



MULTI-USER LICENSE AGREEMENT FOR THE ACTION MANAGEMENT SYSTEM

THIS USER LICENSE IS ISSUED BY BUSINESS ASSOCIATES NETWORK PTY LTD (“BAN”) AND INCLUDES THE TERMS ENTITLED "PROCESS & SOFTWARE USER LICENSE AGREEMENT FOR THE ACTION MANAGEMENT SYSTEM" ON PAGE 2 AND CONSTITUTES A LICENSE FOR THE "BUSINESS UNIT" TO IMPLEMENT THE ACTION MANAGEMENT SYSTEM WITHIN ITS BUSINESS USING THE AMS-C SYSTEM.

- (1) **BUSINESS UNIT (“Licensee”):** _____
 ADDRESS: _____
 SUBURB: _____
 STATE & POSTCODE: _____
 COUNTRY: _____

(2) **LICENCE AND CONNECTION FEES:**

Permitted Number of Concurrent Users	AMS-C Product Licence Fee (in AUS\$ excl. GST)	Monthly Connection Fees (in AUS \$ excl. GST)
()	\$	\$

Additional Concurrent Users may be added at any time for an additional Product License Fee per user and an additional Connection Fee per user.

- (3) **PROFESSIONAL SERVICES** (see Page 2 for details):
 All Professional Services delivered with the Action Management System are provided by an Authorised Representative of BAN under a separate agreement between the parties.

(4) **LICENSE TERM:**

(5) **Start Date of Licence Term:**

SIGNED for and on behalf of the Business Unit
 (Authorised Signature) (Print Name)

SIGNED for and on behalf of BAN
 (Authorised Signature) (Print Name)

AMS-C SOFTWARE USER LICENCE AGREEMENT FOR THE ACTION MANAGEMENT SYSTEM

This Multi-User Licence Agreement is authorised by Business Associates Network Pty Ltd ("BAN") who are the owners of the Action Management System ("AMS"). This Agreement licenses the Business Unit with the right to use the AMS-C Software within the Business Unit.

1. DEFINITIONS

The following terms in this Agreement have the following meanings:

"ACTION MANAGEMENT SYSTEM" ("AMS") means the combination of the management methodology, process, documentation, and Internet-based AMS-C software licensed under this Agreement as at the date of this Agreement (including any upgrades provided by BAN pursuant to clause 5 of this Agreement);
"Agreement" or **"Multi-User Licence"** means this 2-page Agreement that includes this page and must be signed by every Business Unit that implements AMS;
"Territory" means Australia and New Zealand;
"Business Unit" means the individual, division, company, partnership, unincorporated body or other body corporate, as the case may be, which is named on page one of this Agreement, but excludes any and all other divisions, companies, partnerships, unincorporated bodies or other bodies corporate which are related to or connected with such Business Unit also known as the Licensee;
"Licence" means the licence granted pursuant to clause 2 of this Agreement;
"Licence Fee" means the total of AMS-C Product Licence Fee and the Connection and Hosting Fees charged to the Business Unit for the Licence under this Agreement;
"Licence Term" means, unless this Agreement is otherwise terminated, the period specified in clause 9;
"Permitted Number of Concurrent Users" means the maximum number of the users within the Business Unit that are permitted to simultaneously use the AMS software over the Internet for the Licence Fee charged;
"Professional Services" means the training, project management and/or consulting services provided to the Licensee by BAN or their accredited representative specified under a separate agreement;
"Services Fees" means the fees for Professional Services described under a separate agreement;
"AMS Software" means the Internet-based AMS-C computer software licensed by BAN under the name of the Action Management System that is in production use as at the date of this Agreement (including any upgrades provided during the Licence Term and pursuant to clause 6 of this Agreement);
"to use" in relation to AMS Software, means to run the software through an Internet Explorer browser (version 6.0 or later) on any computer, and cause data to be transferred, copied or transmitted to and/or from the Business Unit for the purpose of enabling system instructions or statements embodied within the AMS Software to be processed by any person within the Business Unit;
"User Documentation" means any instructional material supplied within the AMS;
References in this Agreement to persons include all bodies having legal capacity.
References in this Agreement to one gender include all genders and words importing the singular include the plural.

2. LICENCE

2.1 BAN grants the Licensee a non-exclusive licence to use the AMS within its Business Unit determined by the Permitted Number of Users within the Business Unit.
2.2 If the Business Unit expands and the Permitted Number of Users needs to be increased, then the Licensee must pay an additional fee that is published by BAN at that time. The additional fee shall depend upon the number of additional concurrent users required.
2.3 The Licence shall continue in force for the duration of the Licence Term subject to the Licensee paying the Hosting Fees in respect of each month of the Licence Term.

3. LICENCE RESTRICTIONS

The Licensee must not itself do, or authorise any other person other than BAN to do or cause to be done, directly or indirectly by any act or omission, any of the following:
3.1 copy or reproduce any part of the AMS for use outside of the Business Unit;
3.2 make any translation, adaptation or version of the AMS;
3.3 reverse-engineer, decompile, disassemble or modify AMS Software in any way or computerise or create alternative forms of (or of applying) AMS;
3.4 transmit AMS Software or any part thereof, via telecommunications or use or offer the use of the AMS via or in connection with any service bureau, facilities management or outsourcing arrangement provided by the Licensee that has not been authorised in writing by BAN;
3.5 sell, license, lend, lease, rent or otherwise transfer any right or title in the AMS; and
3.6 in any way rely on the AMS as may be modified, enhanced, revised or updated from time to time, to develop a computer program with the same or similar functionality to AMS or any work embodied in the AMS.

4. PROFESSIONAL SERVICES

4.1 BAN shall supply any Professional Services to the Licensee under the terms of a separate Agreement.
4.2 In addition to payment of any Professional Services fees, the Licensee shall reimburse BAN for all reasonable travel and accommodation expenses incurred in delivering the Professional Services.
4.3 The period of supply of the Professional Services shall be specified under a separate Agreement.
4.4 Subject to otherwise complying with its obligations under this Agreement, BAN shall reasonably determine the most appropriate and effective manner of providing any Professional Services and satisfying the Licensee's expectations of those services.
4.5 In performing any Professional Services, BAN will comply with the Licensee's reasonable security requirements.

5. TECHNICAL SUPPORT AND UPGRADES

5.1 Payment of the Licence Fees in respect of the Licence Term in accordance with this Agreement entitles the Licensee to use upgraded versions of AMS at no charge during the Licence Term, as specified in clauses 5.2 and 5.3 respectively, in accordance with this clause.
5.2 If the Licensee requests assistance or advice from BAN as to the use of AMS, BAN will use its reasonable endeavours to respond in a timely manner by providing such assistance or advice as is reasonably appropriate to satisfy the Licensee's request. Email support is provided at no charge within the scope of this Agreement. On-site support from BAN is available on request at the hourly rate specified by BAN at the time of the request.
5.3 If BAN makes any upgrades to AMS then BAN will advise the Licensee of the functionality of these upgrades and make these available to the Licensee during the Licence Term. Any upgrades to the Licensee's implementation of AMS must be undertaken by the Licensee however any Professional Services fees or expenses that may be recommended with the implementation of such upgrades are at the Licensee's discretion.

6. WARRANTIES AND ACKNOWLEDGMENTS

6.1 BAN warrants that it is authorised to grant the Licence.
6.2 Subject to clause 7, BAN warrants that the AMS-C Software will perform substantially in conformance with the User Documentation provided within the system.
6.3 The Licensee acknowledges that the quality of results produced by the use of the AMS and the supply of any Professional Services depends upon the quality of information supplied by the Licensee.
6.4 The Licensee warrants that it has not relied on any representation made by BAN which has not been stated expressly in this Agreement.
6.5 The Licensee warrants that it shall conduct such tests and virus scanning as may be necessary, prior to the use of AMS, to ensure that files within the AMS do not contain any virus and that the use of AMS will not in any way corrupt the Licensee's data or systems or those of any other person.

7. LIMITATION OF LIABILITY

7.1 Except as expressly provided to the contrary in this Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Professional Services, the AMS or to this Agreement, are excluded. Without limiting the generality of the preceding sentence, but subject to clause 7.3, BAN shall not be under any liability to the Licensee in respect of any loss or damage (including special, indirect, punitive and consequential loss or damage) however caused (whether by negligence or otherwise), which may be suffered or incurred or which may arise directly or indirectly in respect of this Agreement (for example, because of the failure of BAN to comply with its obligations under this Agreement or because the Licensee's use of the AMS or the Professional Services have not improved the Licensee's business or profitability).
7.2 Subject to clause 7.3, the liability of BAN to the Licensee, for all acts or omissions on any grounds whatsoever, whether for breach of this Agreement, in negligence or otherwise shall be limited, in aggregate, to the Licence Fee for the Licence Term during which the act or omission which caused the liability occurred.

7.3 Where any Act of Parliament implies in this Agreement any term, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of liability under such term, such term shall be deemed to be included in this Agreement. However, the liability of BAN for any breach of such term shall, if permitted by that Act, be limited, at the option of BAN, to any one or more of the following:

7.4 if the breach relates to goods:
7.4.1 the replacement of the goods or the supply of equivalent goods;
7.4.2 the repair of such goods;
7.4.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or
7.4.4 the payment of the cost of having the goods repaired;
7.5 if the breach relates to services:
7.5.1 the supplying of the services again; or
7.5.2 the payment of the cost of having the services supplied again.

8. PAYMENT OF FEES

8.1 If the Licensee is acquiring a Licence under this Agreement, the Licensee must pay the Licence Fee in the manner specified in the Multi-User Licence and otherwise in accordance with this clause 8.
8.2 Subject to clause 8.1, all amounts to be paid by the Licensee under this Agreement must be paid by the Licensee within 14 days of BAN's invoice.
8.3 If the Licensee requests BAN to perform any additional Professional Services, the Licensee shall pay BAN an additional fee for such services in accordance with BAN's then current rates applicable to such services.
8.4 The Professional Services Fees and Licence Fees and the additional charges referred to in clause 8.3 are exclusive of all charges other than income tax payable by BAN, GST, duties, customs, tariffs, imposts and all other government charges relating to the subject matter of this Agreement. The Licensee must pay those charges as and when they become due.
8.5 BAN may increase any fee or charge under this Agreement upon 30 days notice to the Licensee.

9. LICENCE TERM

The Licence Term will commence on the Start Date of Licence Term and the Licence and will continue for a minimum of two (2) year s or the period stated in paragraph (4) on page one whichever is the greater after which time the Licence Term may be extended at the sole discretion of the Licensee.

10. TERMINATION

10.1 BAN may terminate this Agreement immediately by notice in writing if:
10.1.1 the Licensee breaches any clause of this Agreement and such breach is not remedied within 14 days of written notice by BAN;
10.1.2 the Licensee becomes unable to pay its debts as and when they fall due;
10.1.3 the Licensee becomes, threatens or resolves to become or is in jeopardy of becoming, subject to any form of insolvency procedure or administration; or
10.1.4 the Licensee, being a partnership, dissolves, threatens, or resolves to dissolve or is in jeopardy of dissolving.
10.2 If notice is given to the Licensee in accordance with this clause, BAN may, in addition to terminating this Agreement;
10.2.1 take possession of all copies of AMS material in the possession, custody or control of the Licensee;
10.2.2 retain any moneys paid;
10.2.3 charge a reasonable sum for work performed by BAN in respect of which no sum has previously been charged;
10.2.4 be regarded as discharged from any further obligations under this Agreement; and
10.2.5 pursue any additional or alternative remedies available under statute at law or in equity.
10.3 Upon termination of the Licence, the Licensee shall immediately furnish to BAN, or dispose of at the direction of BAN, all copies of AMS material and after it has done so, shall immediately furnish BAN with written notification that all copies of AMS material in its possession, custody, or control have been so returned or disposed of.
10.4 BAN may immediately terminate this Agreement if it is no longer authorised to distribute or market the AMS but, in that event, must refer to the Licensee an amount paid by the Licensee for any services which have not, at the termination date, been performed.
10.5 The Licensee may terminate the Agreement at any time by giving 90 days notice in writing to BAN.
10.6 The Licence will be revoked upon termination of this Agreement.

11. CONFIDENTIALITY

11.1 Neither party shall disclose or cause to be disclosed any information relating to the other party's business affairs or technology ("Confidential Information") to a third party.
11.2 Either party may only make use of Confidential Information of the other to the extent necessary to enable it to exercise its rights and perform its obligations in a manner reasonably contemplated by this Agreement.
11.3 If a party permits the other to disclose Confidential Information to a third party, then the discloser shall ensure that the third party is bound to the other party, in respect of such Confidential Information on terms which are no less favourable to that other party than those contained in this clause 11.
11.4 The Licensee's obligations under this clause 11 survive the termination of this Agreement but cease in relation to any information which has become public knowledge.
11.5 In addition to clauses 11.1 to 11.4 above, BAN shall use its best endeavours to ensure that each of its personnel who have access to the Licensee's Confidential Information also sign BAN's standard confidentiality agreement.

12. SECURITY

12.1 The Licensee and BAN will be jointly responsible for the security and safekeeping of AMS material.
12.2 BAN will be responsible to ensure that any Licensee data stored within AMS is backed-up daily and is protected at all times from access, use or misuse, damage or destruction by any person
12.3 In addition to clause 12.2 the Licensee is also required to keep a back-up copy of any data files uploaded on to the AMS server and linked to the AMS Software.

13. RISK

No risk of loss or damage to the Licensee or Licensee data passes to BAN upon the licensing of the AMS.

14. ASSIGNMENT

Neither the benefit nor the burden of this Agreement may be dealt with in any way by the Licensee (whether by assignment or otherwise) without BAN's prior written consent.

15. NOTICES

15.1 Notices under this Agreement may be delivered by hand, by mail, by electronic mail, or by facsimile to the addresses specified in the Agreement.
15.2 Notice will be deemed given:
15.2.1 in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
15.2.1 in the case of posting, 3 days after dispatch;
15.2.2 in the case of electronic mail, a return email acknowledgement; or
15.2.3 in the case of facsimile, upon the production of a transmission report indicating that the facsimile was transmitted successfully.

16. GENERAL PROVISIONS

16.1 If either party is unable to fulfil its obligations under this Agreement due to causes beyond its reasonable control, that party will not be liable for failure to fulfil such obligations. If such delay exceeds 60 days, the other party may terminate this Agreement upon providing written notice to the first-mentioned party. If such notice has been given and delivery of the AMS has occurred, the Licensee must comply with BAN's directions for return or destruction of any AMS material.
16.2 Any failure or delay by either party in exercising any right or remedy under this Agreement will not constitute a waiver.
16.3 This Agreement will be governed by the laws in force in the State of New South Wales, Australia, and both parties agree to submit to the jurisdiction of the courts exercising jurisdiction in that State.
16.4 This Agreement constitutes the entire agreement between the parties with respect to the Licence to use AMS and supersedes all prior proposals and agreements, both written and oral, and all other written and oral communications and representations between the parties. This Agreement may not be varied except in writing signed by both BAN and the Licensee after approval of all variances by BAN.
16.5 Each paragraph and provision of this Agreement is severable and if one or more paragraphs or provisions are declared invalid, the remaining paragraphs and provisions will remain in full force and effect.