



LIXI End User Licence Agreement

1. Licence

1.1 Subject to the terms of this Agreement, LIXI grants to the Licensee and its Authorised Users a personal, non-transferable, non-exclusive licence to:

- (a) during the Term, Use the Standards Package in the Territory for the Licensee's own internal business; and
- (b) after the Term, use the Standards Package in the Territory solely for backing up or accessing data stored during the Term Using the Standards Package in accordance with clause 1.1(a) (**Historic Data**), for the purposes of reviewing, auditing or reporting on that data, and for disaster recovery purposes or as otherwise required by law.

1.2 For the avoidance of doubt, the licence granted under clause 1.1(b) does not permit the use of, and the Licensee and its Authorised Users must not use, the Standards Package after the Term:

- (a) in relation to any data other than Historic Data;
- (b) for the transmission of data to anyone other than the Licensee; or
- (c) for developing, distributing or licensing the use of any Licensee Schema, Licensee Software or other software application or service,

except to the extent that non-excludable law provides otherwise.

2. Term

2.1 This Agreement begins on the Commencement Date and continues, subject to payment of the applicable Licence Fee, until terminated in accordance with its terms (**Term**).

3. Licensee and Authorised User obligations

3.1 The Licensee must, and must procure the Authorised Users to:

- (a) independently obtain and pay for any equipment or software necessary to use the Standards Package;
- (b) comply with all Laws in connection with its use of the Standards Package;
- (c) in the case of the Licensee, only supply or grant any right to use Licensee Schema or Licensee Software, whether as a bureau, outsourced or managed service or otherwise, to a person who holds a current licence from LIXI to Use the relevant Standards incorporated into that Licensee Schema or Licensee Software, unless the person is an Authorised User who is using the Licensee Schema or Licensee Software

solely for the conduct of the Licensee's own internal business;

- (d) not grant or allow any sub-licence of or other rights to use or access all or any part of the Standards Package, including through the operation of a bureau or other outsourced or managed service, to any person or entity who does not have a current licence from LIXI to use the relevant Standards or otherwise assign or transfer any of the rights granted to it under this Agreement;
- (e) not use, modify, translate, decompile, reverse engineer, disassemble, reproduce, disseminate, disclose or create works derived from the Standards Package except as provided in this Agreement or as permitted by non-excludable law, if applicable; and
- (f) not remove any copyright notice contained within any component of a Standards Package.

4. Licensee and Authorised User indemnities

4.1 The Licensee must indemnify LIXI, its agents, officers and employees, and keep them indemnified, from and against all Loss arising in connection with the Licensee's and its Authorised Users' use of the Standards Package, including breach of this Agreement, violation of any Law or infringement of another's rights.

4.2 *<removed>*

5. LIXI's Rights

5.1 The Licensee:

- (a) acknowledges and agrees that the Standards Package and all Intellectual Property in the Standards Package and associated trade marks remain the sole property of LIXI and its licensors;
- (b) acknowledges and agrees that it has no interest in or rights to the Standards Package under this Agreement except as set out in clause 1;
- (c) must not use the word LIXI or LIXI's logo as a part of the Licensee's name or logo or product name or logo;
- (d) must not otherwise use the word LIXI or LIXI's logo without LIXI's prior written consent or represent that its products or services have a relationship with or approval by LIXI that they do not have; and
- (e) must ensure its Authorised Users comply with clauses 5.1(a)-(d) as if they were the Licensee.

6. Licence Fees and Payments

- 6.1 The Licensee is liable to pay LIXI the Licence Fee applicable to the Standards Package on the Commencement Date and each Anniversary Date during the Term.
- 6.2 During the Term, LIXI may notify the Licensee if it reasonably believes the Licensee is liable to pay an increased Licence Fee under the Licence Fee Schedule from which the existing Licence Fee was calculated, due to a change in the Licensee's circumstances.
- 6.3 LIXI may issue a Tax Invoice for the applicable Licence Fee on or after:
- the Commencement Date;
 - any material change in the Licensee's circumstances referred to in clause 6.2; and
 - 30 days prior to each Anniversary Date.
- 6.4 The Licensee must pay the amount stated in LIXI's Tax Invoice, without set-off, within 30 days of the date of the Tax Invoice.
- 6.5 Without limiting clause 6.4, if the Licensee disputes an amount set out in LIXI's Tax Invoice, it must notify LIXI within 30 days of the date of the Tax Invoice and provide written reasons for the dispute.
- 6.6 A failure by the Licensee to notify LIXI of a dispute in accordance with clause 6.5 will be deemed to be acceptance of the amounts set out in the Tax Invoice and the Licensee waives any rights it might otherwise have to dispute the Tax Invoice.
- 6.7 The Licensee will nominate 1 person with whom LIXI will deal with in relation to all invoices and payment matters.
- 6.8 LIXI may issue a Tax Invoice by sending it to the person nominated by the Licensee through electronic communications.
- 6.9 The Licensee must pay LIXI interest on any amount due and not paid by the Licensee within the time required by this Agreement at the rate which is 2% per annum above the Commonwealth Bank of Australia Corporate Overdraft Reference Rate (and if that rate ceases to be quoted, any similar rate quoted by an Australian licensed bank nominated by LIXI) as quoted on the date on which payment was due (or if that date is not a Business Day, the next Business Day when the rate is quoted).
- 6.10 To the maximum extent permitted by law, Licence Fees are non-refundable.

7. Warranties

- 7.1 Each party warrants that it has not relied on any representation made by the other which has not been expressly stated in this Agreement.

- 7.2 LIXI does not warrant:

- title in or the performance, accuracy or reliability of the Standards Package or any associated software or equipment;
- that the Standards Package complies with any particular Laws or does not infringe the rights of any third party;
- that the Licensee's or its Authorised Users' use of the Standards Package will render the Licensee or its Authorised Users compliant with the requirements of any applicable Laws;
- that the provision of any product or service utilising the Standards Package will not infringe the rights of any third party; or
- that the Standards Package will be suitable for the Licensee's purpose.

- 7.3 Subject only to any implied warranties that cannot legally be excluded, LIXI makes no other warranties, either express or implied, as to any matter whatsoever, including the merchantability or the fitness for any particular use of the Standards Package. Clause 11.1 applies to non-excludable warranties, to the extent applicable.

- 7.4 This clause 7 applies only to the maximum extent permitted by law.

8. Intellectual Property

- 8.1 LIXI must promptly notify the Licensee of any Infringement Claim.
- 8.2 The Licensee must:
- immediately notify LIXI in writing if it becomes aware of any Intellectual Property infringement or suspected infringement by the Standards Package, or potential for an Infringement Claim; and
 - provide LIXI with reasonable assistance in conducting the defence of any Infringement Claim brought by a third party.
- 8.3 If a court of competent jurisdiction finds the Standards Package infringes the Intellectual Property rights of a third party, LIXI must, at its option and expense:
- modify or replace the Standards Package or the relevant component of the Standards Package, so that the infringement is removed; or
 - procure for the Licensee the right to continue using the Standards Package as contemplated by this Agreement, during the Term.

8.4 The Licensee acknowledges that modifications to the Standards Package in accordance with clause 8.3(a):

- (a) may change, including reduce, the features and functionality of the Standards Package;
- (b) may require the modification of software and systems that implement or otherwise use the Standards Package, the cost of which will not be born by LIXI; and
- (c) must be promptly implemented by the Licensee, unless the Licensee immediately ceases using the Standards Package and terminates this Agreement.

8.5 LIXI will have no obligations under this clause 8 if the Infringement Claim arises from:

- (a) the infringement of Intellectual Property by any software, data or hardware used in connection with the Standards Package;
- (b) the Licensee's failure to implement modifications to any Standards Package provided by LIXI to avoid infringement;
- (c) use of the Standards Package in a manner or for a purpose not reasonably contemplated by or not authorised by LIXI under this Agreement; or
- (d) modification or alteration to the Standards Package by the Licensee, Authorised User or any third party, whether authorised by LIXI or otherwise.

9. Termination

9.1 LIXI may terminate this Agreement immediately by written notice to the Licensee if at any time:

- (a) the licensee fails to pay any amount payable by the Licensee under this Agreement within 30 days of receipt of a request for payment which is made after the amount has become due and payable; or
- (b) the Licensee commits a breach of or fails to perform any or all of its obligations under this Agreement and does not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring it to do so.

9.2 LIXI may terminate this Agreement, effective on or after an Anniversary Date, on written notice no less than 90 days prior to the relevant Anniversary Date.

9.3 The Licensee may terminate this Agreement with immediate effect by written notice to LIXI at any time.

9.4 Termination of this Agreement in accordance with this clause 9 in no way limits or prejudices any right or remedy which either party may have as a result of any breach of this Agreement.

10. Consequences of Termination

10.1 Upon termination of this Agreement the Licensee must and must procure each Authorised User to promptly destroy or return to LIXI all copies of the Standards Package, at LIXI's option, and return all confidential information and other property of LIXI held by it, except to the extent any such material must reasonably be retained for compliance with applicable laws, regulations or industry codes.

10.2 Termination of this Agreement for any reason does not:

- (a) entitle the Licensee to any refund of any Licence Fee, unless otherwise required by law; or
- (b) affect the rights and obligations of either party arising prior to termination.

10.3 Clauses 1.1(b), 1.2, 3.1(e), 3.1(f), 4-7, 9.4, 10-12, 13.3, 13.4, 13.6-13.11 and 14 survive termination of this Agreement.

11. Limitation of liability

11.1 If any Act implies in this Agreement any term, condition or warranty that cannot lawfully be excluded, that term, condition or warranty is deemed to be included in this Agreement. However, LIXI's liability for a breach of the applicable term, condition or warranty is, to the maximum extent permitted by law, limited to any one or more of the following, at LIXI's option:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; or
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

11.2 Subject to clause 11.1 and to the maximum extent permitted by law, LIXI has no liability to the Licensee or its Authorised Users for any Loss, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred in connection with

or relating to this Agreement or the Standards Package or otherwise arising out of the relationship between the parties regardless of whether LIXI was aware or ought to have been aware of the possibility of such Loss.

11.3 Subject to clause 11.1, to the maximum extent permitted by law LIXI's total liability to the Licensee and its Authorised Users for any and all Loss, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred in connection with or relating to this Agreement or the Standards Package or otherwise arising out of the relationship between the parties, to the extent it cannot lawfully be excluded under clause 11.2, is limited to the Licence Fees (less any GST or other taxes) paid to LIXI by the Licensee under this Agreement in the 12 months prior to the Loss occurring (less any other claims paid by LIXI in that period).

12. Notices

12.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.

12.2 Any notice may be served by delivery in person, by post, transmission by facsimile or by e-mail to the address or number of the recipient most recently notified by the recipient to the sender.

12.3 Any notice is effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile or e-mail transmittal confirmation report between 9.00am and 5.00pm on a Business Day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next Business Day following delivery or receipt.

13. General

13.1 LIXI may novate, assign or sub-contract its rights and obligations under this Agreement subject to LIXI giving written notice of any novation or assignment to the Licensee.

13.2 In the event of a sale of the Licensee's business or any corporate restructuring, the Licensee may novate or assign its rights and obligations under this Agreement to the relevant purchaser or entity (**Assignee**) by obtaining LIXI's prior written consent, such consent not to be unreasonably withheld provided the Assignee pays any difference between the Licence Fee already paid by the Licensee with respect to the remaining term of this Agreement, calculated on a pro rata basis, and the Licence Fee that would be payable by the Assignee if it sought the Licence directly from LIXI for the duration of that remaining term.

13.3 If any payment made by one party to any other party under or relating to this Agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the

amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Agreement.

13.4 This Agreement is governed by and construed under the law in the State of New South Wales and each party hereby irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court with jurisdiction in that State, in relation to both itself and its property.

13.5 LIXI may amend this Agreement:

- (a) effective on and from an Anniversary Date, by giving the Licensee no less than 60 days prior written notice;
- (b) effective immediately upon written notice to the Licensee where the amendment is to the benefit of the Licensee; or
- (c) otherwise with the written agreement of the Licensee.

13.6 This Agreement confers rights only upon a person expressed to be a party, and not upon any other person.

13.7 This Agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

13.8 In the event of any inconsistency between the terms of this document and any other document forming part of this Agreement, the provisions of this document take precedence to the extent of the inconsistency, unless expressly stated otherwise.

13.9 Any indemnity agreed by any party under this Agreement:

- (a) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
- (b) survives and continues after performance of this Agreement.

13.10 Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of

any right by that party does not preclude any other or further exercise of that or any other right by that party.

- 13.11 Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

14. Definitions and interpretation

- 14.1 In this Agreement, unless the context requires otherwise:

Agreement means this document and any document executed by the parties that expressly incorporates the terms of this document;

Anniversary Date means 1 January;

Authorised User means a person:

- (a) specified as such in any licence certificate issued to the Licensee by LIXI;
- (b) who is using one or more Standards licensed to the Licensee solely for the internal business purposes of the Licensee, through Licensee Software or software or services licensed to the person by or at the request of the Licensee, whether through a managed service or otherwise, but does not include a person using the Standards for the person's own business purposes or to develop or supply its own software or services; or
- (c) who is providing the Licensee with consulting services solely in relation to the Licensee's own systems;

Business Day means any day on which banks are open and conduct normal trading operations in Sydney other than a Saturday or Sunday;

Commencement Date means the date LIXI agrees, at the Licensee's request, to grant the Licensee a licence to Use the Standards Package on the terms of this Agreement, as evidenced in writing, or such other date agreed by the parties in writing;

Consequential Loss means any indirect, incidental, special or consequential loss, loss of business profits, business interruption, loss of business information (including computer data), loss of business (whether or not caused by LIXI's negligence), loss of goodwill or loss due to delay;

GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999;

GST means any tax, levy, charge or impost

implemented under the GST Law or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Law;

Infringement Claim means any bona fide claim that has not been withdrawn within 30 days of LIXI's receipt of notice of the claim, or any legal proceedings commenced alleging that the Standards Package infringes the Intellectual Property of any person;

Intellectual Property means:

- (a) any commercial information, industrial or intellectual property (whether in material form or not) or rights of a proprietary nature, including without limitation:
 - (i) any copyright, invention, patent, design, trade mark, service mark, domain name, semiconductor, idea, confidential information, trade secret, know-how, database; or
 - (ii) any rights protected or recognised under any laws anywhere in the world related to the above or any similar laws; and
- (b) any thing (whether in material form or not) copied or derived from the above property or rights;

Laws means laws, regulations, codes or industry standards;

Licence Fee means the annual licence fee calculated in accordance with the Licence Fee Schedule in place:

- (a) on the Commencement Date, in the case of a payment due on the Commencement Date;
- (b) 60 days prior to an Anniversary Date, in the case of a payment due on an Anniversary Date; and
- (c) 60 days prior to the previous Anniversary Date, or if there was no previous Anniversary Date on the Commencement Date, in the case of a payment due on any other date;

Licence Fee Schedule means LIXI's published schedule of Licence Fees, as amended by LIXI from time to time;

Licensee means a person who, at their request, is granted a licence by LIXI to Use the Standards Package on the terms of this Agreement, as evidenced in writing;

Licensee Schema means a Schema or parts of a Schema derived by or on behalf of a Licensee from, or by implementing, extending and/or restricting, one or more Schema contained in a Standards Package;

Licensee Software means software developed by a Licensee that incorporates one or more parts of a Standards Package as components;

LIXI means LIXI Limited ABN 53 095 299 835;

Loss means claims, losses, costs, expenses, liabilities and damages (including Consequential Loss and legal costs and disbursements on a solicitor and own client basis) sustained or incurred, whether directly or indirectly or consequentially or in any other way;

Schema means any data schema, definition, structure, methodology or ontology, or other manner used to standardise the collection, preparation, storage or exchange of data within or between systems or applications, including application programming interfaces and messaging standards;

Standards means the individual Schema ratified by LIXI, together with any supporting documentation LIXI may supply to the Licensee from time to time such as user guides, requirements documents or discussion documents;

Standards Package means the group of Standards with respect to which the Licensee has paid the applicable Licence Fee as specified in the Licence Fee Schedule, including any copies thereof;

Tax Invoice has the meaning given by GST Law;

Territory means Australia or such other place specified in any licence certificate issued to the Licensee by LIXI; and

Use means to copy and use the Standards Package, whether for development, production, testing, backup or other internal purposes, and in the case of Licensees to modify the Standards Package including to derive Licensee Schema or develop Licensee Software, and to provide the Standards Package, Licensee Schema and/or Licensee Software to Authorised Users or otherwise in accordance with clause 3.1(c).

14.2 In this Agreement, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;

- (f) any reference to a party to this Agreement includes its successors and permitted assigns; and
- (g) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it.