

QUIKSYS PTY LTD

**SERVICES AND END USER LICENCE AGREEMENT
PHONE APP ORDERING AND MANAGEMENT SYSTEM**

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY AS THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF AGREEMENT BETWEEN YOU AND US CONCERNING THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY PROPOSALS OR PRIOR AGREEMENT.

1. Definitions

In this Agreement:

Accounting System means the accounting system identified in Item 2.

App means a software application and associated order management system that, once the software application is downloaded by third parties from the App Store or Google Play, will allow them to place orders with You.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated as confidential at the time of its disclosure; or
- (c) You or We (as appropriate) know or ought to know is confidential.

Deposit means the fee identified as such in Item 3.

Fees means the fees set out in Item 3.

Force Majeure Event means an event (or the effect(s) of an event) which could not have been reasonably prevented, avoided or overcome by the affected party.

Information and Graphics means the information and graphics described in Item 5 and such other information and graphics requested by Us in relation to the App.

Intellectual Property Rights means any and all copyright and analogous rights, moral rights, all rights in relation to inventions (including patent rights), rights in relation to registered and unregistered trademarks (including service marks), rights in relation to registered designs, confidential information (including trade secrets and know how), circuit layouts and database rights, processes, methodologies, know-how and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields;

Item means an item of the Licence Particulars.

Monthly Fee means, subject to any indexation in accordance with clause 11, the fee identified as such in Item 3.

Personal Information means that term as it is defined in *Privacy Act 1988* (Cth).

Security Incident means any instance of unauthorised access to, or use, disclosure, alteration, transfer or destruction of Personal Information.

Services means the services described in Item 4.

Services Completion Fee means the fee identified as such in Item 3.

We, Our or Us means Quiksys Pty Ltd (ABN 612 240 954) of 1/47 William Street, Raymond Terrace NSW 2324, telephone [+61 438 947 577], email john@quiksys.com.au

2. Term

This Agreement commences on the date on which it is executed by the last party to execute it (**Commencement Date**) and, unless earlier terminated in accordance with its terms, runs until the anniversary of the Commencement Date immediately after the date on which You notify Us in writing that You require it to terminate (**Term**).

3. Your Warranties

You warrant to Us and repeat on each day of the Term that:

- (a) You are aged over 18 years and are legally entitled to, and have the power to, enter into and perform this Agreement;
- (b) You own all Intellectual Property Rights in the Information and Graphics or have a licence that allows You to sublicense them to Us for the purposes contemplated in this Agreement;
- (c) all information You provide to Us for the purposes of this Agreement (**Licence Data**) will be true, accurate and complete, including Your legal name, address, telephone number, email address and applicable billing information;
- (d) You will maintain and promptly update the Licence Data and any other information You provide to Us, to keep it accurate at all times;
- (e) You will comply with all relevant App Store and Google Play user terms and conditions (as may be amended from time-to-time);
- (f) You are not located in a country that is subject to a US Government embargo been designated by the US Government as a "terrorist supporting" country;
- (g) You are not listed on any US Government list of prohibited or restricted parties; and
- (h) You will maintain the Accounting System in the form it was in when We first provided You with access to the App and will not change any aspect of it without providing Us with at least 30 days' prior notice in writing.

You acknowledge and agree that We:

- (e) have relied on the warranties given in subclauses 3(a) - (h) in entering into this Agreement; and
- (f) would not have entered into this Agreement but for those warranties.

4. Provision of Services

Within 10 days after the date on which We receive the Deposit from You, You must provide us with final versions of the Information and Graphics and grant Us a non-exclusive and limited right to use the Information and Graphics for the purposes contemplated in this Agreement.

Within 10 days after the date on which we receive final versions of the Information and Graphics from You, we will commence performing the Services.

At any stage during the Term, We may ask you to provide us with additional Information, Graphics, assistance and instructions and You must do so within a reasonable time thereafter.

We will use reasonable endeavours to complete the Services by the date that is 8 weeks after the date on which You provide us with all Information and Graphics we need to complete the Services.

We will notify You in writing of the date on which We complete the Services.

5. Use of the App

Within 5 days after the later of the date on which:

- (a) We receive:
 - (i) the Services Completion Fee and the first instalment of the Monthly Fee from You; and
 - (ii) Your credit card (Visa or MasterCard) or direct debit (including a correctly completed direct debit authorisation form) details; and
- (b) We notify You in writing that We have completed the Services,

We will:

- (c) upload the App into the App Store and Google Play; and

- (d) provide You with details of how to access and use the App.

On and from this date, We grant You a non-exclusive and non-transferable licence to use the App for the duration of the Term for Your internal business purposes on, as relevant, any:

- (e) Apple device You own or control and as permitted by the usage rules contained in the App Store; and/or
- (f) Android device You own or control and as permitted by the usage rules contained in Google Play.

You must not modify or delete any aspect of the App without Our prior written consent.

You agree that all users of the App must comply with the terms of this Agreement and any use in contravention of those terms will be at Your risk.

6. Operation, Maintenance and Assistance

In consideration of Your payment of the Monthly Fee and subject to You providing Us with all assistance we require, We will:

- (a) provide You with hosting for the App and a related website ([https://\[yourname\].quiksys.com.au](https://[yourname].quiksys.com.au)), daily data back-up and telephone support; and
- (b) use commercially reasonable endeavours to rectify any bugs in the App You notify to Us.

At any stage during the Term, We may alter the App provided that we provide You with prior notice. Where We elect to make such an alteration, You must provide Us with all relevant assistance we require in a timely and professional manner.

You are responsible for all operation and maintenance activities in respect of the App not otherwise included in this clause 6.

7. Postings

You acknowledge and agree that all information, photos, video, text, graphics, music, sounds, questions, creative suggestions, messages, comments, feedback, ideas, notes, drawings, articles and other materials posted, emailed, or otherwise transmitted to or on the App, whether posted at Our request or voluntarily, and whether publicly posted or privately transmitted (together, Postings) are the sole responsibility of the person who made such Postings.

We do not control Postings visible through the App and do not guarantee the accuracy, integrity or quality of such Postings and under no circumstances will We be liable in any way for any Postings (other than for content developed by Us) or for any loss or damage of any kind incurred as a result of the use of any Postings.

8. Usage Standards

You agree not to use the App to:

- (a) upload, post, email or otherwise transmit any Postings or other materials that are unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable (as determined by Us);
- (b) harm, wrongfully influence or threaten children in any way or solicit or otherwise attempt to gain any information from a minor;
- (c) impersonate any person or entity, including, but not limited to, any user of the App, a director, officer, employee, shareholder, agent or representative of Us or any other person or entity, or falsely state or otherwise misrepresent your affiliation with Us or any other person or entity;

- (d) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Postings or other materials transmitted to or through the App;
- (e) upload, post, email or otherwise transmit any Postings or other materials that:
 - (i) are not Yours, or that You do not have a right to upload, post, email or otherwise transmit;
 - (ii) infringe the Intellectual Property Rights, privacy or other proprietary rights of any person; or
 - (iii) contain viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (f) upload, post, email or otherwise transmit any unsolicited or unauthorised advertising, promotional materials, 'junk mail', 'spam', 'chain letters', 'pyramid schemes' or any other form of commercial solicitation, except in those areas that are specifically designated for such purpose;
- (g) act in a manner that negatively affects or otherwise diminishes the quality of another user's experience of the App or Us;
- (h) interfere with or disrupt the App or servers or networks connected to the App, or disobey any requirements, procedures, policies or regulations of networks connected to the App;
- (i) intentionally or unintentionally violate any applicable law; or
- (j) access or attempt to access another user's account without his or her consent.

9. Title to the App

Title to and all Intellectual Property Rights in the App shall at all times reside in Us. Other than the licence granted to You in clause 5, no other right is granted in the App to You as a result of the parties' entry into this Agreement.

You acknowledge and agree that damages may be an inadequate remedy and agree that We may enforce our rights under this Agreement by any court of competent jurisdiction.

10. Rights in Data

Subject to compliance with Our obligations under clause 26, We, including our employees, agents and contractors, may use, reproduce, distribute and retain all data generated by, submitted to or evaluated utilising the App and all associated data residing on Our systems for the purposes of:

- (a) system and network maintenance and the diagnosis, investigation and correction of actual or suspected performance issues;
- (b) measurement or evaluation of software, services or App usage and performance;
- (c) information security;
- (d) recommending, developing or monitoring improvements, upgrades or enhancements;
- (e) performing Our obligations under this Agreement;
- (f) analysing, modelling and auditing;
- (g) protecting against and/or preventing actual or potential fraud; and/or
- (h) compliance with relevant laws.
- (i) all emails used with the systems must be valid and current

11. Fees and Payment

We will perform the Services and allow You to use the App in return for Your payment of the Fees to Us in accordance with this Agreement.

Within 5 days after the Commencement Date, We will issue You with a tax invoice in the amount of the Deposit and You must pay that amount to Us in accordance with that tax invoice within 15 days thereafter.

Within 45 days prior to the date on which We anticipate that We will complete the Services, We will issue You with a tax invoice in the amount of the Services Completion Fee and You must pay that amount to Us in accordance with that tax invoice within 15 days thereafter.

Within 5 days after the date on which We provided You with access to the App in accordance with clause 5 and on each monthly anniversary of that date thereafter, We will automatically charge the Monthly Fee for that month to Your nominated credit card or bank account. If we cannot charge that account in accordance with this Agreement for any reason, We reserve the right to terminate this Agreement on no less than 5 days' prior notice to You.

Prior to each anniversary of 1 July after the first year of the Term, We may alter the Monthly Fee that will apply for the year commencing on that date by applying the following formula to the then current Monthly Fee:

$$\text{NMF} = \text{CMF} * (\text{CLIN} / \text{PLIN})$$

where:

NMF New Monthly Fee

CMF Current Monthly Fee

CLIN the LIN last published by the ABS prior to the most recent anniversary of 1 July

PLIN means the LIN:

- (a) in the case of the first adjustment to the Monthly Fee, last published by the ABS prior to the preceding anniversary of 1 July; and
- (b) in all other cases, the CLIN used in the most recent previous adjustment to the Monthly Fee

Labour Index Number (LIN) means the index number in ABS Catalogue 6345.0, Labour Price Index, Australia Table 1: Total Hourly Rates excluding bonus for Australia, All Sectors or such other equivalent index if this index is replaced

If We do not alter the Monthly Fee in the manner contemplated above, then the then current Monthly Fee will remain unchanged for the next year of the Term commencing on 1 July.

12. Other Fees

In addition to paying Us the Fees, You are responsible for paying all fees and charges associated with executing this Agreement, providing the Information and Graphics to Us and using the App, including, all legal and transaction fees and costs associated with telephone access lines, internet service provider fees and telephone and computer equipment.

13. GST

Despite the definition of 'consideration' in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and unless otherwise stated in this Agreement, consideration to be provided under or in accordance with this Agreement is exclusive of GST.

If any consideration given by a party (Payer) in connection with this Agreement does not include GST and is consideration for a taxable supply for which the party who makes the supply (Supplier) is liable for GST, the Payer must, at the same time as the consideration is given, pay the Supplier an additional amount equal to the consideration multiplied by the then current rate of GST.

14. Security

You are responsible for maintaining the confidentiality of your password and user account information and must notify Us immediately of any known or suspected:

- (a) unauthorised use of the App or Your account;
- (b) breach of security, including loss, theft or unauthorised disclosure of Your or anyone else's password, credit card or bank account information.

In the event of a breach of security by You, You are liable for all related unauthorised use.

If Your nominated:

- (c) credit card expires or is cancelled, lost or subject to use without Your authorisation; or
- (d) bank account is closed or deactivated,

You must notify us immediately.

15. Indemnity

You shall defend, indemnify and hold Us (including Our subsidiaries and affiliates and their and Our employees, officers and agents (the **Indemnified Parties**)) harmless from any and all claims, damages, losses, liabilities, costs and expenses (including legal fees on an indemnity basis) arising out of or in connection with Your breach of this Agreement, the improper use of the App or the infringement of any Intellectual Property Right or other right of any person however, such liability will be reduced proportionally to the extent that a negligent act or omission of an Indemnified Party contributed to the relevant claim.

Each indemnity in this Agreement is continuing, separate and independent from Your other obligations and survives the expiry or termination of this Agreement.

16. Limitation of Liability

Subject to any rights You may have under the Australian Consumer Law (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) and its state and territory equivalents (together, the **Consumer Laws**):

- (a) the App and Services are provided to You on an 'as is' basis and without any express or implied warranties (including as to functionality, uninterrupted or error-free usage and that the App will be free of viruses or other harmful components);
- (b) We disclaim all warranties, express or implied, including warranties of merchantability and fitness for purpose, results, title, compatibility, security, accuracy and non-infringement, including as a result of any advice provided to You by or on Our behalf;
- (c) Your use of the App is at Your sole risk and, as between You and Us, You are solely responsible for any loss or damage that results from such use;
- (d) We will have no liability to You or any of Your employees, agents, officers or contractors for any of the following under or arising out of this Agreement or Your or their use of the App:
 - (i) loss of revenue, use, data, production, goodwill, profit, income, business, contract or anticipated savings;
 - (ii) financing costs or increase in operating costs;
 - (iii) unauthorised access to or alteration of Your or any of Your client's transmissions or data; or
 - (iv) other financial or economic loss or any other special or indirect loss or damage,

and We limit Our liability to You and Your employees, officers, agents and contractors:

- (e) for any breach of a condition or warranty implied by a Consumer Law to, at Our option, repairing or replacing the App or having it repaired or replaced by a third party; and
- (f) in all other instances, a total of \$50.

17. Assignment, Novation and Sublicensing

You must not:

- (a) assign, sublicense, rent, lease, reproduce, distribute, convey or otherwise transfer to any third party or dispose of any or all of the App, other than as permitted by this Agreement; or
- (b) translate, convert to another programming language, decompile, reverse engineer or disassemble any or all of the App.

We may transfer any or all of Our rights and obligations under this Agreement and this Agreement will inure to the benefit of Our successors, assigns and licensees.

18. Waiver

Any failure on Our part to insist upon or enforce the strict performance of any provision of this Agreement, or to exercise any right under this Agreement, will not be construed as a waiver or relinquishment to any extent of Our right to assert or rely upon any such provision or right in that or any other instance.

19. Amendment of Agreement

We may, in Our sole discretion, change, modify, add or remove clauses of this Agreement at any time. We will notify You in writing of any such changes.

20. Dispute Resolution

- (a) If a dispute arises under this Agreement, either party may issue a written dispute notice to the other (setting out details of the dispute) requesting that a settlement meeting take place.
- (b) Within 7 days after a notice is received by a party in accordance with clause 20(a), senior representatives from each party must meet to endeavour to resolve the dispute in good faith.
- (c) If a dispute is not resolved within 15 days after the meeting referred to in clause 20(b), either party may commence litigation to resolve it.
- (d) Nothing in this clause 20 prejudices the right of a party to commence legal proceedings at any time to seek injunctive or urgent declaratory relief.

21. Default and Termination

- (a) If You commit a material breach of this Agreement, We may give You a written notice to show cause which states:
 - (i) the alleged substantial breach;
 - (ii) that You are required to show cause in writing; and
 - (iii) the time by which You must do so.
- (b) If You fail to show cause by the stated time, We may terminate this Agreement by written notice to You.

22. Termination for Insolvency

If We determine (acting reasonably) that You are or are likely to soon be insolvent or financially unable to proceed with this Agreement, We may immediately terminate this Agreement by written notice to You.

23. Termination for Convenience

- (a) Without prejudice to Our other rights under this Agreement, We may at any time, for Our sole convenience and by written notice to You,

terminate this Agreement effective from the time and date stated in the notice.

- (b) If We terminate this Agreement under clause 23(a), Our sole liability to You is to refund the unused portion of any prepaid Monthly Fee.

24. Effect of Termination

If We terminate this Agreement in accordance with clause 21 or 22, You agree that We:

- (a) may immediately deactivate Your use of the App; and
- (b) to the extent permitted by law, shall not be liable to You or any third party for any such termination or deactivation.

25. Force Majeure

Other than the obligation to pay amounts due and owing under this Agreement, the obligations of the parties under this Agreement will be suspended to the extent affected by the effects of a Force Majeure Event from the date a party gives the other party written notice of the event until cessation of the relevant effects of the Force Majeure Event.

26. Confidentiality

- (a) Subject to clause 26(b), each party must not, whether before or after the end of the Term, without the other party's prior written consent, divulge or permit the receiving party's employees, agents, officers or contractors to divulge to any person (other than to its employees, agents, officers or contractors who require such information to properly perform their obligations under this Agreement and provided that they are informed of and comply with the obligations set out in this clause 26) any Confidential Information of the other party.
- (b) The restrictions imposed by clause 26(a) do not apply to the disclosure of Confidential Information which is:
 - (i) made public through no default of the receiving party or any of its employees, agents, officers or contractors; or
 - (ii) required to be disclosed by law.

27. Media

You must not disclose information concerning the App or Us to any media without Our prior written approval and must refer any enquiries to Us.

28. Privacy

As and to the extent required by law, each party agrees to maintain at all times during the Term, appropriate measures to:

- (a) provide for the security and confidentiality of all Personal Information received by it as a result of this Agreement;
- (b) address any Security Incident with prompt and effective corrective action, including cooperating with the other party in its investigation and remedy, as well as prompt disclosure and notification;
- (c) provide for the security and integrity of all computer systems and networks on which Personal Information is stored or transmitted;
- (d) provide for the secure and confidential disposal or destruction of Personal Information in such a manner as to reasonably protect against unauthorised access or use; and
- (e) instruct its employees, agents and contractors who may receive Personal Information about Your obligations under this clause 28 and the procedures necessary to fulfil them.

You must also comply with all of Our obligations under the *Privacy Act 1988* (Cth), *Privacy and Personal Information Protection Act 1998* (NSW) and all other relevant rules, orders, directives, codes and similar instruments as if You were Us.

29. Notices

A notice or other communication under this Deed is only effective if it is in writing, signed by an authorised representative of the issuing party, addressed to the other party's authorised representative and either left at the addressee's address or sent to the addressee by mail or email. If:

- (a) left at the addressee's address, it is taken to have been immediately received;
- (b) sent by mail, it is taken to have been received 5 days after posting; or
- (c) sent by email, it is taken to have been received at the time when the recipient issues a return email confirming receipt (which it must do immediately).

30. Relationship

- (a) Nothing in this Agreement:
 - (i) creates or is intended to create any representative, joint venture, partnership, agency, trust or other fiduciary or employment relationship; or
 - (ii) is to be construed as creating or requiring any continuing relationship between the parties after the end of the Term.
- (b) You must not act for or bind Us, nor do You have any right to hold yourself out as having the authority or right to do so.

31. App Store and Google Play

Notwithstanding that access to the App has been provided to You via the App Store and/or Google Play, You acknowledge and agree that:

- (a) this Agreement is concluded between You and Us and not between You and Apple or You and Google;
- (b) neither Apple nor Google have any responsibility for providing any maintenance and support services in respect of the App;
- (c) neither Apple nor Google provide any warranties, whether express or implied and neither Apple nor Google will have any liability for claims, losses, liabilities, damages, costs or expenses attributable to any failure by the App to conform to any warranty;
- (d) in the event of any third party claim that the App or Your possession and use of the App infringes that third party's Intellectual Property Rights, You, not Apple nor Google, will be solely responsible for the investigation, defence, settlement and discharge of any such claim;
- (e) neither Apple nor Google are responsible for addressing any claim by You or any third party

relating to the App or Your possession and/or use of the App, including, but not limited to:

- (i) product liability claims;
 - (ii) any claim that the App fails to conform to any applicable law; and
 - (iii) claims arising under consumer protection or similar legislation;
- (f) any costs involved for app modifications due to changes by Apple, Google or any other third party will be the sole responsibility of You (excludes APK Version updates)
 - (g) Apple and Google and their subsidiaries are third party beneficiaries of this Agreement and have the right (and will be deemed to have accepted the right) to enforce this Agreement against You as a third party beneficiary; and
 - (h) You will comply with all relevant App Store and Google Play user terms and conditions (as appropriate and as may be amended from time-to-time) and such terms will override the terms of this Agreement to the extent of any inconsistency.

32. Governing law

This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.

33. Joint and Several Obligations and Liabilities

If You are comprised of two or more persons (whether as a joint venture, consortium, partnership or other unincorporated grouping):

- (a) Your obligations and liabilities under this Agreement bind those persons jointly and severally;
- (b) those persons must notify Us of their leader, who must have authority to bind You and each of those persons; and
- (c) You must not alter its composition or legal status without Our prior written consent.

34. Severability

If any provision of this Agreement is declared or found to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions.

35. Counterparts

This Agreement may be executed in a number of counterparts and all such counterparts taken together will be deemed to constitute one and the same agreement.

36. Further Assurances

You will at Your cost immediately on demand by Us perform all acts and execute all agreements and other documents We require to perfect the rights and powers created or intended to be created by this Agreement.

37. Survival

Clauses 1, 3, 5 - 20, 24 and 26 - 37 survive the termination or expiration of this Deed.

38. User Access

Access to the App must strictly be to your customers or employees only. Giving access to persons that are not a legitimate customer or employee is breach of this agreement.

Access to the administration panel is strictly limited to employees of the business that enters into or accepts this agreement. To allow access to individuals that are not employees is in breach of this agreement.