

NIDAC PTY LTD – DOWNLOADABLE SOFTWARE TERMS OF USE

PLEASE READ THE FOLLOWING TERMS CAREFULLY BEFORE ACCESSING OR USING ANY NIDAC DOWNLOADABLE SOFTWARE (THE “SOFTWARE”).

NIDAC PTY LTD, PROVIDES ACCESS TO AND USE OF THE SOFTWARE SUBJECT TO THESE TERMS. BY ACCESSING OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THESE TERMS.

1. In these Terms:
 - (a) “**Australian Consumer Law**” means the Australian Consumer Law as contained in the *Competition and Consumer Act 2010* (Cth);
 - (b) “**Implied Term**” means a term implied into these Terms by consumer protection legislation and which such legislation prohibits from being excluded, restricted or modified, including for example guarantees provided under the Australian Consumer Law;
 - (c) “**Licence**” means a licence granted under **clause 8**;
 - (d) “**Our IP**” means Our intellectual property, including all intellectual property rights (including present and future intellectual property rights) in and relating to the Software and all intellectual property created pursuant to or in contemplation of these Terms;
 - (e) “**Software**” means any downloadable software (including firmware) made available on the nidac.com website in relation to products made by Us or services supplied by Us, and includes any new releases, updates and accompanying documentation that We may make publicly available from time to time;
 - (f) “**Terms**” means these terms of use;
 - (g) “**We, Us, Our**” means NIDAC Pty Ltd ACN 004 933 242;
 - (h) “**You, Your**” means a person who uses the Software and may include an individual, a company, a partnership, an association, an organization or an agency or department;
 - (i) “**Your Data**” means data owned or generated by or on behalf of You or Your People, where such data relates solely to You, Your business or operations or Your People (as the case may be). Your Data expressly excludes any material comprising a good or service supplied by Us, Our data and Our IP;
 - (j) “**Your People**” means people whom You permit or authorize to use the Software (subject to the Licence), such as Your members, employees, contractors and agents.

Use of the Software

2. These Terms commence when You first use or register to use the Software and shall continue to govern Your use of the Software.
3. The Software and its contents are subject to copyright and are protected by Australian and international copyright laws. The compilation (including the collection, organization and display of all content on the Software) is the exclusive property of Us and may be used only in accordance with the Licence. All trade marks, signs, logos and get-up (“**marks**”) contained on the Software and relating to Our business are owned by Us. You must not use such marks without Our prior written consent.
4. We are unable to guarantee that any file made available for download from Our website is free from viruses or other conditions which could damage or interfere with data, hardware or software. You assume all risk of files downloaded and used from this site and release Us from all responsibility and liability arising from their use.

Intellectual property rights and Licence

5. We or a company within Our corporate group own all intellectual property rights in Our IP.
6. You acknowledge and agree that:
 - (a) You acquire no right, title or interest in any of Our IP, or any intellectual property used or supplied by Us to You or any other party, at any time regardless of whether the intellectual property was created prior to or during the term of these Terms;
 - (b) nothing in these Terms has the effect of granting, transferring to or vesting in You any right, title or interest in such intellectual property;
 - (c) You shall do all things reasonably required by Us, and to procure that the Your representatives do so also, to enable Us to obtain, defend and enforce Our rights in such intellectual property; and
 - (d) You shall not do or fail to do any act or thing which would or might prejudice Our rights under this clause.
7. Notwithstanding anything to the contrary in these Terms, no clause will operate to assign or provide for the assignment of any intellectual property to You or to any third person.
8. Subject to these Terms, We grant to You a worldwide, non-transferable, non-exclusive, perpetual licence to use the Software.
9. We warrant that We have the authority to grant the Licence.
10. You must not (directly or indirectly, whether for personal gain, commercial gain, training purposes or otherwise), nor attempt to (and You must ensure that each of Your People does not, or attempt to):

- (a) reverse engineer, disassemble, decompile or re-create the source code relating to Our IP;
 - (b) copy, translate, modify or create derivative works based on Our IP or accompanying written materials;
 - (c) distribute, sell, assign, pledge, sublicense, lease, deliver or otherwise transfer or grant access to Our IP nor permit any other person to do any of the foregoing;
 - (d) remove from Our IP any of the trademarks, trade names, logos, patent or copyright notices or marking or add any other notices or markings or add any other notices or markings to Our IP.
11. As licensee, You only own the magnetic or other physical media on which Our IP is recorded or fixed, and We shall retain ownership of all patents, copyrights, trademarks, trade names, trade secrets and other proprietary rights relating to or residing in Our IP.

Warranties and liability

12. You warrant to Us that:
- (a) all information supplied by You is true and correct;
 - (b) You have made all necessary enquiries and satisfied Yourself regarding the suitability of the Software for Your purposes;
 - (c) You will not use the Software in breach of any law or any person's rights (including intellectual property rights);
 - (d) in the case of an individual entering into these Terms on behalf of a company, partnership, an association, an organization or an agency or department, You are authorized to enter into these Terms in that capacity; and
 - (e) You will use the Software only for the purposes stated in these Terms, and in the product description for the Software.
13. You must fully indemnify and save harmless Us and Our related bodies corporate and Our suppliers and their respective officers, employees, contractors and agents (the "**Indemnified Persons**") from any claim, loss, injury, damage, fine, penalty, liability, costs or expenses whatsoever suffered or incurred by an Indemnified Person arising from or in connection with:
- (a) any information provided by or on behalf of You or Your People;
 - (b) the use of the Software by You or Your People;
 - (c) any alleged breach of a person's rights (including, but not limited to, defamation, intellectual property and privacy rights) in respect of the use of the Software by Your or Your People; and
 - (d) any breach of these Terms by You or Your People.
14. All Implied Terms are expressly included in these Terms. All other terms which might otherwise be implied into these Terms, are excluded.
15. Our liability in respect of a breach of an Implied Term relating to the supply of any goods or services or **clause 14** is to the full extent permitted by law limited to, at Our option:
- (a) in the case of goods, any one or more of the following: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; and the payment of the cost of having the goods repaired; and
 - (b) in the case of services: the supply of the services again; or the payment of the cost of having the services supplied again.
16. Subject to the Australian Consumer Law, You agree that Our maximum aggregate liability in relation to any claim, loss or damage, whether arising under or in relation to these Terms, any tortious act or omission (including negligence) or under common law or statute, is excluded and (if it cannot be excluded) is otherwise limited to the amount that You have actually paid Us in the two months prior to the event giving rise to the claim.
17. Subject to sub-sections 259(4) and 267(4) of the Australian Consumer Law in relation to an Implied Term, in no event will We be liable to You or to any other person for any indirect, special, incidental, consequential, punitive or other like loss or damage whatsoever, loss of profit or loss of data, whether or not such person was advised of the possibility of such loss or damage, in relation to these Terms.
18. Nothing in the Software constitutes advice of any type. Information contained in the Software and on our website is provided on an "as is" basis. We are not required to provide such advice or information under these Terms and You shall make Your own enquiries as to the appropriateness and correctness of such. Subject to these Terms, We shall not be responsible for loss or damage occasioned by You in reliance thereof.
19. We disclaim, to the maximum extent permitted by law, all responsibility and liability arising directly or indirectly from any use of material contained or referred to in the Software, including any errors, omissions or harmful components.
20. Subject to **clause 14**, We do not warrant that the Software or any service will be uninterrupted or error-free, or that any content are accurate, complete, reliable, current, or error-free.

21. We do not warrant that the Software will be compatible with any hardware and software which You may use, other than the hardware and software which we expressly provide for use with the Software.

Data backup and security

22. You must ensure that appropriate data security measures are taken in relation to Your Data, having regard to the criticality of the data, including using appropriate firewall and encryption technologies, applying latest security patches, disabling any unnecessary ports, routine backup, having multiple backups and/or redundant backups, archiving Your Data, and conducting regular security audits.

Your responsibilities

23. You must (and You must ensure that Your People):

- (a) comply with all policies (including any acceptable use policy and privacy policy) in relation to the Software, as published by Us from time to time.
- (b) ensure that the Software is used solely for its intended purpose;
- (c) not permit any other person (other than Your People) to use the Software and must not re-sell or purport to re-sell the Software.
- (d) ensure there is no unauthorized access, or harm caused, to Our computer system or network or those of Our suppliers;
- (e) not commit, cause or allow any breach (or do anything which might put Us in breach) of any law, regulation, government direction or industry standard or code;
- (f) not use the Software to breach a person's rights (including committing defamation or infringing a person's intellectual property or privacy rights);
- (g) be solely responsible for arranging, maintaining and configuring all communications services, system resources and other equipment and services needed to access the Software in accordance with Your requirements, including without limitation:
 - (i) adequate bandwidth;
 - (ii) adequate infrastructure specification and configuration, including data storage and capability to handle the data load and integration with the Software; and
 - (iii) maintenance of firewalls to ensure integration with the Software is possible and available;
- (h) be responsible for the timely and accurate notification to Us of any defect in the Software or other issue which may give rise to a warranty or consumer claim.

24. You must ensure that each of Your People complies with each term in these Terms that is applicable to them. You shall be vicariously liable and responsible to (and You fully must fully indemnify and save harmless) Us in respect of each of Your People's use of any good or service (including the Software and including in circumstances where Your People have the benefit of any such good or service) and compliance with such terms.

Your Data and use of information

25. For the avoidance of doubt, Your Data (including all intellectual property rights in Your Data) shall be owned by You (or Your People, as applicable).

26. Consent to Use of Data: You agree that We may collect and use technical data and related information (including but not limited to technical information about Your device, system and application software, and peripherals) that is gathered periodically to facilitate the provision of software updates, product support, and other services to You (if any) related to the Software. We may use this information, as long as it is in a form that does not personally identify You, to improve Our products and services or to provide services or technologies to You.

27. Usage data (including metadata and customer usage) may be generated by the use of the Software, in which case:

- (a) where applicable, all right, title and interest in such usage data is retained by You (or Your People, as applicable);
- (b) You grant Us a perpetual, non-exclusive, transferable, sub-licensable, royalty-free, worldwide licence to use such data; and
- (c) You consent to Our use of such data (and to provide such data to others) for Our internal business purposes, for marketing purposes, for market analysis, to analyze customer trends and where required by law.

28. We are not obliged to review or monitor any of Your (or Your People's) use of the Software (including Your Data), although We may do so if such use violates any clause contained in these Terms, or if required by law.

29. You authorize Us to use and provide personal information to Our suppliers or sales channels to the extent necessary to fulfil Our obligations under these Terms.

30. We may also collect Your personal information and use it for the following purposes:

- (a) for marketing purposes, including to provide information about goods or services which We or any of Our suppliers or related bodies corporate or affiliates may offer;

- (b) to disclose to credit reference associations and credit reporting agencies for the purpose of providing services or other credit providers providing services;
 - (c) for the purpose of engaging with, assisting and fulfilling Our obligations to third party suppliers;
 - (d) for purposes related to or arising out of Our provision of services and credit or commercial credit.
31. You give Your consent to the types of use of information described in these Terms. You give Your consent to Us sending electronic messages (including commercial electronic messages) within the meaning of the *Spam Act 2003* (Cth), to You.

General

32. These Terms and Our policies regarding the Software are subject to change by Us from time to time. Any such change shall be uploaded to Our website and We may require You to accept any changed Terms.
33. You grant Us a licence to use Your name and logo for the purpose of indicating that You are a customer of Us, provided that We shall not use such name or logo as a trade mark.
34. We will not be responsible for any delay or failure to perform Our obligations under these Terms caused by any act beyond Our control including without limitation acts of God, wars, strikes, natural disasters, delay or default of any person.
35. Any provision which by its nature would survive termination or expiry of these Terms (including without limitation any exclusion or limitation of liability or indemnity in these Terms) shall survive termination or expiry of these Terms.
36. If any clause or part of these Terms is held to be void, illegal or unenforceable for any reason, it shall be deemed to be severed from these Terms without affecting any other clause or part of these Terms.
37. These Terms contain the entire agreement of the parties with respect to its subject matter. They set out the only conduct relied on by the parties and supersede all earlier conduct and negotiations by the parties with respect to their subject matter.
38. Any right under these Terms may not be waived or varied except in writing signed by the person to be bound.
39. We may assign or novate any of Our rights or obligations under these Terms and You give Your consent to such assignment or novation.
40. The agreement governed by these Terms is governed by the laws of Victoria, Australia. You irrevocably submit to the jurisdiction of courts and tribunals in the State of Victoria.
41. The Software may be accessed throughout Australia and internationally. We make no representations that the content of the Software complies with the laws, including intellectual property laws, of any country other than Australia. If You access this site or use the Software from outside Australia, You do so at Your own risk and are responsible for complying with all applicable laws.