



SOFTWARE LICENCE

DATE

(1) WAY FORWARD TECHNOLOGIES LIMITED at Wellington ("the Supplier")

(2)

BACKGROUND

The Supplier is the owner of the software package and has agreed to license it to the Licensee on the terms and conditions set out in this Agreement.

IT IS AGREED by the parties:

TERMS AND CONDITIONS

1. DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms

In this Agreement, unless the context requires otherwise:

"Business Day" means any day other than Saturday, Sunday and New Zealand statutory holidays.

"Equipment" means the Licensee's computer hardware configuration described in Schedule 1 on which the Licensed Software is to execute;

"Force Majeure" means any:

- (1) Act of God, fire earthquake, storm or flood;
- (2) Strike, lockout, work stoppage or other labour hindrance;
- (3) Explosion, nuclear accident or collision;
- (4) Sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- (5) Requirement or restriction of, or failure to act by, any government semi governmental or judicial entity;
- (6) Any other cause beyond the reasonable control of the party claiming the benefit of the Force Majeure clause in this agreement and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost; and
- (7) Unavoidable accident.

But does not include:

- (8) Loss of supply of essential services including but not limited to electrical power and air conditioning if such loss of supply is caused by the action or negligence of the party claiming the benefit of the Force Majeure clause in this agreement;

- (9) Inability to obtain or delay in obtaining adequate labour, contractors, equipment, materials, transport or supplies; or
- (10) Any event which the party affected could have prevented or overcome by exercising a standard of reasonable care; or
- (11) A lack of funds for any reason.

"GST" means Goods and Services Tax payable in terms of the Goods and Services Tax Act 1985;

"Licence" means the licence to use the Licensed Software granted by the Supplier to the Licensee under this agreement.

"Licensed Software" means the items, units or modules of software specified in Schedule 1 and licensed to the Licensee under this agreement, including all Revisions and New Versions of those items, units or modules which the Licensee may accept from time to time.

"Maintenance Agreement" means the agreement for the maintenance and support of the Licensed Software entered into by the parties and dated.

"New Versions" means new versions of the Licensed Software which are for general release throughout New Zealand, and which go beyond making minor improvements to existing versions by, for example, introducing new functions;

"Revisions" means minor improvements made to the Licensed Software which are for general release throughout New Zealand, and which fix program faults and other minor defects;

"Source Code" means the Licensed Software expressed in uncompiled or uninterpreted programming (human- readable) language encoded on any media;

"Supporting Documentation" means operating manuals and other printed materials, including users' manuals, programming manuals and other manuals which are designed to assist and supplement the understanding or application of the Licensed Software, including the documentation specified in Schedule 2;

"System" means the Equipment and the Licensed Software;

"Warranty Period" means the period calculated from installation of the Licensed Software and shown against each item, unit or module of the Licensed Software in Schedule 1;

1.2 Construction

In the construction of this agreement, unless the context requires otherwise:

- 1.2.1 Headings appear as a matter of convenience and shall not affect the construction of this agreement;
- 1.2.2 References to clauses and schedules are to clauses and schedules of this agreement;
- 1.2.3 The background and schedules form part of this agreement;
- 1.2.4 A reference to a person includes a corporation sole, and also a body of persons, whether corporate or unincorporate;
- 1.2.5 A reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- 1.2.6 A reference to a party to this agreement includes the successors and any permitted assigns of that party.

2. THE LICENCE

2.1 Grant of Licence

The Supplier grants to the Licensee a non-exclusive non-transferable licence to use the Licensed Software in its object (machine-executable) code form on the Equipment.

2.2 Term of Licence

The Licence shall commence on the date that the Licensed Software is delivered to the Licensee and shall continue until it is terminated by either party in accordance with the provisions of this agreement.

2.3 Supply of Licensed Software and Supporting Documentation

The Supplier will supply the Licensee with (one copy/*copies) of the Licensed Software and the Supporting Documentation. If the Licensee requires further copies of the Licensed Software or the Supporting Documentation the Supplier will supply additional copies at the Supplier's then current published fee for the Licensed Software and the Supporting Documentation.

2.4 Copying

2.4.1 Subject to clause 2.4.2, the Licensee will not copy all or part of the Licensed Software without first obtaining the Supplier's written consent.

2.4.2 The Licensee may make one copy of the Licensed Software and the Supporting Documentation for the purposes of operational use, back-up and security.

2.5 Modification

2.5.1 The Licensee will not modify the Licensed Software or merge all or part of the Licensed Software with any other licensed software without first obtaining the Supplier's written consent.

2.5.2 If the Licensed Software is modified or merged under this clause with the Supplier's consent the Licensee will indemnify the Supplier against all liability which the Supplier may suffer or incur if such modification or merger infringes any intellectual or industrial property rights of a third party.

2.5.3 The Licensed Software, if so modified or merged, remains the property of the Supplier and continues to be subject to this agreement.

2.6 Reverse Engineering

The Licensee shall not reverse engineer, reverse assemble, reverse compile, disassemble or decompile all or part of the Licensed Software or directly or indirectly allow or cause a third party to do so.

3. LICENCE FEE

The Licence Fee, which is specified in Schedule 1, is payable in one lump sum upon execution of this agreement subject to the Licensee first having received a GST invoice for the Licence Fee.

4. SECURITY

The Licensee shall be solely responsible for the supervision, management and control of the Licensed Software. Throughout the term of this Agreement the Licensee will use its best endeavours to ensure that the Licensed Software is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person.

5. CONFIDENTIALITY

Each party agrees to treat all information which comes to its knowledge or into its possession in connection with this agreement as strictly private and confidential and each party further agrees to divulge that information to any third party or to use it in any way for profit, unless and until it becomes public knowledge otherwise than by that party's own disclosure.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Notification of Infringement

The Licensee shall notify the Supplier as soon as practicable of any infringement, suspected infringement or alleged infringement by the Licensed Software of the intellectual or industrial property rights of any person.

6.2 Defence of Infringement Claims

Without prejudice to the Licensee's right to defend a claim such as an infringement, the Supplier shall if requested by the Licensee but at the Supplier's own expense, conduct the defence of any claim against the Licensee alleging such infringement. The Licensee shall if requested provide the Supplier with reasonable assistance in conducting the defence of such a claim.

6.3 Supplier's Obligations On Infringement

If it is determined by a court or tribunal of competent jurisdiction, or if it is agreed between the parties to the dispute, that an infringement of any intellectual or industrial property rights of any person has occurred on grounds in any way related to the use of the Licensed Software, then within 7 days of such determination or agreement, the Supplier at its option and at its own risk and expense shall either:

6.3.1 Modify the Licensed Software so that such infringement, defect or inadequacy is removed; or

6.3.2 Procure for the Licensee the right to continue enjoying the benefit of this agreement; or

6.3.3 Replace the infringing Licensed Software with alternative software.

7. SUPPLIER'S LIMITATION OF LIABILITY

7.1 Limit of Liability

Subject to clauses 7.2 and 7.3, the Supplier's liability under or in connection with the performance of this agreement, whether in tort or contract or on some other basis, shall be limited to the greater of the following amounts:

7.1.1 An amount equal to the aggregate of all charges paid by the Licensee to the Supplier under this agreement and any collateral agreement for the twelve month period immediately preceding the date of any act or omission by the Supplier that directly or indirectly creates such liability; or

7.1.2 An amount equal to the aggregate of the total price of any items, units or modules of the Licensed Software that are the subject of a claim by the Licensee against the Supplier or directly related to such a claim.

7.2 Indirect or Consequential Damage

The Supplier shall not be liable under this agreement for any indirect or consequential damage or loss of profits suffered or incurred by the Licensee.

7.3 Exception to Limit Liability

The limitation of liability under this clause shall not apply to the Supplier's liability for breaches of the Licensee's intellectual property rights or for breaches of confidentiality under this agreement.

7.4 Clause Survives Termination

The provisions of this clause shall survive the termination of this agreement.

8. REMEDIES FOR BREACH

If a party breaches any of its obligations under this agreement, then any party not in breach may, by written notice to the other party, without prejudice to its other rights and remedies at law or in equity, cancel this agreement immediately in whole or in respect of any item, unit or module of the Licensed Software and exercise all or any of its rights or remedies under this agreement and any agreement collateral with this agreement.

9. LICENSEE'S OBLIGATIONS ON CANCELLATION

Upon cancellation of this agreement (other than by default of the Supplier) the Licensee, at the Supplier's option, will either return or erase or destroy the Licensed Software and all copies (in whatever form) and shall either return or destroy the Supporting Documentation and all copies. the Licensee will promptly provide the Supplier with a certificate that the Supplier's instructions regarding the return, erasure or destruction of the Licensed Software and the Supporting Documentation and all copies have been complied with fully.

10. TAXES

In addition to the requirement to pay GST on the Licence fee, the Licensee shall pay the Supplier on the payment dates fixed or provided for under this agreement and if no dates are fixed then not later than 7 days before the date for payment by the Supplier any government taxes imposts and levies (other than the Supplier's income tax) assessed or levied on the Supplier in respect of the supply of goods or services under this agreement.

11. MISCELLANEOUS CLAUSES

11.1 No Merger

The agreements, obligations, warranties and undertakings of the parties shall not merge with the delivery and installation of the Licensed Software and payment of the Licence fee but (to the extent that they have not been completed by performance at the time of acceptance) shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.

11.2 Arbitration

Except as otherwise provided in this agreement, all differences and disputes arising between the parties concerning the construction or performance of this agreement, or the rights and liabilities of the parties, which cannot be settled by negotiation, will be referred to a single arbitrator, if the parties can agree upon one or, failing agreement, to two arbitrators (one to be appointed by the supplier and the other by the Licensee). If either party fails to appoint an arbitrator within 15 days of the date upon which both parties became aware of the difference or dispute then the arbitrator then appointed shall be the sole arbitrator. If the reference is to two arbitrators, those arbitrators will appoint an umpire immediately after they themselves are appointed. The parties acknowledge that this clause 11.2 constitutes a "submission" within the meaning of the Arbitration Act 1908.

11.3 Notices

11.3.1 Any notice produced under this agreement shall be sufficient if in writing and delivered personally or sent by prepaid mail or facsimile transmission to the address or facsimile number of the party specified below, or any subsequently notified new address or number.

Supplier

Address: Way Forward Technologies Limited
PO Box 54-226
Mana
Wellington
NEW ZEALAND

Facsimile: (04) 234-8217
Email info@wft.co.nz

11.3.2 Any such notice shall be deemed to have been received upon personal delivery or sending of the facsimile transmission or two business days after mailing.

11.4 No Waiver

No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this agreement shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this agreement.

11.5 No Assignment

11.5.1 The Licensee shall not transfer or assign or deal in any manner with the benefit or burden of this agreement without first obtaining the written consent of the Supplier, and any attempt to assign the rights, duties or obligations under this agreement without such consent shall be of no effect.

11.5.2 Any change or rearrangement in the beneficial ownership of the principal shareholding of the Licensee or its holding company, or any alteration in the Memorandum or Articles of Association of either of them altering the effective control of the Licensee shall be deemed proposed assignment of this agreement and shall require the Supplier's prior written consent.

11.6 Severability

If any part of this agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this agreement which shall remain in full force.

11.7 Force Majeure

- 11.7.1 Non-performance by either of the parties of any of its obligations (other than to pay money) under this agreement shall be excused during the time and to the extent that such performance is prevented, wholly or in part, by Force Majeure.
- 11.7.2 The party claiming the benefit of this clause shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this agreement and the likely duration of such non-performance. In the meantime such party shall take all reasonable steps to remedy or abate the Force Majeure.
- 11.7.3 No party shall, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbances.
- 11.7.4 Performance of any obligation affected by Force Majeure shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure. If by reason of Force Majeure a party is unable to perform any obligation under this agreement for a period of 60 days the other party may on giving 30 days' written notice to that party, cancel this agreement.
- 11.7.5 Cancellation of this agreement under this clause shall not prejudice the rights of either party against the other in respect of any matter or thing occurring under this agreement before cancellation.

11.8 Collateral Agreements

The Maintenance Agreement and this agreement are collateral agreements. A breach under the Maintenance Agreement will be a breach of this agreement and vice versa.

11.9 Governing Law/Jurisdiction

This agreement shall be governed by, and construed in accordance with, the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this agreement.

SIGNED by _____)

_____)
duly authorised on behalf of _____)

SCHEDULE 1

Licensed Software

SCHEDULE 2