thereto provided to you by ThorApps) and any other information provided to you by ThorApps (together the “Confidential Information”) are confidential and proprietary to ThorApps and constitute ThorApps valuable trade secrets. You agree to keep the Confidential Information confidential and not to divulge such information to a third party and only to divulge such information to your employees as is strictly necessary for you to use the Software pursuant to this Agreement. You shall ensure that all parties permitted to have access to the Confidential Information maintain such confidentiality. You acknowledge that the terms of this Clause and Clause 4 shall survive the termination of this Agreement for whatever reason.

3.2 Subject to payment of the Licence Fee, ThorApps shall be entitled to disclose your name as a user of the Software unless you notify ThorApps in writing that you withdraw consent for this.

3.3 Except to the extent permitted by law, You shall not duplicate or otherwise reproduce, in whole or in part, the Trial Version or the Software or permit whether directly or indirectly any third party to do so.

3.4 You acknowledge that, except as expressly set forth herein, you are not being granted any rights in and to the Software, the Confidential Information, or ThorApps Intellectual Property Rights.

3.5 You will notify ThorApps of any claim which may be made against ThorApps or You alleging that the Software infringes the Intellectual Property Rights of a third party as soon as you become aware of any such actual or potential claim.

3.6 You shall immediately bring to ThorApps attention any infringement or suspected infringement by any third party of any of the Intellectual Property Rights in the Software of which you are aware and shall at ThorApps request and expense take such action or assist ThorApps in taking such action as ThorApps may deem appropriate to protect ThorApps Intellectual Property Rights.

3.7 You agree not to remove, delete or obscure any copyright notices, confidentiality notices, or other notices relating to Intellectual Property Rights, on or in the Software and to ensure the accurate reproduction of the same on any copies of the Software which You are entitled to make in accordance with the terms hereof.

4. Limitation of Liability and Warranties

4.1 You acknowledge that the Software has not been written to meet your individual requirements and it is your responsibility to satisfy yourself that the Software will meet your requirements and be compatible with your existing or any future hardware/software configuration. ThorApps makes no warranty or representation in that respect and no failure of any part or the whole of the Software to be suitable for your requirements shall give rise to any right or claim against ThorApps.

4.2 ThorApps will not be liable for any indirect, consequential, or incidental losses or damages, nor any loss of profit, business opportunity, revenue, data or goodwill howsoever arising suffered by You, or for any wasted management time, failure to make anticipated savings or liability You may have to any third party arising in any way in connection with this Agreement whether in contract, tort (including negligence), by statute or in equity or otherwise whether or not ThorApps has been advised of the possibility of such losses.

4.3 ThorApps shall not be liable for any loss or damage of whatsoever nature suffered by You arising out of or in connection with any breach of this Agreement by You or any act, misrepresentation, error or omission made by You or on Your behalf (including without limitation use of the Software by someone with inadequate training or experience) or arising from any cause beyond ThorApps reasonable control.

4.4 Subject to Clauses 4.6 and 4.8 below, no matter how many claims are made and whatever the basis of such claims, ThorApps maximum aggregate liability to You under or in connection with this Agreement, in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 4.1-4.3 above or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to \$1,000,000 (AUD).

4.5 Although ThorApps makes all reasonable attempts to exclude errors and viruses from the Software, ThorApps does not warrant that the Software will be virus or error free.

4.6 None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from ThorApps negligence or that of ThorApps appointed agents.

4.7 ThorApps does not warrant that the Software will be compatible or work in conjunction with any future releases of any manufacturer's Operating System.

4.8 ThorApps warrants that the Software will, to the extent that it is not modified by you or any third party, perform substantially in accordance with the accompanying written materials for a period of 90 days from the date of download by you. Your sole remedy for a breach of the foregoing warranty shall be the repair or replacement of the non-performing component. In the event that ThorApps, in its sole discretion, determines that it is unable to cause the Software to perform substantially in accordance with the accompanying written materials, then ThorApps may terminate this Agreement and in full and final settlement of any claims that you might have refund to you the Licence Fee.

4.9 Except as otherwise expressly set forth herein, ThorApps makes no other warranties or representations with respect to the Software and hereby disclaims all other express or implied warranties, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

4.10 You agree that You are in a better position to foresee and evaluate any loss You may suffer in connection with this Agreement and that the Licence Fee has been calculated on the basis of the limitations and exclusions in this Clause 4 and that You will effect such insurance as is suitable having regard to Your particular circumstances and the terms of this Clause 4.

4.11 You hereby warrant that you have not been induced to enter into this Agreement by any prior representations whether oral or written except as expressly contained in this Agreement and You hereby waive any claim for breach of any such representations which are not so contained.

5. Termination

5.1 The Agreement will continue in force unless it is terminated in accordance with one of the following:

5.1.1 Either party may terminate this Agreement immediately by written notice to the other party in the event that any of the following occur:-

- a) the other party fails to pay any amount due hereunder within 30 days of its due date;
- b) the other party materially breaches any term of this Agreement and such breach is incapable of remedy or continues for a period of 30 days after notice requiring the same to be remedied has been given by the non-breaching party to the other party;
- c) the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

5.1.2 ThorApps may terminate this Agreement immediately if you breach Clause 6.4 hereunder.

5.1.3 You may terminate this Agreement at any time by giving ThorApps 30 day's prior written notice.

5.1.4 Termination of this Agreement shall be without prejudice to any other rights or remedies of the terminating party.

5.1.5 In the event of termination of this Agreement, You shall within 7 days remove the Software from Your computer system(s) including any portable computers used in or outside Your office(s) and certify in writing to ThorApps or its Reseller that this has been done.

6. General

6.1 Subject to any Pre-existing Agreement and Clause 6.2, this written Agreement constitutes the entire understanding and agreement between the parties hereto relating to the subject matter hereof and neither party has relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this Clause 6.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable.

6.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed by duly authorised representatives of both parties.

6.3 If any provision of this Agreement or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.

6.4 Your rights and obligations under this Agreement are personal to You and You agree that You shall not, without ThorApps prior written consent, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.

6.5 ThorApps reserves the right to sub-contract any of the work required to fulfil ThorApps obligations hereunder.

6.6 Any notice given pursuant hereto may be served personally or sent by pre-paid registered letter or recorded delivery or overnight courier to the addresses set forth at the head of this Agreement. Such notice shall be deemed to have been duly served upon and received by the addressee, when served personally or delivered by overnight courier, at the time of such service or delivery, or, when posted, 48 hours after the same shall have been put into the post correctly addressed and pre-paid. However, any communication by electronic mail shall not amount to notice in writing for the purposes of this Clause

6.6 or to a written instrument for the purposes of Clause 6.2.

6.7 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.

6.8 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.

6.9 Clause headings have been included in this Agreement for reference and convenience only and shall not be considered part of, or be used in interpreting, this Agreement.

6.10 No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement.

6.11 This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.