



**ASIGNIT LICENCE  
TERMS AND CONDITIONS**



# ASIGNIT SOFTWARE LICENCE TERMS AND CONDITIONS

The Customer acknowledges that it has read the following Terms and Conditions and agrees with the content of same and that if the Supplier agrees to provide services in accordance with the agreement, then the customer accepts all of these terms and conditions.

## SCHEDULE 1: AGREEMENT PARTICULARS

### Supplier:

Asignit Pty Ltd  
PO Box 1913  
Hervey Bay QLD 4655  
ABN: 84 604 469 187

**Commencement Date:** date of registration for a user account

## SCHEDULE 2: RATES AND PRICES

The Asignit android field application is free of charge for all registered traffic management service providers.

For access to data captured via the Asignit report centre please contact [helpdesk@asignit.com](mailto:helpdesk@asignit.com) for a quotation.

### 1. Definitions & Interpretation

(1) In these Terms and Conditions the following words and expressions shall have the following meanings:

**'Active Job Site'** means a job site created with the Software that has been edited during a Day.

**'Business Day'** means a day other than a Saturday, Sunday or a day when the banks are closed in Brisbane, Queensland;

**'Commencement Date'** means the date of registration by the Customer with the Supplier.

**'Customer Affiliate'** means:-

- (i) any entity Controlling directly or indirectly the Customer, or
- (ii) any entity which the Customer Controls, or
- (iii) any holding company of the Customer.

**'Customer Data'** means any personal information as defined in the *Privacy Act 1988 (Cth)* provided or made available to the Supplier by the Customer (including copies, summaries and excerpts in whatever form or medium) in connection with the Licence;

**'Confidential Information'** means the terms of the Licence, secret or confidential commercial, financial, marketing, technical, know-how, trade secrets and other information relating to the Customer or the Supplier in any form or medium whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part of this information;

**'Control' or 'Controlled'** means in relation to a the Customer, that the Customer shall be treated as "controlled" by another entity if that other entity (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or

otherwise) appoints (or is able to appoint) and/or removes (or is able to remove) the majority of the members of the governing body of that entity or otherwise controls or has the power to control the affairs and policies of that entity;

**'Customer'** means the organisation that has completed registration for a user account with the Supplier;

**'Data'** means all field data captured by the Customer using the Software.

**'Date Compliant'** means in relation to the Software or any part of it that neither the performance nor functionality of the Software is adversely affected by dates and in particular that in the Software:

- (a) no value for any current date will cause any interruption in operation;
- (b) date-based functionality will behave consistently for all dates;
- (c) in all interfaces and data storage, the century in any date will be specified either explicitly or by unambiguous algorithms or inferencing rules; and
- (d) all relevant years will be recognised as leap years.

**'Day'** means for the purposes of billing 12 o'clock midnight to 11:59pm the following day.

**'Device'** means any electronic device approved by the Supplier for the use of the Software;

**'Disclosing Party'** means the party to the Licence disclosing Confidential Information;

**'Documentation'** means all data or information (in whatever form and on whatever medium) which is originated, prepared or recorded by or on behalf of the Supplier or any third party or their employees, agents or sub-contractors for the purpose of describing the functions of the Software and which may reasonably be required by the Customer for the understanding and operation of the Software;

**'Error'** means any characteristic of the Software or the Documentation which means that the Software or the Documentation is not compliant with the warranties set out in Clauses 6.1(b) to 6.1(h);

**'Fees'** means the amounts due from the Customer to the Supplier for use of the Software calculated as follows:-

**'GST'** means goods and services tax levied under any GST Act;

**'GST Act'** has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 Cth (as amended) and any regulation made under that Act;

**'Insolvent'** means in relation to either party (save in relation to a corporate reorganisation, reconstruction or amalgamation) the appointment of or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver, the entering into a scheme of arrangement or composition with or for the benefit of creditors generally, any reorganisation, moratorium or other administration involving its creditors or any class of its creditors, a resolution or proposed resolution to wind it up, or becoming unable to pay its debts as and when they fall due or becoming deemed to become unable to pay its debts as and when they fall due within the meaning of the *Bankruptcy Act 1966 (Cth)* or the *Corporations Act 2001 (Cth)* (as the case may be);

**'Intellectual Property Rights'** means all intellectual property rights, including without limitation patents, registered designs, trademarks and service marks (whether registered or not), rights in the nature of unfair competition rights, copyright, database right, design rights, and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances,

computer programs, semi-conductor topographies, confidential information, business names, goodwill and the style and presentation of goods or services and applications and the right to apply for protection of any of the above rights;

**'Modification'** means any change or amendment to, or upgrade or New Version of, the Software or any New Release provided to the Customer;

**'New Release'** means any new release of any Software which from time to time is publicly marketed and offered for licensing by the Supplier or any third party in the course of their normal business;

**'New Version'** means the updating of the Software with versions that contain error fixes and/or functional changes;

**'Receiving Party'** means the party to whom Confidential Information is disclosed;

**'Software'** means the data capture, storage and management software known as Asignit;

**'Support Services'** means the support services provided by the Supplier in accordance with the Supplier's policy for providing support in relation to the Software as made available at [www.asignit.com](http://www.asignit.com).

**'Supplier'** means Asignit Pty Ltd;

**'Terms and Conditions'** means these terms and conditions;

**'Use'** means to possess, load, execute, process, develop or otherwise use and utilise the Software; and

**'Virus'** means any code which is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Software, or any other associated hardware, software, firmware, computer system or network, or would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral, or that would permit Supplier or any other person to access the Software to cause such disablement or impairment, or which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations. It includes, without limitation, computer programs commonly referred to as worms or Trojan horses.

- (2) In the interpretation of this Agreement, unless the context otherwise requires:
- (a) headings are for reference only and do not affect its meaning;
  - (b) these Terms and Conditions include the Schedules;
  - (c) references to Clauses or Schedules are to clauses of and the schedules to these Terms and Conditions;
  - (d) the singular shall include the plural and vice versa;
  - (e) references to one gender shall include references to the other;
  - (f) references to a "person" include any person, firm, the Customer, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having a separate legal personality) or two or more of the foregoing;
  - (g) any reference to any statute or legislation shall be deemed to include any amendments, re-enactments or replacements unless otherwise stated;
  - (h) A reference to "\$" or "dollars" is to Australian dollar currency except as otherwise provided in the Agreement; and

- (i) References to time within these Terms and Conditions are to Queensland Time.

## 2. Licence

- (1) In consideration of the Fees payable by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence (the "Licence"):
  - (a) to use the Software which use shall include but is not limited to:
    - (i) processing data of or for the Customer;
    - (ii) making sufficient copies of data for back-up and archival purposes;
  - (b) to access the Support Services.
- (2) Except as otherwise permitted by law or otherwise stated in these Terms and Conditions, the Customer may not in any way adapt, vary, modify, transfer, reverse assemble, reverse compile or otherwise reverse engineer the Software in whole or in part.
- (3) The Customer shall not be entitled to grant to sub-contractors including without limitation, consultants, programmers, system integrators and system maintenance, outsourcing, disaster recovery or other services, a sub-licence to use the Software solely to provide services (whether systems integration, maintenance, outsourcing, disaster recovery or other support services) under such Contractor Terms and Conditions in respect of the Software.

## 3. Payment

- (1) The Customer agrees to pay to the Supplier the Fees.
- (2) The Supplier shall issue invoices for the Fees annually for payment by the Customer.
- (3) For the purposes of this Clause 3 an invoice shall:
  - (a) be addressed to the Customer in respect of amounts payable under this Agreement;
  - (b) set out the detailed breakdown of the payment requested; and
  - (c) be a GST invoice where applicable, clearly identifying the GST element.
- (4) GST will be payable by the Customer in addition to the Fees subject to presentation to the Customer by the Supplier of a valid GST invoice and shall be clearly identified in the Supplier's invoice. The Customer agrees to settle correctly presented and valid GST invoices within 7 days of receipt of each invoice.
- (5) The Supplier shall have the right to claim interest on any Fees not paid when due, as appropriate, at the rate of 11.5% per annum, which interest shall accrue on a daily basis from the date payment becomes overdue until the Customer has made payment of the overdue amount.
- (6) The Supplier shall have the right to suspend or terminate the Customer's Licence and/or Support Services if Fees are not paid when due. Customer Data shall not be released to the Customer until payment is made. The right to suspend the Customer's Licence is without prejudice to the Supplier's right to take any other action available to the Supplier against the Customer for breach of the Licence.
- (7) The Supplier shall have the right to vary the Fees upon 14 days notice in writing to the Customer.

## 4. Delivery

- (1) Risk in the Software and Documentation, and risk in and title to the media upon which they are delivered to the Customer, shall pass to the Customer upon actual receipt by the Customer.

## 5. Configuration and Training

- (1) Configuration of the Software shall be on devices provided by the Customer.
- (2) Following configuration the Supplier shall, during the term of this Agreement, make available to the Customer on the Customer's request adequate training for Use of the Software at such rates determined by the Supplier from time to time. The Supplier does not provide Support Services to Customer's employees or agents engaged in the use of the Software in the field, only to Customer's employee's and agents at an office based location.

#### 6. Supplier Warranties

- (1) The Supplier warrants, represents and undertakes that:
  - (a) it has full capacity and authority to grant the Licence and it has or will obtain prior to the Commencement Date, any necessary licences, consents and permits required of it to do so;
  - (b) the Software and Documentation do not infringe or violate any Intellectual Property Rights, trade secrets, or rights in proprietary information, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties;
  - (c) it will comply with all applicable laws, regulations and rules which relate to its obligations under this Agreement;
  - (d) subject to clause 6(3) and 6(4) the Software will perform in accordance with the functions described in the Documentation;
  - (e) the Software is Date Compliant;
  - (f) the Software does not contain any Viruses;
  - (g) the Software and Documentation are of satisfactory quality and are fit for the purpose for which they are required as set out in the Specification;
  - (h) the Support Services will be performed promptly and with all due skill and care and diligence in a good and workmanlike manner and otherwise in line with best practice within the Supplier's industry, and that all of the Supplier's personnel engaged in fulfilling its obligations will possess sufficient qualifications and professional competency and experience to carry out such services in accordance with the foregoing standards; and
  - (i) the Documentation describes in detail and in a completely self-contained manner how the Customer may access and use the Software such that any reader of the Documentation can access, use and maintain all of the functionality of the Software without the need for further instruction.
- (2) If the Customer notifies the Supplier of an actual or suspected Error in the Software or Documentation, the Supplier shall, at its own expense, use its reasonable efforts to correct the Error. If it is unable to do so, the Supplier shall, at the Customer's option either:
  - (a) repair the Software or Documentation so that it is free of Errors; or
  - (b) replace the defective Software or Documentation (as the case may be) with software or documentation of at least equivalent functionality and performance that is free of Errors.
- (3) The Supplier does not provide any warranty and makes no representation as to the accuracy of GPS recordings necessary for the use of the Software.
- (4) The Customer acknowledges that PDOP values required for use of the Software are captured by the Customer and its agents and employees, that the supplier is unable to warrant the accuracy of the capture of this data and that the Customer is responsible for the training of any agents or employees tasked with the capture of this data.

#### 7. Intellectual Property

- (1) The Customer acknowledges that any and all copyright and other proprietary rights which subsist in or arise in connection with the Software or the Documentation belong to the Supplier (or its licensors) and that the Customer shall have no right in or to the Software or the Documentation save the right to use it as permitted by this Agreement.

#### 8. Confidentiality and Data Protection

- (1) Each party undertakes to keep confidential the Confidential Information of the other disclosed to it and to use the other party's Confidential Information solely for purposes related to the Licence.
- (2) The Receiving Party will not disclose, copy, reproduce or distribute the Disclosing Party's Confidential Information to any person, except:
  - (a) with the prior written consent of the Disclosing Party;
  - (b) to its employees, professional advisors, consultants, sub-contractors, agents, insurers and authorised representatives (including to such persons representing its group undertakings), but only to the extent that disclosure is necessary for the purposes related to the Licence;
  - (c) where disclosure is required by law, by a court of competent jurisdiction, by the rules of any stock exchange or by the mandatory requirements of another appropriate regulatory body, provided that all reasonable steps to prevent such disclosure will be taken, the disclosure will be of the minimum amount required, and the Receiving Party consults the Disclosing Party first on the proposed form, timing, nature and purpose of the disclosure.
- (3) The obligations under Clauses 8(1) and 8(2) will not apply to Confidential Information:
  - (a) to the extent it is or becomes generally available to the public other than through a breach of the Licence; or
  - (b) which the Receiving Party can show by its written or other records was in its lawful possession prior to receipt from the Disclosing Party and which had not previously been obtained from the Disclosing Party or another person under an obligation of confidence; or
  - (c) which subsequently comes into the possession of the Receiving Party from a third party who does not owe the Disclosing Party an obligation of confidence in relation to it.
- (4) Upon request by the Customer, the Supplier shall procure that any employee or contractor gives a confidentiality undertaking in a form acceptable to the Customer.
- (5) Without prejudice to Clause 8(1) insofar as it relates to any Confidential Information of The Customer or its Affiliates, any 'personal information' (as defined under Australian privacy Laws and principles or any law with similar or equivalent subject matter in any country which has jurisdiction in relation to the subject matter of the Licence or any data to be processed under it) which is processed in any manner by the Supplier, shall be processed in accordance with the instructions of the Customer. The Supplier shall retain Customer Data for seven (7) years from the date of collection (Customer Data will thereafter be deleted), comply with all of its obligations under any relevant data protection or privacy Legislation and any obligations which the Customer is obliged to impose upon the Supplier, including in particular, the adoption of appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (6) Notwithstanding anything contained in this clause, or elsewhere in this Agreement to the contrary, the Customer authorises the Supplier to retain the GPS coordinates for the event and to provide the same (for a fee or otherwise) to third parties in the absolute discretion of the Supplier.

## 9. Term and Termination

- (1) The Licence shall be effective from the Commencement Date
- (2) The Supplier may terminate this Agreement for any reason by providing fourteen (14) days notice to the Customer.
- (3) The termination of the Licence shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- (4) Upon termination of the Licence for any reason, the Supplier shall provide the Customer with all necessary termination assistance reasonably required by the Customer.
- (5) The provisions of Clause 9 (Termination) and any other provision of the Licence which expressly or by implication are intended to come into or remain in force on or after termination shall continue in full force and effect.

## 10. Limitation of Liability

- (1) Except as provided in Clause 10(2) the Supplier's total liability in contract, tort, negligence or otherwise arising out of or in connection with the performance or observance of its obligations, or otherwise, in respect of the Licence shall be limited to a sum equal to the greater of
  - (a) 10 % of the value of the fees paid or payable under these Terms and Conditions; or
- (2) Nothing in these Terms and Conditions shall exclude or limit either party's liability for:
  - (a) death or personal injury resulting from negligence;
  - (b) the tort of deceit;
  - (c) any breach of the obligations implied by Legislation; or
  - (d) any liability which cannot be excluded by law.

## 11. Insurance

- (1) Without limiting its other obligations under the Licence or otherwise at law the Supplier shall effect and maintain at its own expense with a reputable insurance provider the following insurance policies (the "Insurance Policies").
- (2) The Supplier will be responsible for maintaining the following Insurance Policies in connection with the provision of the Services:
  - (a) Professional Indemnity Insurance in relation to any negligent act, error or omission or any breach of duty in the conduct and execution of professional activities and duties undertaken by the Supplier or any person for whom they are responsible pursuant to this Agreement;
  - (b) Product Liability Insurance in relation to the Software.

## 12. Other Agreements

13.1 These Terms and Conditions will supersede all other agreements or discussions whether written or oral between the Customer and the Supplier and comprise the entire agreement between the parties with respect to the subject matters described in them. Nothing in this Clause 13 shall, however, operate to limit or exclude liability for fraud.

## 13. Variations

- (1) No changes or variations to the Licence shall be effective unless agreed in writing between the parties.

## 14. Publicity

- (1) The Supplier shall not disclose in its publicity material or otherwise the existence of the Licence or the terms of its relationship with the Customer without the prior written consent of the Customer.

## 15. Assignment

- (1) The Supplier may only sub-contract or assign its rights and obligations under the Licence to any third party where the Supplier has obtained a covenant from the third party to be bound to the terms and conditions of the Licence.

## 16. Waiver

- (1) The failure of either party to enforce or to exercise any term of the Licence does not constitute a waiver of such term and will in no way affect that party's right later to enforce or to exercise it.

## 17. Severability

- (1) If any provision of these Terms and Conditions or any part of any provision shall be determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only and no further and the validity and enforceability of any of the other provisions or the remainder of any such provision shall not be affected by such determination.

## 18. Applicable Law

- (1) The Licence will be construed in accordance with the law of Queensland and each Party agrees to submit to the exclusive jurisdiction of the courts of Queensland.