

## TERMS AND CONDITIONS FOR SUBSCRIBERS TO ALL AUDATEX AUSTRALIA SERVICES/PLATFORMS

This is a legally binding Agreement between you, the Subscriber, and Audatex Australia Pty Ltd whose registered office is at Level 1, 100 Cubitt Street, Cremorne, VIC, 3121. This Agreement governs the provision by us of access to Audatex's web-based solutions (the "Service"). A specification of the various solutions is available on request. The Service is accessed using web browser, which enables you to access the Service ("Software").

The details of your access to the Service and any Additional Services will be confirmed to you in a Service confirmation form issued by us to you ("Service Confirmation"), which together with these Terms, and the click wrap license embedded in the Software and any usage guidelines or policies issued by us to you from time to time will form the terms of our legal Agreement with you ("this Agreement"). No other terms, including terms on any purchase order or other document issued by you will apply to this Agreement.

You will be deemed to have accepted this Agreement when you place your order with us for the Service and any Additional Services.

### 1. The Services

1.1 We intend to make the Service available to you for one year (the Term) and for the number of users confirmed on the Service Confirmation, 0700 to 1900 Monday to Friday inclusive and 0700 to 1400 on Saturdays excluding public holidays in Melbourne. However, we reserve the right to suspend access to the Service at any time and we may, at our discretion, restrict your use of the Service.

1.2 We reserve the right to add, delete or modify any part of the Service and this Agreement at our sole discretion. Any changes to this Agreement will become effective when we notify you of them in writing.

1.3 We will provide at least 48 hours written notice prior to any suspension or restriction or change to the Service unless we cannot practically do so, for example, for security reasons. Where in your reasonable opinion the modifications described in 1.2 or 1.3 are unacceptable to you, you may terminate this Agreement by providing 30 days written notice to us.

### 2. Payment

2.1 Payment for the Service is composed of a monthly Service Fee in accordance with the Service Confirmation payable monthly in advance and a volume usage fee payable monthly in arrears and any other sum due in respect of the Service as detailed in the Service Confirmation. Payment for any Additional Services will be in accordance with the Service Confirmation. All fees will be paid by direct debit. GST will be payable in addition on the Service Fee and the fees for any Additional Services.

2.2 Any failure to make any payment when due will result in any part of the Service Fee outstanding being due for payment immediately. In addition, without affecting our other remedies, we may immediately terminate this Agreement and/or withdraw your access to the Service and/or charge you interest on the amounts overdue from the due date until the date of payment at an annual rate of 4% above the Reserve Bank of Australia base rate from time to time.

2.3 We may alter the Service Fee in accordance with the procedure set out in clauses 1.2 and 1.3.

### 3. Your Responsibilities

3.1 You will act in a professional and ethical manner at all times when you access or use the Service and will provide all co-operation reasonably required by us in relation to the provision of the Service and any Additional Services.

3.2 You will not use the Service:

- (i) to send unsolicited any bulk mail message (commonly known as "junk mail" or "spam")

which is disruptive or which generates complaints;

- (ii) for flaming, hacking or otherwise obtaining unauthorised access to any data or systems;
- (iii) to obtain e-mail addresses or any other information for marketing purposes;
- (iv) for any criminal or unlawful activity, or to post any information or material which might be legally actionable; or
- (v) To harass any person.

3.3 You will:

- (i) at your expense obtain, install, and maintain suitable equipment and software and Internet access or connection services to access the Service;
- (ii) comply with all of your obligations in your agreement with your Internet service provider;
- (iii) Restrict access to the Service to your authorised operators and not disclose your user identification or password to any third party. You will promptly notify us if you suspect or become aware of any unauthorised use of the Service or of your user identification or password; and
- (iv) Comply with all applicable laws, regulations and conventions.

3.4 You will not:

- (i) introduce any virus, logic bomb, harmful code and/or Trojan horse to the Service;
- (ii) place on the Service any misleading, defamatory, obscene, offensive or indecent material or material which breaches any intellectual property rights; or
- (iii) interfere with the Service or any other service to any user, host, or network.

### 4. Confidentiality and Privacy

4.1 You agree that all Software and other documentation and other information relating to the Service are confidential and shall not be disclosed except to the extent necessary to enable you to use the Services in accordance with this Agreement.

4.2 You consent to us obtaining, using and disclosing your Personal Information (having the definition set out in the Privacy Act 1988) for any of the purposes specified in this clause 4. If you choose not to provide all or part of the Personal Information we request, we may not be able to provide you with the Services, or we may refuse to provide or limit the provision to you of any Services.

4.3 We may monitor and record your use of the Service and we may make this information available to other organisations in a form which may identify you.

4.4 You acknowledge and agree that we will use your Personal Information for the following purposes:

- (i) to identify you in order to supply you with the Services;
  - (ii) to issue you with invoices and to collect fees and any other debts you owe to us in connection with this Agreement; and
  - (iii) for all other purposes reasonably required to provide the Services to you.
  - (iv) You acknowledge and agree that we may disclose your Personal Information:
  - (v) to work providers for which you carry out work for the purpose of enabling us to provide our AudaStats/Insight service;
  - (vi) to any other person who provides services to us in connection with the Services;
  - (vii) to government agencies, law enforcement authorities and other persons as required by law; and
  - (viii) to any other person, where you have consented for us to do so.
- 4.5 Where we hold any Personal Information about you, you may request access to that information. We will provide you with access to the Personal Information that we have about you (once we have verified your request is in good faith). We may impose a reasonable charge for the access of such Personal Information.
- 4.6 We shall not be responsible for any third party or personal information you may disclose or communicate using the Service. You acknowledge and agree that you will ensure all third-party information disclosed or communicated using the Service is held and managed by you in accordance with the Privacy Act 1988.
- 4.7 Our Privacy Policy may be viewed on our webpage. By signing this Agreement you warrant that you have read and agree to our Privacy Policy including the information within the policy regarding our collection of Personal Information.
- 5. Intellectual Property Rights**
- 5.1 All the intellectual property rights in the Service or in material or information contained on Service is our property or the property of our licensors. You may not use or copy any material or information contained on the System except to the extent necessary in order to receive the Service.
- 5.2 The data elements of the Service are made available subject to the database rights of Audatex, and notwithstanding that such data may have been transferred to your own systems for your internal use, the use of the data remains subject to the restrictions in this Agreement, and in particular may not be transmitted, transferred or otherwise communicated to any third party.
- 5.3 Nothing in this Agreement grants you any right in respect of our intellectual property rights.
- 6. Disclaimer of Warranty and Limitation of Liability**
- 6.1 Notwithstanding any clause set out below, we do not exclude our liability for fraud or for death or personal injury caused by our negligence.
- 6.2 Any service which you provide to or receive from another subscriber to the Service is a contract between you and that other subscriber and will be subject to the specific terms and conditions agreed between you both. We will not be a party to any such contract made between subscribers using the Service and we merely provide the venue for the transactions to take place. We will have no liability whatsoever for any disputes between you and another subscriber or any other third party arising from your use of the Service.
- 6.3 The Service and any information provided to you by us are provided "as is". We make reasonable efforts to ensure that the information on the Service (including but not limited to any "hints" or "tips" or any other information or advice screens within the Service.

- 2
- 6.4 We will use reasonable endeavors when providing Additional Services.
- 6.5 Except as expressly set out in this Agreement all warranties, representations, terms, conditions or undertakings whether implied by statute, common law, custom, trade usage, course of dealing or otherwise (including any implied warranty, representation, term, condition or undertaking of satisfactory quality or fitness for a particular purpose) are, to the fullest extent permitted by law, hereby excluded.
- 6.6 We are not responsible for invalid destinations or transaction errors in, corruption of, or the security of your information on the Service or carried over any telecommunications or data communications facilities. We are not liable for the unavailability of or delays to the Service arising from any act or omission of any Internet and/or any connectivity service provider.
- 6.7 We are not liable for any claim that your access to or use of the Service or of any program, material, information or products or any Additional Service infringes any third party's intellectual property or other rights.
- 6.8 In no event are we liable for any damages arising from any cause beyond our control.
- 6.9 We are not liable for any of the following:
- (i) loss of profits,
  - (ii) business or anticipated savings,
  - (iii) loss of goodwill,
  - (iv) lost or wasted time of management or other employees;
  - (v) loss of use or destruction of data;
  - (vi) any indirect, special, incidental or consequential loss or damage; or
  - (vii) any claims against you by any other party;
- whether direct or indirect, even if we have been advised of the possibility of that loss or damage arising.
- 6.10 Subject to the above and to the extent permitted by law (including by the Trade Practices Act 1974), our liability is limited to either of the following options at our sole election:
- (i) in the case of goods, the replacement of the goods or resupply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
  - (ii) in the case of services, the supply of the services again or the payment of the reasonable cost of having the services supplied again, provided that such cost shall be limited to the annual contract value of the Services.
- 6.11 Except in the case of a claim arising under Clause 6.1 above one party shall have no liability to the other party in respect of any claim unless the first party shall have served notice of the same upon the other party within two years of the date it became aware of the circumstances giving rise to the claim or the date when it ought reasonably to have become so aware. Where a party has served such notice, it will not be entitled to pursue the claim referred to in the notice after the first anniversary of giving such notice unless it has, on or before such first anniversary, issued and served a claim form in respect of such claim in accordance with the rules of the applicable court.
- 7. Termination**
- 7.1 This Agreement will commence upon your acceptance in accordance with these terms.
- 7.2 Your software subscription may be terminated by you or by us at any time by giving 30 days' notice to expire on an

anniversary of the commencement of this Agreement.  
7.3 In addition, we may terminate or suspend your subscription at any time without notice if you materially breach (or we reasonably suspect that you have materially breached) this Agreement, or if your agreement with any Internet service provider for access or connection to the Internet is terminated for any reason.

**8. Notices**

8.1 All notices under this agreement will be sent:  
(i) in our case, to the Managing Director at the address set out above or by e-mail to info@audatex.com.au; and  
(ii) in your case, to the address details you provide to us when entering into this Agreement;  
or to such other person and/or address as may be notified from time to time.  
8.2 All notices will be sufficiently served if sent by pre-paid ordinary mail or by e-mail and shall be deemed to have been received 3 working days after posting or, in the case of e-mail, on the day of transmission, provided that you telephone us to confirm that the e-mail has been sent.

**9. Support Services**

9.1 If you experience any error, malfunction or other issue with the Service that stops it complying with its specification, we will use reasonable efforts to rectify

it within a reasonable period of time ("Support Services").

9.2 You will nominate a maximum of three contacts who you will authorise to contact us for the purposes of reporting issues when Support Services are required. The relevant contact number is on the Service Confirmation.

9.3 Helpdesk support will be available 0830 to 1730 AEST Monday to Friday excluding public holidays in Melbourne.

**10. General Terms**

10.1 This Agreement contains the entire agreement between us and relating to the Services and, unless we otherwise agree in writing, this Agreement prevails over any other communication or terms of business.

10.2 You may not assign, transfer or sub-contract your subscription or your rights or obligations under this Agreement. We may assign or sub-contract our rights and/or obligations to any third party.

10.3 If any part of any of this Agreement is held to be invalid or unenforceable that party will be severed, and all other provisions will remain in effect.

10.4 Any failure to exercise a right under this Agreement will operate as a waiver of such right or any other right in future.

10.5 This Agreement is governed by the laws of Victoria and you agree to submit to the non-exclusive jurisdiction of the courts of Victoria.

**Signed for and on behalf of the Subscriber by an authorised representative**

Name.....

Signature.....

Position.....

Company.....

Date.....