

AUSTRALIAN INSTITUTE OF ENVIRONMENTAL HEALTH

SOFTWARE DEVELOPER LICENCE AGREEMENT – AUSTRALIAN FOOD SAFETY ASSESSMENT

LICENCE AGREEMENT dated 200

Between: **AUSTRALIAN INSTITUTE OF ENVIRONMENTAL HEALTH (A.C.N. 000 031 998)**
of [address] (the Licensor); and

THE PARTY whose name and address is set out at **Item 1** of the **Schedule** (the Licensee)

RECITALS

- A. The Licensor owns and has the right to licence the Licensed Material and is the owner of the Intellectual Property.
- B. The Licensee wishes to obtain a licence for the Intellectual Property for the purpose of incorporating AFSA with Software to create an electronic version of AFSA.
- C. The Licensor is willing to grant the Licensee a licence to use the Licensed Material, subject to the terms set out below.

The parties **AGREE AS FOLLOWS**:

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

- (a) **AFSA** means the Australian Food Safety Assessment material published by the Licensor;
- (b) **Agreement** means this Agreement for the licensing of the Licensed Material;
- (c) **Authorised Users** means employees, contractors, consultants or parties acting on behalf of the Licensee;
- (d) **Commencement Date** means:
 - (i) the date of this Agreement; or
 - (ii) such other date as shall be agreed in writing between the parties;
- (e) **Confidential Information** means the confidential information of a party which relates to the subject matter of this Agreement and includes information relating to:
 - a. the Intellectual Property;
 - b. the personnel, policies or business strategies of the Licensor;
 - c. the terms of this Agreement;
- (f) **Initial Term** means a period of twelve (12) months;
- (g) **Intellectual Property** means copyright in AFSA;
- (h) **Licence** means the licence to use the Licensed Material granted pursuant to clause 3 for the Initial Term or any renewal or extension of the Initial Term;
- (i) **Licensee** means but is not restricted to a person, sole trader, corporation, partnership, government or statutory authority who enters into this Agreement.
- (j) **Licence Fee** means the fee specified in **Item 2** of the **Schedule**, payable by the Sub licensee for the use of the Licensed Material;
- (k) **Licensed Material** means the Australian Food Safety Assessment material provided by the Licensor to the Licensee pursuant to this Agreement contained on AFSA Pads, compact disc, read only memory disks or floppy disks or any other electronic or magnetic media;
- (l) **Party** means either the Licensor, Licensee or as the context dictates;
- (m) **Product** means any products, goods or chattels made, in whole or in part, by combining or merging the Licensed Material with the Software;
- (n) **Software** means the software specified in **Item 3** of the **Schedule** or software otherwise approved by the Licensor pursuant to this Agreement to be used by the Licensee to enable the Licensed Material to be viewed on or with electronic devices and any enhancement, modification, update or new release of that software or parts thereof;
- (o) **Sub licensee** means the customer or client entering into an agreement with the Licensee for the use of the Product.

2. INTERPRETATION

In this Agreement, unless the contrary intention appears:

- (i) headings are for convenience only and do not affect interpretation;
- (ii) a reference to a person includes a reference to a corporation, partnership, government, statutory authority and / or to a person in the capacity as a trustee;
- (iii) the plural shall include the singular and vice versa and a reference to any gender shall be taken to include every other gender;
- (iv) a reference to this Agreement shall include a reference to any amendment, novation, variation, supplemental agreement or replacement from time to time in existence;
- (v) references to any party to this Agreement include its successors or permitted assigns;
- (vi) where two or more legal entities constitute the Licensee their liability shall be joint and several,
- (vii) if any time limit pursuant to this Agreement falls on a day which is not a business day then that time limit shall be deemed to have expired on the next business day;
- (viii) This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior agreements and understandings.
- (ix) No amendment of, or addition to, the provisions of this Agreement shall be binding unless it is in writing and signed by the parties to this Agreement.
- (x) The **Schedules** of this Agreement have effect as if they formed part of this Agreement.

3. GRANT AND DURATION OF LICENCE

- (a) The Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Licensed Material to reproduce and publish the Product during the Term on and subject to the provisions of this Agreement and solely for the purpose of making, using, selling and licensing the Products.
- (b) The product must be approved by the Licensor prior to release.
- (c) The Licensee may incorporate AFSA with the Software specified in **Item 3 of Schedule** or such other software approved in writing by the Licensor to the Licensee during the Initial Term or any extension thereof.
- (d) The Licence shall commence on the Commencement Date and continue during the Initial Term unless terminated earlier pursuant to the terms of this Agreement.
- (e) At the sole discretion of the Licensor, the Licence may be renewed for subsequent terms stipulated by the Licensor. The Licensee shall provide at least thirty (30) days notice in writing prior to the expiry of the Initial Term or any subsequent term if it wishes to renew the Licence.

4. REPORT AND LICENCE FEE

- (a) The Licensee shall deliver to the Licensor within 30 days after the expiration of each calendar month during the Term a statement setting out the nature and amount of Product sold by the Licensee.
- (b) The Licensee shall forward to the Licensor annual License Fees collected from the sale of the Product to sub licensees, together with proof from each sub licensee of the number of food premises within its jurisdiction.

- (c) The Licensee shall forward all Licensee Fees to the Licensor within 30 days of invoice.
- (d) The Licensee shall pay the Licensor interest on any amount due and not paid by the Licensee within thirty (30) days from the date the Licensor submits an invoice to the Licensee at a rate of 10% per month.

5. RECORDS and ACCOUNTS

The Licensee shall keep true and accurate records and accounts containing all information reasonably necessary for the accurate calculation and verification of all Licence Fees and all matters incidental thereto including the making, manufacturing and production and the sale, lease or other disposal or dealing in or with the Products, by or on behalf of the Licensee.

6. SITUATION AND INSPECTION OF RECORDS AND ACCOUNTS

The records and accounts to be kept by the Licensee shall be kept and maintained at the address specified in the **Schedule** or at such other place as the Licensee and Licensor may agree from time to time and the Licensee shall during usual business hours permit the Licensor or the Licensor's agent or representative to inspect and to take copies of all records and accounts required to be kept by the Licensee.

7. LICENCE CONDITIONS

- (a) The Licensee shall not copy, alter, modify or reproduce the Licensed Material except to the extent otherwise authorised by this Agreement.
- (b) Except to the extent specified to the contrary in this Agreement, the Licensor shall not be obliged to support the Licensed Material, whether by providing advice, training, error-correction, modifications, updates, new releases or enhancements or otherwise.
- (c) The Licensee acknowledges that there is no transfer of title or ownership to the Licensee of the Licensed Material or any modifications, updates or new releases of the Licensed Material.

8. TRADE MARKS

Where any trade mark of the Licensor is used on or in relation to the Product then the Product and all representations of the trade mark shall be clearly marked or accompanied with a clear and legible statement that the trade mark is a registered trade mark and that the Licensor is the proprietor of the trade mark and that the Licensee uses the trade mark under Licence from the Licensor.

9. BEST ENDEAVOURS

- (a) During the Term the Licensee shall use its best endeavours by using all its efforts and skills to the extent that it is reasonable to do so in the circumstances to promote and market the Products;
- (b) The Licensee shall not:
 - (i) engage in misrepresentative promotion or advertising of Products;
 - (ii) breach nor aid, abet, encourage or permit any breach of the Intellectual Property;
 - (iii) challenge the validity of any of the Intellectual Property; or

10. CONFIDENTIALITY

Unless otherwise stated the Licensee agrees that all of the Confidential Information seen or obtained by the Licensee as a result of this agreement will be kept strictly confidential;

11. COPYING

The Licensee shall ensure any copy of the Licensed Material made pursuant to this Agreement or included in the Product bears notice of the Licensor's ownership of copyright. The Licensee shall comply with any directions of the Licensor as to the form or content of such notices.

12. OWNERSHIP AND PERMITTED USE

- (a) The Licensed Material and the delivery media upon which the Licensed Material is supplied is not sold to the Licensee who shall not acquire any right, title or interest (including without limitation copyright) in the Licensed Material or any part thereof or the delivery media upon which the Licensed Material is supplied.
- (b) All rights in the Licensed Material whether existing or which may come into existence which are not specifically granted to the Licensee by this Agreement are expressly reserved to the Licensor.
- (c) The Licensee shall not sell or sublicense the Licensed Material to any person.
- (d) All extracts must clearly reproduce the Licensor's copyright notice.
- (e) The Licensee shall promptly inform the Licensor if the Licensee becomes aware of:
 - (i) any unauthorised use of the Licensed Material;
 - (ii) any actual, threatened, or suspected infringement of any Intellectual Property Rights of the Licensor in the Licensed Material which comes to the Licensee's notice; and
 - (iii) any claim by any third party coming to its notice that the Licensed Material infringes the Intellectual Property Rights of any other person.
- (f) The Licensee shall ensure Authorised Users who have authorised access to the Licensed Material are made aware of the terms of this licence.

13. INSPECTION BY LICENSOR

The Licensee shall permit the Licensor or its agent at any reasonable time to inspect the Product.

14. MODIFICATIONS

The Licensee shall not modify or alter the Licensed Material or merge all or any part of the Licensed Material with any other software or material without the Licensor's written permission.

15. UPDATES AND NEW RELEASES

The Licensor is under no obligation under this Agreement to provide updates or new releases of the Licensed Material to the Licensee.

16. WARRANTY

The Licensee acknowledges that the Licensed Material cannot be guaranteed error-free and further acknowledges that the existence of any such errors shall not constitute a breach of this Agreement.

17. INTELLECTUAL PROPERTY RIGHTS

- (a) Subject to subclauses (b), (c) and (d), the Licensor shall indemnify the Licensee against liability under any final judgment in proceedings brought by a third party against the Licensee which determine the Licensee's use of the Licensed Material constitutes an infringement in Australia of any Intellectual Property Rights in the Licensed Material.
- (b) The Licensor shall not be required to indemnify the Licensee as provided in subclause (a) unless the Licensee:
 - (i) notifies the Licensor in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - (ii) gives the Licensor the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
 - (iii) provide the Licensor with reasonable assistance in conducting the defence of such a claim;
 - (iv) permits the Licensor to modify, alter or substitute the infringing part of the Licensed Materials at its own expense in order to avoid continuing infringement, or authorises the Licensor to procure for the Licensee the authority to continue the use and possession of the infringing Licensed Material.
- (c) The Licensor shall not indemnify the Licensee to the extent that an infringement, suspected infringement or alleged infringement arises from:

- (i) use of the Licensed Material in combination by any means and in any form with other goods not specifically approved by the Licensor;
 - (ii) use of the Licensed Material in a manner or for a purpose not reasonably contemplated or not authorised by the Licensor;
 - (iii) modification or alteration of the Licensed Material without the prior written consent of the Licensor; or
 - (iv) any transaction entered into by the Licensee relating to the Licensed Material without the Licensor's prior consent in writing.
- (d) In the event that proceedings are brought or threatened by a third party against the Licensee alleging that the Licensee's use of the Licensed Material constitutes an infringement of Intellectual Property Rights, the Licensor may at its option and at its own expense conduct the defence of such proceedings. The Licensee shall provide all necessary co-operation, information and assistance to the Licensor in the conduct of the defence of such proceedings.
- (e) The Licensee shall indemnify the Licensor against any loss, costs, expenses, demands or liability, whether direct or indirect arising out of a claim by a third party alleging such infringement if:
- (i) the claim arises from an event specified in subclause (c); or
 - (ii) the ability of the Licensor to defend the claim has been prejudiced by the failure of the Licensee to comply with any requirements of subclauses (b) or (d).

18. INDEMNITY BY LICENSEE FOR SOFTWARE

The Licensee shall indemnify and keep indemnified the Licensor from and against all liability whatsoever in respect of all claims, actions, proceedings and demands by any person for or in respect of any loss, injury or damage arising from any defect or want of quality or fitness for any purpose or otherwise of the Software.

19. LIABILITY OF LICENSOR

Each Party excludes all liability to the other Party for consequential or indirect damages arising out of or in connection with this Agreement, including, without limitation, lost profits, loss of revenue, loss of data and damages suffered as a result of claims by any third person for loss or damage of a similar nature.

(i) SUB-LICENCES

The Licensee may give and grant sub-licences under and pursuant to this Agreement for the use of the Intellectual Property as part of the Product provided always that:

- (a) no term of any sub-licence shall be for any period longer than twelve (12) months;
- (b) no sub-licence shall be assignable except with the consent of the Licensee;
- (c) no sub-licence shall be sole or exclusive;
- (d) the Licensee shall be liable to the Licensor for any act or omission to do any act by any sub-licencee which would be a breach or default of the provisions of this Agreement;
- (e) the sub-licencee shall be subject to the following conditions:
 - (i) AFSA may only be used with the Product;
 - (ii) The sub-licencee shall not alter, modify or reproduce AFSA;
 - (iii) the sub-licencee acknowledges that there is no transfer of title or ownership to the sub-licencee of the Intellectual Property;
 - (iv) the sub-licencee shall not sell or license the Product or the Intellectual Property.
- (f) The sub-licencee shall use AFSA and shall take all reasonable steps to ensure that its employees use AFSA and the Products;

- (i) only for its own business purposes, specifically for food safety assessment.
- (g) All extracts must clearly reproduce the Licensor's copyright notice.

- (h) The sub-licensee shall not use or authorise the use of AFSA or the Product:
 - (i) for the purpose of operating a bureau or similar service or any online service; or
 - (ii) The Licensee shall ensure the sub-licensee who have authorised access to the Product are made aware of the terms of this licence.
- (i) In the event that the sub licensee is in breach of any terms of this agreement, and such breach is not remedied within 30 days of notification by the licensor and or licensee, then the sub licensee shall:
 - (i) cease to use the Licensed Material and remove it from any computers on which it has been installed; and
 - (i) within 14 days return to the Licensor (postage paid) or the licensee the Licensed Material together with any copies of the whole or part thereof and the delivery media upon which the Licensed Material is supplied.

21. DISCLAIMER

The Licensee acknowledges that the Licensor disclaims any liability for the accuracy of the information in the Licensed Material and the Licensee agrees to enter into this Agreement subject to that disclaimer.

22. NEGOTIATIONS

The parties in the Agreement shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy.

(a) Notice

Any person may give the other party written notice of any dispute not resolved in the normal course of business. Within 14 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include:

- 24. a statement of that party's position and a summary of arguments supporting that position; and
- 25. the name and title of the executive who will represent that party and of any other person who will accompany the executive.

Within 30 days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as deemed necessary, with the aim of resolving the dispute. All requests made by one party to the other for information relating to the beach of this Agreement will be honored.

All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) Mediation and Case Appraisal

If the dispute has not been resolved by negotiation as provided herein within 45 days after delivery of the initial notice of negotiation, or if the parties failed to meet within 30 days after delivery, the parties shall endeavor to settle the dispute by Mediation under the Alternative Dispute Resolution (ADR) rules of the Queensland Courts. <http://www.courts.qld.gov.au/practice/adr.htm>

26. ©Case Appraisal

If the dispute has not been resolved within 15 days after mediation or the parties failed to meet, then the parties shall endeavor to settle the dispute by Case Appraisal under the Alternative Dispute Resolution (ADR) rules of the Queensland Courts. <http://www.courts.qld.gov.au/practice/adr.htm>

The decision of the Case Appraisal will be final and both parties are bounded by the final decision. If the parties do not comply with the final decision of the Case Appraisal or if the parties failed to meet within the 15 days, then the dispute resolution will be resolved through the prevailing laws of the Queensland Court of Laws.

27. Costs

The party that initiated a breach of this Agreement will be responsible for all costs incurred by Mediation and Case Appraisal.

If the matter is to be resolved through the Queensland Court of laws, the party/parties responsible for associated costs will be determined by the ruling of the Queensland Court of Laws.

23. TERMINATION

- (a) Without limiting the generality of any other clause in this Agreement, the Licensor may terminate this Agreement immediately by notice if:
 - (i) the Licensee is in breach of any term of this Agreement and such breach is not remedied within 30 days of notification by the Licensor;
 - (ii) the Licensee for any reason destroys or disposes of or loses custody of the Licensed Material;
28. the Licensee becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
29. the Licensee dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - (a) the Licensee, being a natural person, dies; or
30. the Licensee ceases or threatens to cease conducting its business in the normal manner.
 - (vii) If the Licensee sells or assigns or endeavours to sell or assign the Licence or any interest therein without the consent of the Licensor as herein provided

- (a) If notice is given to the Licensee pursuant to clause (a), the Licensor may, in addition to terminating the Agreement:
 - (i) repossess any copies of the Licensed Material in the possession, custody or control of the Licensee;
 - (ii) retain any moneys paid;
 - (iii) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
 - (iv) be regarded as discharged from any further obligations under this Agreement; and
 - (v) pursue any additional or alternative remedies provided by law.

- (b) ©In the event of the expiration or termination of this Agreement the Licensee will:
 - (i) cease to use the Licensed Material and remove it from any computers on which it has been installed; and
 - (ii) within 14 days return to the Licensor (postage paid) the Licensed Material together with any copies of the whole or part thereof and the delivery media upon which the Licensed Material is supplied.

31. RIGHTS ON TERMINATION AND EXPIRATION

On the expiration of a license or termination pursuant to clause 22(a) hereof all rights held by the Licensee under the Licence shall cease immediately (including all sub-licences) PROVIDED THAT:

- (a) the Licensee shall not be relieved of any obligation to make payments pursuant to clause 3 in respect of the license sale and use of Products made and consideration received from sub-licensees prior to the termination of the Licence;
- (b) Confidential Information disclosed to the Licensee shall continue to be confidential and the provisions of clause 10 shall continue to apply;
- (c) the provisions of clause 6 shall continue to apply for a period of 12 months after the termination of the Licence;

- (d) the termination of the Licence shall be without prejudice to any other rights accruing to any other party hereunder prior to the date of termination including the right to pursue all remedies available to either party at law or in equity;

25. ASSIGNMENT AND NOVATION

- b. The benefit of this Agreement shall not be assigned by the Licensee without the Licensor's written consent. The Licensor may consent to the assignment or novation of this Agreement by the Licensee subject to such conditions as it chooses to impose.
- (b) The Licensor may at any time by notice to the Licensee transfer or assign, subject always to this Agreement and the provisions hereof, the Intellectual Property or any part thereof and the benefit of this Agreement.

26. WAIVER

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.
- (b) A waiver made by the Licensor pursuant by clause 25(a) will not prejudice its rights in respect of any subsequent breach of the Agreement by the Licensee.
- (c) Subject to clause 25(a), any failure by the Licensor to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Licensor to the Licensee, will not be construed as a waiver of the Licensor's rights under this Agreement.

27. VARIATION

The provisions under this Agreement shall not be varied except by agreement in writing signed by the Parties.

28. SURVIVAL OF AGREEMENT

Subject to any provision to the contrary, this Agreement shall ensure to the benefit of and be binding upon the parties and their successors, trustees, permitted assigns or receivers but shall not ensure to the benefit of any other persons.

29. SEVERABILITY

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

30. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws in force in the State of Queensland and the parties agree by their execution of this Agreement to irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of Queensland in respect of all matters arising under or in connection with this Agreement.

31. NO PARTNERSHIP

Except as herein specifically required or as may be agreed from time to time the parties hereto shall not be or be deemed to be in any partnership or joint venture and neither shall hold itself out as being in any way a partner of or agent of or in any joint venture with the other and neither shall pledge the credit or warrant the authority of the other.

32. NOTICES

- (a) Notices under this Agreement may be delivered by hand, by mail, by facsimile or by electronic mail to the addresses of the parties set out in this Agreement (or as later notified in writing to the other party).
- (b) Notice will be deemed given:

- (i) in the case of posting, in the ordinary course of post; or
- (ii) in the case of facsimile or electronic mail, upon receipt of transmission.

33. EXECUTION

This Agreement may be executed in counterparts by the respective parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

THIS AGREEMENT has been duly signed and executed on the date first set out above.

EXECUTED for and on behalf of **AUSTRALIAN INSTITUTE OF ENVIRONMENTAL HEALTH:**

Name (please print)

Signature of Authorised person

EXECUTED for and on behalf of **THE LICENSEE:**

Name (please print)

Signature of Authorised person

<u>THE SCHEDULE</u>		
ITEM 1: LICENSEE (Name and address)	Name: _____ Address: _____ _____ _____	
ITEM 2: LICENCE FEE	Food Premises	Annual License Fee
	1 to 250	\$75
	251 to 500	\$150
	501 to 750	\$225
	751 to 1,000	\$300
	1,000 +	\$500
	* Proof of the number of food premises within the jurisdiction of Licensee required upon commencement and renewal of License.	
ITEM 3: THE SOFTWARE		

LICENCE AGREEMENT

AUSTRALIAN FOOD SAFETY ASSESSMENT

Between:

AUSTRALIAN INSTITUTE OF ENVIRONMENTAL HEALTH
(the **Licensor**)

And:

THE PARTY
whose details are set out at **Item 1** of the **Schedule**
(the **Licensee**)