

EDVAL SOFTWARE LICENCE AND SUPPORT TERMS AND CONDITIONS

BACKGROUND:

- A. Edval owns certain computer software ("**Licensed Software**").
- B. Upon payment of the Initial Invoice issued by Edval to the Licensee and from the commencement of the Term, Edval will grant to the Licensee a licence to use the Licensed Software and its associated documentation and to provide support and maintenance on the terms and conditions set out in this document (Agreement).

OPERATIVE PROVISIONS:

1. Definitions and interpretation

In these terms and conditions, unless the context indicates the contrary:

- 1.1 **Commencement Date** means the date upon which the Initial Invoice is paid.
- 1.2 **Confidential Information** means all information provided by one party to the other in connection with the Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably to be considered confidential based on its content, nature or the manner of its disclosure, but excluding:
 - a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of these terms and conditions, and
 - b) information developed independently by a party.
- 1.3 **Documentation** means any and all proprietary documentation made available to the Licensee by Edval for use with the Licensed Software, including any documentation available online and including the content of the Support Portal.
- 1.4 **Fees** means the licence fees calculated in accordance with any quotation and/or invoice provided to the Licensee by Edval and set out in the Initial Invoice and any subsequent invoices issued by Edval to the Licensee.
- 1.5 **Force Majeure Event** means any event beyond the control of the relevant party.
- 1.6 **GST** has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth), or any other similar tax.
- 1.7 **Intellectual Property Rights** means all intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, domain names, know-how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.
- 1.8 **Insolvency Event** means any of the following events:
 - 1.8.1 **(dissolution)** the corporation is dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise);
 - 1.8.2 **(controller or liquidator appointed)** a controller, liquidator, provisional liquidator, trustee or administrator is appointed in respect of the corporation or any of its assets;
 - 1.8.3 **(steps to dissolve or appoint liquidator or administrator)** an application is made to a court or a meeting is convened, or a resolution is passed (or notice is given of such meeting or resolution) or a notice is issued or any other step is taken by any person for the corporation to be wound up or dissolved or for the appointment of a liquidator, provisional liquidator, trustee or administrator to the corporation or any of its assets;
 - 1.8.4 **(scheme of arrangement)** the corporation:

- a) resolves to enter into, or enters into, a scheme of arrangement, a deed of company arrangement or composition which its creditors or an assignment for their benefit;
- b) proposes or is subject to a moratorium of its debts; or
- c) takes proceedings or actions similar to those mentioned in this paragraph as a result of which the corporation's assets are, or proposed to be, submitted to the control of its creditors;

1.8.5 **(protection from creditors)** the corporation seeks or obtains protection from its creditors under any statute or any other law;

- a) **(insolvent)** the corporation is unable to pay all of its debts and when they become due and payable or is deemed to be insolvent under any provision of the *Corporations Act* or any other law;
- b) **(attachment, distress)** any attachment, distress, execution or other process is made or levied against any asset of the corporation;
- c) **(cease business)** the corporation ceases to carry on all or a substantial part of its business (or threatens to do so);
- d) **(analogous process)** an event occurs in relation to the corporation which is analogous to anything referred to above or which has a substantially similar effect; or
- e) **(bankruptcy)** the individual commits or is deemed to commit an act of bankruptcy, or is declared bankrupt, in accordance with the provisions of the *Bankruptcy Act 1966* (Cth) or any equivalent legislation applicable to the individual in the any other jurisdiction.

1.9 Initial Invoice means the invoice issued by Edval to the Licensee that sets out particulars of the Licensed Software, including the Licence Fees and the period to which they relate, and any services to be supplied to the Licensee by Edval and which forms part of the Agreement.

1.10 Licensed Software means the Edval software identified in the Initial Invoice.

1.11 Licensee means the party to whom the Initial Invoice is addressed, or a party authorised by Edval to use the Licensed Software.

1.12 Edval means Edval Timetables Pty Ltd ACN 131 571 214.

1.13 Location means the place at which the Licensee operates its business.

1.14 Moral Rights has the meaning given under the Copyright Act 1968 (Cth) and includes any similar rights existing in other countries.

1.15 Reverse Engineer means, reproduce, duplicate, decompile or enhance the Licensed Software following detailed examination of its construction or composition.

1.16 Term means the term of the licence specified in the Initial Invoice.

1.17 Timetable Support Services means the services provided by Edval to the Licensee during the Term that include advice on timetabling issues raised by the Licensee and/or assistance provided by Edval to the Licensee over and above initial training referred to in clause 10.1 of these terms and conditions, that are not related to technical faults in the Licensed Software.

1.18 Support means the Licensed Software Support and Timetable Support Services provided by Edval to the Licensee during the Term.

1.19 Support Portal means the area of the Edval website accessed via the URL help.edval.com.au with a secure log in code, where documentation concerning the Licensed Software is stored and certain support services may be accessed.

Unless the context requires otherwise:

- a) a reference to a person includes a corporation or any other legal entity;
- b) the singular includes the plural and vice versa;
- c) headings are for convenience and do not form part of these terms and conditions or otherwise affect the interpretation of these terms and conditions;
- d) the term "includes" (or any similar term) means "includes without limitation"; and
- e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

2. Grant of licence

- 2.1** Edval grants to the Licensee non-exclusive licence to use the Licensed Software and the Documentation during the Term subject to and in accordance with the terms and conditions set out in this document.
- 2.2** The licence is limited to the use of the Licensed Software by the Licensee on any computer equipment used by a person nominated by the Licensee at the Location, or on laptop computers used by approved personnel of the Licensee, however the Licensed Software is accessed.
- 2.3** The Licensee will be granted access to relevant security and access codes required to utilise the Licensed Software.
- 2.4** The Licensee must not:
 - 2.4.1** use the Licensed Software in any way that could damage the reputation of Edval or the goodwill or other rights associated with the Licensed Software;
 - 2.4.2** except as expressly permitted by these terms and conditions, and except to the extent that applicable laws, including the Copyright Act 1968 (Cth), prevent Edval restraining Licensee from doing so;
 - 2.4.3** reproduce, make error corrections to or otherwise modify or adapt the Licensed Software or the Documentation or create any derivative works based upon the Software or the Documentation;
 - 2.4.4** de-compile, disassemble or otherwise Reverse Engineer the Licensed Software or permit any third party to do so; or
 - 2.4.5** modify or remove any copyright or proprietary notices on the Licensed Software or the Documentation.

3. Supply and installation

- 3.1** Edval shall supply and/or make available the Licensed Software and the Documentation to the Licensee on the Commencement Date.
- 3.2** If the Licensee reasonably requests, Edval may install the Licensed Software on the Licensee's computer equipment at a cost and time agreed between the parties.
- 3.3** Upon initial installation, or the Licensee's download of the Licensed Software, the Licensee shall be deemed to have accepted the Licensed Software but acknowledges that the licence to use the Licensed Software does not commence until the commencement of the Term..

4. Intellectual Property Rights

- 4.1** Nothing in these terms and conditions constitutes a transfer of any Intellectual Property Rights.

4.2 The Licensee:

- 4.2.1 acknowledges that Edval owns all Intellectual Property Rights in the Licensed Software; and
- 4.2.2 will not directly or indirectly do anything that would or might invalidate or put in dispute Edval's title in the Licensed Software.

4.3 Edval warrants that the Licensed Software:

- 4.3.1 is owned by Edval alone and that no other person has any claim to, or interest in, any Intellectual Property Rights in the Licensed Software;
- 4.3.2 is Edval's original work (or Edval personnel's original work), not copied wholly or substantially from any other item or thing which is protected by copyright anywhere in the world; and
- 4.3.3 do not infringe any person's Intellectual Property Rights.

4.4 Edval retains ownership of the Licensed Software, whether in its original form as provided to the licensee or as specially modified by Edval for the use of the Licensee during the term of the licence.

4.5 Edval must at all times indemnify the Licensee against all claims, liabilities, losses, expenses and costs (including legal costs and expenses on a solicitor/client basis) incurred or suffered in connection with claim or demand by any person for infringement of Intellectual Property Rights arising directly or indirectly from the creation or use of the Licensed Software (**a Claim**).

4.6 If a Claim occurs, without limiting Licensee's rights and remedies under these terms and conditions, Edval will, at no additional cost to Licensee:

- 4.6.1 procure for Licensee the right to continue to use the Licensed Software or part of the Licensed Software which is the subject of the Claim (**Infringing Item**);
- 4.6.2 modify, replace or adapt the Infringing Item:
 - a) so that the Infringing Item no longer infringes any third party's Intellectual Property Rights; and
 - b) without any loss of functionality, operability or performance in Licensee's use of the Software; or
- 4.6.3 if Edval cannot achieve the remedies under clause 4.7.2(a) or 4.7.2(b), Edval must immediately refund to Licensee all Fees relating to the Infringing Item and any other affected items.

5. Modifications

- 5.1** The Licensee shall not modify the whole or any part of the Licensed Software or combine or incorporate any part of the Licensed Software into any other program or system.

6. Security

- 6.1** The Licensee shall be responsible for protecting the Licensed Software and the Documentation at all times from unauthorised access, use or damage.
- 6.2** Where the Licensee has an employee or contractor who uses the Licensed Software or Documentation remotely, in the event that employee or contractor is no longer employed or engaged by the Licensee, the Licensee must ensure the Licensed Software and/or Documentation are promptly returned to the Licensee.

- 6.3** Where Edval stores any data of the Licensee on its servers, Edval shall take all reasonable steps to protect the security and integrity of that data and to ensure that the Licensee can access that data at any time.

7. Risk

- 7.1** Risk of loss or damage to the Licensed Software and the Documentation shall pass to the Licensee upon delivery or authorised download of the Licensed Software to the Location.
- 7.2** Maintenance of all data created and implemented using the Licensed Software is the responsibility of the Licensee.
- 7.3** Edval cannot guarantee that the Software is free of defects or viruses and it is the User's responsibility to ensure that the Software is appropriately tested with anti-virus software prior to installation and during use.

8. Payment

- 8.1** The Licensee must pay Edval the Fees.
- 8.2** After the Initial Invoice, Edval will invoice the Licensee for the Fees annually.
- 8.3** Each invoice is payable within 30 days of the date of the invoice.
- 8.4** The Fees are exclusive of all taxes, duties and surcharges payable in respect of the Licensed Software.
- 8.5** If any payment is not made within the period specified under Clause 8.3, Edval shall be entitled, at its discretion, to:
- 8.5.1** Suspend its remaining obligations under these terms and conditions until the payment, and any interest owing, has been paid; and/or
 - 8.5.2** Terminate the Software Licence; and/or
 - 8.5.3** Re-possess or restrict access to the Licensed Software; and/or
 - 8.5.4** Cease to provide support services, if any, to the Licensee.

9. GST

- 9.1** All amounts payable under these terms and conditions are expressed exclusive of GST.
- 9.2** In respect of any taxable supply, the Licensee must pay to Edval an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Fees, subject to the receipt by the Licensee of a valid tax invoice.

10. Licensed Software Support and Maintenance

- 10.1** Edval will provide the Licensee the availability of a consultant to assist as reasonably required with initial data migration, file set up and initial training as separately quoted for and invoiced, in connection with the installation or download of the Licensed Software.
- 10.2** Edval shall provide the Support Portal and updates and new releases of the Licensed Software from time to time and use reasonable endeavours to maintain the Licensed Software in substantial conformity with the functionality set out in the Initial Invoice.
- 10.3** Maintenance and support services required of Edval under clause 10.2 do not include the following:
- a)** rectification of defects or errors resulting from any modification of the Licensed Software made by any person other than Edval;

- b) rectification of defects or errors resulting from use of the Licensed Software in combination with equipment other than authorised computer equipment;
- c) rectification of operating errors;
- d) rectification of a fault in the computer equipment used by the Licensee;
- e) answering queries concerning how to use the Licensed Software, or queries that would require analysis of the Licensee's specific needs.
- f) dealing with issues caused by internet access faults.

11. Timetable Support Services

- 11.1** For the first term of the Agreement Edval will provide the Licensee with Timetable Support Services on the terms set out in the Initial Invoice.
- 11.2** For the second and subsequent years of the Agreement Edval may provide Timetable Support Services on terms to be agreed.

12. Warranties

- 12.1** Each party warrants to the other that it has the right and ability to enter into the Agreement and that these terms and conditions will be legally binding on it.
- 12.2** Edval warrants to the Licensee that:
 - 12.2.1 the Licensed Software will meet the functionality set out in the Initial Invoice; and
 - 12.2.2 any use of the Licensed Software by the Licensee in accordance with these terms and conditions will not infringe any right of any party, and will not breach any applicable law or relevant industry code.
- 12.3** Edval will indemnify the Licensee against all costs (including legal costs), expenses, damages, accounts or other losses or liability, including those from any actions, suits, proceedings, claims or demands, made against or suffered by the Licensee, arising out of Edval's breach of these terms and conditions, except to the extent to which it arises out of any breach by the Licensee of these terms and conditions or any negligent act or omission by the Licensee or its agents.

13. Fitness for purpose

- 13.1** The Licensee acknowledges that the Licensed Software is an 'off the shelf' software package that has undergone customisation for the Licensee's particular needs only to the extent that such customisation is a feature of the Licensed Software.
- 13.2** The Licensee acknowledges that it has had the opportunity to observe demonstration of, operate, trial, and/or inspect the Licensed Software and its features and functionality, and has satisfied itself that the Licensed Software:
 - 13.2.1 is fit for the purpose for which the Licensee intends that it will be used;
 - 13.2.2 is of sufficient quality and merchantability in respect of the purpose for which it will be used.
- 13.3** Edval shall not be liable for any claim for damages, including consequential damages or liability resulting from negligence on the part of Edval or its employees, relating to the lack of any feature, functionality, or quality of the Licensed Software required by the Licensee that is not a feature of the Licensed Software at the date of the Initial Invoice.

14. Software features

- 14.1** Edval may, at its discretion, upgrade or add additional features or functionality to, or modify existing features or functionality of the Licensed Software, provided that such features do not substantially restrict or inhibit the functionality of the Licensed Software.
- 14.2** Edval may, at its discretion, charge an additional fee for the inclusion or use of any additional features developed and included in the Licensed Software during the Term, provided that the failure to pay for and use that additional feature does not substantially inhibit or restrict previous functionality of the Licensed Software.

15. Liability

- 15.1** To the full extent permitted by law, neither party will be liable in respect of loss of data, interruption of business or any consequential or incidental damages.
- 15.2** Where the Australian Consumer Law or other laws imply conditions or warranties or give other rights in respect of these terms and conditions, the maximum liability of Edval for any breach of such a condition, warranty or right will (but only to the extent permitted by law) be limited in the case of services supplied, to the supplying of the services again or the payment of the lesser of the reasonable cost of having the services supplied again, or the total of all Licence Fees paid by the Licensee to the date of the breach.
- 15.3** Either party's liability for any claim relating to these terms and conditions will be reduced to the extent to which the other party contributed to the damage arising from the claim.

16. Termination

- 16.1** A party may terminate the Agreement by written notice to the other if any of the following events has occurred in respect of the other party:
- 16.1.1 a material breach of these terms and conditions which is not remediable or if capable of remedy, where the other party fails to remedy within 14 days of written notice;
 - 16.1.2 an Insolvency Event occurs, other than an internal reconstruction with notice to the other party.
 - 16.1.3 the permanent discontinuance of use of the Licensed Software or any part of the Licensed Software by the Licensee.
- 16.2** In the event that the licensee prepays Fees for the Term and lawfully terminates the Agreement before the commencement of the Term, Edval shall refund the prepaid Fees, less a reasonable administration charge.
- 16.3** In the event of termination, and at Edval's request, the licensee shall destroy such software, copies, revisions, enhancements and upgrades by erasing them from the location and shall certify in writing to Edval that the Licensed Software has been destroyed.
- 16.4** Any termination of the Agreement shall not affect any accrued rights or liabilities of either party nor affect any provision of these terms and conditions which are expressly or implicitly intended to continue in force following such termination.

17. Consequences of Termination

- 17.1** If the Agreement is terminated or expires for any reason, then, in addition to and without prejudice to any other rights or remedies available:

- 17.1.1 the parties are immediately released from their obligations under the Agreement except those obligations in clauses 6, 8, 15 and 18, and any other obligations that, by their nature, survive termination;
- 17.1.2 each party retains the claims it has against the other; and
- 17.1.3 Subject to clause 16.2, Edval may, at its discretion, refund a portion of any prepaid licence fees paid in connection with the Initial Invoice.

18. Confidentiality and Privacy

- 18.1 A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by these terms and conditions or required to do so by law or any regulatory authority.
- 18.2 A party may:
 - 18.2.1 use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under these terms and conditions; and
 - 18.2.2 disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to these terms and conditions, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- 18.3 Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- 18.4 Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of Edval's request or on termination of the Agreement for any reason.
- 18.5 The Licensee will restrict access to and knowledge of proprietary information in respect of the software to employees of the Licensee who are directly involved with the use of the Licensed Software and such information will remain confidential.
- 18.6 In addition to meeting its statutory obligations in respect of privacy, Edval will comply with the terms of its Privacy Policy published at <http://www.edval.com.au/privacy-policy>.

19. Notices

- 19.1 The parties' contact details for notices under these terms and conditions are as set out in the Initial Invoice, or as otherwise notified by one party to the other from time to time.
- 19.2 All notices must be in writing and can be given by:
 - 19.2.1 hand delivery during normal business hours;
 - 19.2.2 registered post; or
 - 19.2.3 sent by email to the party's email address for notices.
- 19.3 A notice is deemed to be given and received:
 - 19.3.1 if delivered in accordance with clause 19.2.1 on the next business day after the day of delivery;
 - 19.3.2 if sent in accordance with clause 19.2.2 within 5 clear business days after the day of posting;
 - 19.3.3 if sent in accordance with clause 19.2.3 5 hours after the time sent (as recorded on the device from the sender sent email) unless the sender receives an automated message that the email has not been delivered..

20. General

- 20.1** Nothing contained in these terms and conditions creates any relationship of partnership or agency between the parties.
- 20.2** If a provision of these terms and conditions is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 20.3** Each party must at its own expense do everything reasonably necessary to give full effect to these terms and conditions and the events contemplated by it.
- 20.4** These terms and conditions (and any documents executed in connection with it, including the Initial Invoice) is the entire agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in these terms and conditions, no party has relied on any representation made by or on behalf of the other.
- 20.5** These terms and conditions supersede all prior agreements between the parties and constitutes the entire agreement between the parties in relation to the software.
- 20.6** These terms and conditions may be amended only by a document signed by all parties.
- 20.7** A provision of or a right under these terms and conditions may not be waived or varied except in writing signed by the person to be bound.
- 20.8** A party will not be responsible for a failure to comply with its obligations under these terms and conditions to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- 20.9** Without limiting any other right to terminate under these terms and conditions, if a Force Majeure Event affects a party's performance under the Agreement for more than thirty (30) consecutive days, the other party may immediately terminate the Agreement by written notice.
- 20.10** All stamp duties and other government charges in relation to the Agreement must be paid by Edval.
- 20.11** These terms and conditions are governed by the laws of New South Wales and each party submits to the jurisdiction of the courts of New South Wales.