End-User Licence Agreement

This End-User Licence Agreement is a legal agreement between you (**you** or the **Licensee**) and Dothenumbers Pty Ltd (ACN 651 751 754) of 593 Anzac Highway Glenelg North SA 5045 (**we**/**us** or the **Licensor**). Please read this agreement carefully because it governs your use of the Software and Support and Maintenance for the Software. If you are agreeing to this agreement not as an individual but on behalf of a company, government or other entity for which you are acting, then **you** means the entity and you are binding the entity to this agreement. We may modify this agreement from time to time, subject to clause 17.

As part of this agreement, your use of the Software is also subject to our Privacy Policy and Website Usage Terms which are incorporated by reference into this agreement, provided that, if any provision thereof conflicts with any provision of this agreement, this agreement will prevail.

By clicking "I agree" (or similar button or checkbox) or by ordering, downloading, installing, accessing or using the Software, you indicate that you agree to be bound by this agreement. If you do not agree to this agreement, do not use or access the Software. This agreement does not grant you any other rights other than those expressly contained herein.

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1. Definitions and interpretation

Definitions

1.1 The following definitions apply in this agreement unless the context requires otherwise:

Authorised Users means the specific individuals whom you designate to use the Software and for whom you have paid the required fees. Authorised Users may be your or your affiliates' employees, representatives, consultants, contractors, agents or other third parties who are acting for your or your affiliates' benefit or on your or your affiliates' behalf.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Adelaide, South Australia are open for business.

Change of Control means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

Claim means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).

Commencement Date means the earlier of the date on which the Software was first made available to you (by any means, whether tangible (such as by way of a hard drive) or intangible (such as email, internet download or online login)) and the date on which your first payment is made to us in respect of this agreement.

Confidential Information means all information (however recorded or preserved) disclosed or provided (whether in writing, orally or by any other means and whether directly or indirectly) by one party to the other before, on or after the date of this agreement in connection with this agreement or the Software where such information is identified as confidential at or before the time of its disclosure or ought reasonably be considered confidential based on its content or nature or the manner of its disclosure and, for the avoidance of doubt, includes the existence and terms of this agreement and all User Data.

Consumer Law means the *Competition and Consumer Act 2010* (Cth).

Control has the meaning given in Section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Disclosing Party means, in respect of any particular Confidential Information, the party that discloses that Confidential Information (whether directly or indirectly) to the other party.

Dispose means, in relation to any right, benefit or property, to sell, assign, transfer, alienate, rent, lease, distribute, sublicence alienate or create a trust or Encumbrance over or in respect of that right, benefit or property.

Documentation means all information (however recorded or preserved) relating to the Software (including all Source Code and Object Code, manuals, notes, user guides, functional and technical drawings, specifications, data, reports, designs, modification manuals, flow charts and listings that are designed to assist or supplement the development, understanding or use of the Software).

Encumbrance means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third-party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other

security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

Fees mean the fees payable by you for your use of the Software as set out in the Subscription Terms.

Force Majeure Event means any:

(a)   natural disaster (such as flood, earthquake, windstorm, etc);

(b)   outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;

(c)   industrial dispute;

(d)   government restraint;

(e)   unavailability, shortage, breakage or failure of essential equipment, communication channels, facilities, machinery or electricity supply (not caused by the relevant party);

(f)   shut-down or corruption of, or interruption to, the internet or network servers (not caused by the relevant party); or

(g)   other event that is not within the reasonable control of the parties and which, by its nature, could not have been foreseen by the relevant party or, if it could have been foreseen, was unavoidable.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST has the same meaning given to that expression in the GST Law.

GST Law has the same meaning given to that expression in the GST Act.

Hosted Servers means servers owned and/or used by us for the purposes of hosting the Software and/or User Data.

Improvements means, in respect of the Software and/or any Documentation relating thereto, any developments, enhancements, modifications, derivatives, updates or other improvements thereof, including any customisations that are made at your request or upon your direction, even if such customisations incorporate know-how, ideas, requests or suggestions made or provided by you.

Insolvency Event means, in respect of a party:

(a)   where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;

(b)   where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law;

(c)   a receiver or manager or receiver and manager is appointed to the assets or undertaking of the party or any part thereof; or

(d)   the party is otherwise unable to pay its debts as and when they fall due.

IP Ownership Claim has the meaning given in clause 14.1.

IP Rights means patents, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence means the licence to use the Software and Documentation provided by us to you pursuant to clause 2.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

(a)   liabilities on account of Tax;

(b)   interest and other amounts payable to third parties;

(c)   legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and

(d)   all amounts paid in settlement of any Claim.

No-Charge Software means certain parts of the Software offered by us on a trial, evaluation, beta or free-of-charge basis, including pilot, development, test, sandbox and other non-production offerings.

Object Code means the executable version of a computer program.

Recipient means, in respect of any particular Confidential Information, the party that receives that Confidential Information (whether directly or indirectly) from the other party.

Representatives means, in respect of a person, its employees, consultants, agents and advisors and, in respect of a body corporate, includes its officers.

Software means the software described as follows, including the Documentation and all updates and upgrades of that software and Documentation:

Accounting and bookkeeping software.

Source Code means a computer program expressed in a source language or form that can be interpreted or compiled and then executed by a computer as commands, together with all documentation and tools reasonably required to enable a person having commercially available computer programming skills to read, understand and modify the computer program.

Subscription Terms means the pricing and inclusions for the Licence as specified in the Website at the time of your initial purchase or, otherwise, set out in Schedule 1 of this agreement.

Support and Maintenance means the support and maintenance services referred to in clause 9.

Tax means any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under any statute, ordinance or law by any Governmental Agency, including any:

(a)   profits tax, property tax, land tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, value-added tax, goods and services tax, payroll tax, superannuation guarantee charge or withholding tax;

(b)   stamp, transaction or registration duty or similar charge imposed by any Governmental Agency; and

(c)   any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Trademarks means the trademarks and service marks of the Licensor that are used or displayed in the Software and/or the Website.

Treasury Laws Amendment means the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth).

User Data means any data, information, financials, content, code, video, images or other materials of any type that you submit, upload, transmit or otherwise make available to or through the Software.

Website means our website located at dothenumbers.com.au and pages within that domain and any of its subdomains.

Interpretation

1.2   The following rules of interpretation apply in this agreement unless the context requires otherwise:

(a)   headings in this agreement are for convenience only and do not affect its interpretation or construction;

(b)   no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;

(c)   where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;

(d)   a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;

(e)   references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;

(f)   in each schedule to this agreement, a reference to a paragraph is a reference to a paragraph in that schedule;

(g)   a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint

of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;

(h)   an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;

(i)   a reference to writing includes any communication sent by post, facsimile or email;

(j)   a reference to time refers to the time in Adelaide, South Australia and time is of the essence;

(k)   all monetary amounts are in Australian currency;

(l)   the word "**month**" means calendar month and the word "**year**" means 12 calendar months;

(m)   the meaning of general words is not limited by specific examples introduced by "**include**", "**includes**", "**including**", "**for example**", "**in particular**", "**such as**" or similar expressions;

(n)   a reference to a "**party**" is a reference to a party to this agreement and a reference to a "**third party**" is a reference to a person that is not a party to this agreement;

(o)   a reference to the termination of this agreement includes a reference to the expiry or revocation of the Licence in accordance with the terms of this agreement;

(p)   a reference to a liability includes a reference to a present, prospective, future or contingent liability;

(q)   a reference to any thing is a reference to the whole and each part of it;

(r)   a reference to a group of persons is a reference to all of them collectively and to each of them individually;

(s)   words in the singular include the plural and vice versa; and

(t)   a reference to one gender includes a reference to the other genders.

2.   Licence

Hosted service

2.1   You acknowledge and agree that the Software will be provided to you as a hosted service, rather than as a standalone product installed on your computer equipment and that accordingly:

(a)   you will have access to the Software only through a web browser interface;

(b)   to the extent that functionality of the Software is divided into designated modules, you will have access only to the modules that you are entitled to use;

(c)   access to the Software depends on your having valid and current access permissions that are recognised by the Hosted Servers; and

(d)   all User Data will be stored on the Hosted Servers, rather than on your computer equipment.

Grant of Licence

2.2   Subject to the provisions of this agreement, with effect on and from the Commencement Date, we hereby grant to you a non-exclusive, non-transferable, non-sublicensable, licence to use the Software worldwide, but only for your own business purposes in accordance with the terms of this agreement.

Subscription Terms

2.3   This agreement sets out our standard licence terms for the Software. The particular pricing and inclusions of your Licence are set out in your Subscription Terms. To the extent of any inconsistency between the terms of this standard agreement and your Subscription Terms, the Subscription Terms will prevail.

3.   Restrictions on use

3.1   You must:

(a)   ensure that no more than the allowed number of Authorised Users, as per the Subscription Terms, have access to the Software;

(b)   only disclose your account access details to your Representatives on a need-to-know basis;

(c)   ensure that your Representatives who have access to the Software:

(i)   are made aware of the terms of this agreement; and

(ii)   do not do, or omit to do, anything which, if done or omitted to be done by you, would constitute a breach of this agreement by you,

and you acknowledge and agree that you will be responsible for, and liable to us in respect of, the actions and omissions of any and all of your Representatives in relation to the Software as if they were your own actions or omissions;

(d)   ensure that all information and data entered by you and/or your Representatives is true, accurate and reliable as it is your sole responsibility;

(e)   acknowledge that any information and data obtained, calculated or inferred from the Software is based on your true and accurate input of such data;

(f)   contact us immediately if you have any reason to believe that any of your passwords have been compromised or used without your authority;

(g)   keep your account access details secure and confidential and change your passwords whenever directed to do so by us;

(h)   where directed, provide us with details of any other professional parties linked to your account;

(i)   keep your account details and other personal information, including your email address and payment method details, updated and provide us with notice of any changes to that information so that we can complete your transactions and contact you as needed in connection with your account; and

(j)   keep your internet privacy and virus detection software up-to-date.

3.2   You must not:

(a)   provide access to the Software to a third party or otherwise Dispose of your access to the Software, whether in whole or in part, to any person without our prior written consent under clause 17;

(b)   use the Software:

(i)   in any way other than pursuant to the Licence granted to you under clause 2;

(ii)   in any way that could damage our reputation or the goodwill or IP Rights associated with the Software;

(iii)   for competitive analysis or to build competitive products; or

(iv)   to share inappropriate content or material (involving, for example, nudity, bestiality, pornography, offensive language, graphic violence, or criminal activity);

(c)   use any software or services in conjunction with the Software that modifies or reroutes, or attempts to modify or reroute, the Software;

(d)   authorise any third party to access and/or use the Software on your behalf using any automated process such as a bot or spider or periodic caching of information stored by the Software;

(e)   reverse engineer, decompile, disassemble, decrypt, hack, emulate, exploit, adapt, modify, translate, frame or reformat any part of the Software or otherwise seek to obtain or derive any of the Source Code or any underlying ideas, algorithms or file formats of, or any components used in, the Software by any means whatsoever, or attempt to do any of the foregoing;

(f)   modify or remove any copyright or proprietary notices pertaining to the Software;

(g)   disclose your passwords to any third party;

(h)   circumvent any restrictions on access to, or availability of, the Software;

(i)   attempt to access or control the Software or the Hosted Servers except through the browser interfaces to which we have given you access;

(j)   engage in activity that is harmful to you, the Software or others (eg, transmitting viruses, stalking, posting terrorist or violent extremist content, communicating hate speech or advocating violence against others);

(k)   infringe upon the rights of others (eg, unauthorised sharing of copyrighted material); or

(l)   engage in activity that violates the privacy of others.

4.   Privacy

4.1   You acknowledge that your use of the Software is subject to our Privacy Policy. We reserve the right to monitor, collect and store your communications with us (whether by

email, facsimile or any other form of transmission) for the purposes of our business needs, including quality control and security.

4.2   In relation to any Personal Information that is included in any User Data, all parties must comply with the Privacy Act and any guidelines issued from time to time by the Commonwealth Privacy Commissioner.

5.   Duration of the Licence and renewals

The Licence and Support and Maintenance will commence on the Commencement Date and will continue in force without limit of period unless terminated or revoked in accordance with clause 7.

6.   Payment of Fees

6.1   You must pay the Fees to us in full and on time in the currency specified in the Subscription Terms in accordance with this clause 6. Your use of, and access to, the Software is conditional upon your payment of the Fees.

Periodic payments

6.2   In consideration for granting the Licence, you must pay the applicable Fees to us periodically in accordance with the Subscription Terms. Unless specified otherwise in the Subscription Terms, such Fees are payable in advance commencing on the Commencement Date for the duration of your Licence. The amount due for each renewal term will be immediately payable in full as at the first day of that renewed term.

6.3   You agree that you are authorising recurring payments and you authorise us to charge you for the Software at the recurring intervals you have agreed to until the Licence is validly terminated by you or by us pursuant to clause 7. We may suspend or cancel the Licence if we do not receive an on time, full payment from you.

Timing of payment

6.4   All payments must be made in full within seven (7) days after the date on which you receive a relevant tax invoice from us. Such payment will be made by direct debit from your account. Failure to pay in full (whether or not it is due to your insufficient funds) by that due date is a fundamental breach of this agreement.

Method of payment

6.5   If paying manually against an invoice, payment must be made by electronic funds transfer into our nominated bank account or by credit or debit card.

6.6   If paying automatically by direct debit, we will deduct the amount due on your account at the due date of your direct debit from your nominated bank account or credit or debit card.

6.7   Direct debits are governed by our Direct Debit Application Form.

Third-party payment processing

6.8   Payment by credit or debit card or by direct debit from your bank account is additionally subject to the usage terms and policies of the relevant third-party payment processor.

Billing statements and errors

6.9   We will provide you with a billing statement from time to time. If we make an error on your bill, you must tell us within 30-days after the error first appears on your bill. We will then promptly investigate the charge. If you do not tell us within that time, you release us from all liability and claims of loss resulting from the error and we won't be required to correct the error or provide a refund, unless otherwise required by law. If we have identified a billing error, we will correct that error within 90-days. This policy does not affect any statutory rights that may apply.

Failed payment fees

6.10   If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, we reserve the right to collect any applicable return item, rejection or insufficient funds fee and process any such fee as an additional payment. If you initiate a chargeback or reversal with your bank for your payment of the Fees, we will deem you to have cancelled as of the date that the original payment was made and you authorise us to immediately terminate the Licence and revoke your access to the Software.

Refunds

6.11   Except as expressly provided otherwise in this agreement and where required by the Consumer Law, all amounts paid on account of Fees are non-refundable.

No set-off or deduction

6.12   The parties acknowledge and agree that – unless otherwise required by law, but subject to clause 6.13 – all amounts payable under this agreement are to be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever (whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement).

6.13   If a party is required by law to make a deduction or withholding in respect of any sum payable under this agreement, that party must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the recipient of such additional amount as is required to ensure that the net amount received by the recipient will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

7.   Revocation and termination

Suspension of access

7.1   We may, with or without notice, suspend your access to all or part of the Software:

(a)   for the purposes of any scheduled or unscheduled maintenance periods that we decide at our discretion to implement; and/or

(b)   if you breach this agreement or do, or allow to be done, anything that may have the effect of jeopardising the operation of the Software for other users.

Termination or revocation by Licensor

7.2   We may revoke the Licence or terminate this agreement at any time and for any reason at our absolute discretion by giving written notice of not less than one (1) month to you.

Termination by Licensee upon notice

7.3   You may terminate this agreement for any reason at your absolute discretion upon not less than one (1) month of notice by following the cancellation instructions within the Software or by sending a written notice to us by email at the following address:

>   To: Dothenumbers Pty Ltd (ACN 651 751 754) of 593 Anzac Highway Glenelg North SA 5045
>
>   Email: admin@dothenumbers.au

7.4   Your access to the Software will end at the expiry of the billing period in which your termination under clause 7.3 takes effect. You will remain committed for that billing period and, in accordance with clause 6.11, amounts paid by you prior to your termination under clause 7.3 taking effect will be non-refundable, except where required by the Consumer Law. You should refer to the Subscription Terms as you may be obligated to pay cancellation charges.

Mutual termination rights

7.5   Notwithstanding clauses 7.2 and 7.3, each party may terminate this agreement with immediate effect by written notice to the other party if:

(a)   the other party materially breaches this agreement where:

(i)   such breach is irremediable; or

(ii)   if remediable, the other party fails to remedy the breach within 14 days of written notice by the terminating party;

(b)   an Insolvency Event occurs in respect of the other party; or

(c)   a Force Majeure Event preventing the performance of this agreement continues for more than 20 Business Days.

Payment obligations

7.6   In no event shall termination of this agreement release you from the obligation to pay any amounts that became due and payable on or before the date of termination.

8.   Consequences of termination

8.1   You acknowledge and agree that, following termination of this agreement in any circumstances, you will not only have further access to your User Data, which will be deleted or destroyed immediately upon termination.

8.2   If this agreement is terminated or expires for any reason, then, in addition, and without prejudice, to any other rights or remedies:

(a)   the parties are immediately released from their obligations under this agreement, other than under clauses 4 (Privacy), 6 (Payment of Fees), 7 (Revocation and termination), 10 (Warranties), 11 (Disclaimer of warranties and limitation of liability), 12 (Indemnities), 13 (Intellectual property rights), 14 (IP Ownership Claims), 15 (Confidentiality), 16 (GST), 20 (General) and this clause 8, which shall survive any termination of this agreement;

(b)   your right to use the Software and the Trademarks immediately ceases, the licence granted to you under clause 2.2 immediately terminates and you must

immediately remove all Software and Trademarks from your computer systems and records; and

(c)   we reserve the right to delete your account, including your User Data.

Accrued rights

8.3   Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

9.   Support and Maintenance

9.1   The Licence will entitle you to access the Software as it stands as at the Commencement Date only and we will have no obligation to keep the Software current or correct any failure of the Software to perform according to its specifications.

10.   Warranties

You represent and warrant that:

(a)   you are authorised to use the payment method you provided and that any payment information you provide is true and accurate;

(b)   you have the legal power and authority to execute, deliver and perform your obligations under this agreement and the transactions contemplated by this agreement, and no limit on your powers will be exceeded as a result of the transactions contemplated by this agreement;

(c)   you have taken all necessary actions, and obtained all required consents, to enable you to execute, deliver and perform your obligations under this agreement, and any such authorisations are in full force and effect;

(d)   your obligations under this agreement are legal, valid, binding and enforceable; and

(e)   the execution, delivery and performance of this agreement by you does not and will not violate, breach, or result in the contravention of:

(i)   any law, resolution or authorisation;

(ii)   any document that is binding upon you or any of your assets; or

(iii)   if applicable, your constitution or other constituent documents.

11.   Disclaimer of warranties and limitation of liability

Disclaimer of warranties

11.1   To the maximum extent permitted by law, we expressly disclaim all representations, warranties and guarantees (whether implied, statutory or otherwise) in relation to the Software, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement.

11.2   The Software and Support and Maintenance are provided strictly on an 'as is' basis and, to the maximum extent permitted by law, we make no representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy

or completeness of the Software and in particular we do not represent, warrant or guarantee that:

(a)   your use of the Software will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;

(b)   the Software will meet your requirements or expectations;

(c)   the Software will provide true, accurate or reliable information or calculations from your data input;

(d)   errors or defects will be corrected; or

(e)   the Software and the servers that make them available will be free of viruses or other harmful components.

Exclusion of liability

11.3   To the maximum extent permitted by law, we exclude all liability to you or any other person for any Losses arising directly or indirectly out of, or in connection with, any use of, or reliance upon, the Software by you or any other person (provided that nothing in this clause 11.3 absolves us of our obligations as expressly set out in this agreement, subject always to the liability cap under clause 11.5).

Waiver and release

11.4   You hereby irrevocably release us from, waive the right to bring, and covenant not to bring, any Claim that you have, or would otherwise have had, against us arising directly or indirectly out of, or in connection with, any use of, or reliance upon, the Software by you or any other person (including, but not limited to, any Loss arising from your direct or indirect use of data calculations from the Software by way of your manual input of information) and acknowledge and agree that this waiver and release may be pleaded as a bar and complete defence to any such Claims (provided that nothing in this clause 11.4 absolves us of our obligations as expressly set out in this agreement, subject always to the liability cap under clause 11.5).

Liability cap

11.5   Our total aggregate liability for all Claims under or in respect of this agreement is limited to the aggregate amount of the Fees paid by you under this agreement.

Remedies limited

11.6   Without limiting or derogating from the liability cap under clause 11.5, to the maximum extent permitted by law, we expressly limit our liability for breach of any non-excludable condition or warranty implied by virtue of any legislation to the following remedies (the choice of which is to be at our sole discretion):

(a)   the supply of the services again; and/or

(b)   the payment of the cost of having the services supplied again.

Force Majeure Event

11.7   To the maximum extent permitted by law, and without limiting any other provision of this agreement, we exclude liability for any delay in performing any of our obligations under this agreement where such delay is caused by a Force Majeure Event, and we shall be entitled to a reasonable extension of time for the performance of such obligations.

12. Indemnities

You will indemnify and hold us harmless against all Losses that may be suffered or incurred by us arising directly or indirectly out of, or in connection with:

(a)   any breach of this agreement by you;

(b)   your negligent acts or omissions; and/or

(c)   any Claim brought, or threatened to be brought, by a third party against us alleging that your use of the Software constitutes an infringement of any IP Rights of the third party.

13. Intellectual property rights

Licensor retains ownership

13.1   You acknowledge and agree that:

(a)   this agreement does not transfer or assign any IP Rights to you;

(b)   we own and retain all relevant IP Rights in the Software and Documentation including any and all Improvements that may be created or developed by you; and

(c)   you have no IP Rights in any part of the Software or Documentation, including any Improvements thereof, other than the rights granted to you pursuant to clause 2.2 and you must not take any step to invalidate or prejudice our title thereto.

Ownership of User Data

13.2   We acknowledge and agree that you own and retain all IP Rights in the User Data submitted, uploaded, transmitted, generated or otherwise made available to or through the Software. Solely to the extent necessary to provide the Software to you, you grant us a worldwide, limited-term licence to access, use, process, copy, distribute, perform, export, and display your User Data.

Trademarks

13.3   The Trademarks are registered and unregistered trademarks owned by us and/or our licensors or affiliates. You may not use any of the Trademarks without our prior written consent. You must comply with our reasonable usage guidelines and directions with respect to the Trademarks as notified to you from time to time.

Feedback

13.4   We welcome your comments, feedback, suggestions, information and other communications regarding the Software and Support and Maintenance – however, please note that:

(a)   any such feedback will be and remain our exclusive property and you will relinquish any right, title or interest in such feedback immediately upon it being sent to us;

(b)   we will be entitled to use, exploit, improve, make, copy, disclose, display or perform publicly, distribute, improve and modify any such feedback for any purpose whatsoever without restriction; and

(c)   we will not compensate you for any such feedback.

14.   IP Ownership Claims

14.1   You must promptly notify us of any actual or suspected infringement of, or attack or challenge to the ownership or registration of, any of our IP Rights in the Software that comes to your attention (each an **IP Ownership Claim**).

14.2   We will have absolute discretion to decide what action to take in respect of any IP Ownership Claim and sole conduct of any related legal proceedings (including any legal proceedings conducted in our name or in the joint names of you and us). Accordingly, you must:

(a)   not bring any legal proceedings in respect of any IP Ownership Claim without our prior written consent; and

(b)   cooperate fully with us, and take all steps requested by us in our discretion, in defending any IP Ownership Claim, provided that we will be responsible for the cost of any related legal proceedings and entitled to any damages, account of profits and/or awards of costs recovered in respect thereof,

and you must ensure that any and all of your assignees or sub-licensees do the same.

15.   Confidentiality

Confidentiality obligations

15.1   Subject to clauses 15.2, 15.3 and 15.5, the Recipient must:

(a)   keep the Confidential Information of the Disclosing Party confidential and not disclose or make available that Confidential Information in whole or in part to any third party;

(b)   not use or exploit that Confidential Information in any way except for the purposes of complying with its obligations and exercising its rights under this agreement; and

(c)   implement and maintain effective security measures to prevent unauthorised use and disclosure of that Confidential Information whilst it is in the Recipient's possession or control.

Disclosure to authorised Representatives

15.2   The Recipient may disclose the Confidential Information of the Disclosing Party to the Recipient's Representatives but only to the extent that they have an actual need to know the Confidential Information in order for the Recipient to properly perform its obligations and exercise its rights under this agreement and provided that the Recipient:

(a)   must ensure that all such Representatives:

(i)   comply with the obligations in this agreement as if each of them was a party to this agreement in the place of the Recipient; and

(ii)   do not do, or omit to do, anything which, if done or omitted to be done by the Recipient, would constitute a breach of this agreement by the Recipient; and

(b)   will be responsible for, and liable to the Disclosing Party in respect of, the actions and omissions of any and all of its Representatives in relation to that Confidential Information as if they were its own actions or omission.

Other exceptions

15.3   Subject to clause 15.4, the obligations in clause 15.1 do not apply to any Confidential Information which (as shown by appropriate documentation and other evidence in the Recipient's possession):

(a)   either:

(i)   is or becomes generally available to the public;

(ii)   was already known to the Recipient or its Representatives on a non-confidential basis prior to the time of its first disclosure (whether direct or indirect) by the Disclosing Party to the Recipient; or

(iii)   is received by the Recipient (whether directly or indirectly) from a third party after that time,

unless it became so generally available, known or received (as applicable) as a direct or indirect result of an unlawful act or breach of confidentiality about which the Recipient knew or ought reasonably (after due enquiry) to have known;

(b)   is required by law or court order to be disclosed, provided that the Recipient must:

(i)   promptly notify the Disclosing Party in writing in advance of any such disclosure, if reasonably practicable; and

(ii)   reasonably assist the Disclosing Party in obtaining confidential treatment for, or avoiding or minimising such disclosure of, the relevant Confidential Information to the extent reasonably requested by the Disclosing Party;

(c)   is independently developed by the Recipient or its Representatives without any direct or indirect use of, reference to, or reliance on any Confidential Information of the Disclosing Party; or

(d)   subject to clause 15.5, is authorised for release or use by the written pre-approval of the Disclosing Party but only to the extent of such written pre-approval.

15.4   The exceptions in clause 15.3 do not apply to any specific Confidential Information merely because it is included in more generally non-confidential information, nor to any specific combination of Confidential Information merely because individual elements, but not the combination, are included in non-confidential information.

Announcements

15.5   At any time during the term of this agreement, either party may publicly disclose (including via a statement on its website or in a press release or other public announcement) the fact that you have a subscription to use the Software, and that fact alone, without needing any consent of the other party. For the avoidance of doubt, any further public statement regarding this agreement or the Software may not be made without the written pre-approval of the other party under clause 15.3(d) or pursuant to another exception in clause 15.3.

16.   GST and other taxes

GST

16.1   In this clause 16, terms used have the meanings given to them by the GST Law.

16.2   Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this agreement has been determined without regard to GST and must be increased on account of any GST payable under this clause 16.

16.3   If any GST is payable on any taxable supply made under this agreement to the recipient by any other party, the recipient must pay the GST to us on the earlier of:

(a)   the time of making payment of any monetary consideration on which the GST is calculated; and

(b)   the issue of an invoice relating to the taxable supply.

16.4   The recipient must pay the GST in the same manner as making payment of any monetary consideration on which the GST is calculated. We must provide, as a precondition to payment by the recipient of the GST, a tax invoice or a document that the Commissioner will treat as a tax invoice.

16.5   The amount recoverable on account of GST under this clause 16 by us will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other default by the recipient under this clause 16.

16.6   If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party (or Representative if this is not the other party) can claim an input tax credit, partial input tax credit or other similar offset.

Other taxes

16.7   The Fees under this agreement exclude any taxes or duties payable in respect of the Software in the jurisdiction where the payment is made. To the extent that any such taxes or duties are payable by us, you must pay to us the amount of such taxes or duties in addition to any amounts owed under this agreement. If you have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, you may provide to us any such exemption information and we will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

16.8   You will pay all Fees net of any applicable withholding taxes. We will work together to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If we qualify for a tax exemption, or a reduced treaty withholding rate, we will provide you with reasonable documentary proof. You will provide us with reasonable evidence that you have paid the relevant authority for the sum withheld or deducted.

17.   Assignment and sub-licensing

17.1   You must not Dispose of your access to the Software, the Licence, the benefit of this agreement or any rights or obligations hereunder, whether in whole or in part, to any person without our prior written consent, which we may withhold or delay at our absolute discretion. We may provide any such consent subject to such conditions as

we choose at our absolute discretion to impose. For the purposes of this clause 17.1, a Change of Control in respect of you will be deemed to constitute a Disposal of your rights under this agreement requiring our prior written consent in accordance with this clause 17.1.

Responsibility for actions of assignees and sub-licensees

17.2 You must ensure that any and all of your assignees and/or sub-licensees:

(a)   comply with the obligations in this agreement as if each of them was a party to this agreement in the place of you; and

(b)   do not do, or omit to do, anything which, if done or omitted to be done by you, would constitute a breach of this agreement by you,

and you will be responsible for, and liable to us in respect of, the actions and/or omissions of any and all of your assignees and sub-licensees in relation to the Software as if they were your actions and/or omissions.

18.   Changes to this agreement

We may modify the terms and conditions of this agreement from time to time, with notice given to you by email, through the Software or through our Website. Such modifications will become effective 7 days after the notice is given. Your continued use of the Software following notice of such modifications shall be deemed to be your acceptance of any such modifications to this agreement. If you do not agree to any such modifications, you must immediately stop using the Software and destroy all copies of the Software in your possession or control.

19.   Notices

19.1 We will send you notices via email or regular mail. We may also display notices in the Software and/or the Website.

19.2 A notice is deemed to have been received:

(a)   if delivered personally, at the time of delivery;

(b)   if delivered by commercial courier, at the time of signature of the courier's receipt;

(c)   if sent by pre-paid post, 48 hours from the date of posting;

(d)   if sent by airmail, five days after the date of posting;

(e)   if sent by email, 4 hours after the sent time (as recorded on the sender's email server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the; or

(f)   if displayed in the Software and/or the Website, at the time the notice is posted in the Software and/or the Website,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

19.3 To prove service, it is sufficient to prove that:

(a) in the case of post – that the envelope containing the notice was properly addressed and posted;

(b) in the case of fax – the notice was transmitted to the fax number of the party;

(c) in the case of email – the email was transmitted to the party's email server or internet service provider; and

(d) in the case of the Software and/or the Website – the notice was posted on the Software and/or the Website.

20. General

Third-party licences

20.1 The Software may contain IP Rights (eg, code and libraries) that are licenced to us by third parties. These IP Rights are subject to their own applicable licence terms.

Further assurances

20.2 Each party must (at its own expense, unless otherwise provided in this agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

Relationship of the parties

20.3 This agreement does not create any partnership, joint venture or agency relationship between the parties. No party has the authority to bind any other party.

Agents and third-party purchasers

20.4 If you are acquiring the Software on behalf of another person or entity, you represent and warrant that you have the authority to bind the party or entity for which you are acquiring the Software to the terms and conditions of this agreement.

Entire agreement

20.5 This agreement contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this agreement other than those expressly stated in it or necessarily implied by statute.

Severability

20.6 If a provision of this agreement is invalid or unenforceable in a jurisdiction:

(a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and

(b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

20.7 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this agreement will operate as a waiver of that power or right.

No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this agreement.

Ipso facto legislation

20.8   If any provision of this agreement is otherwise unenforceable by virtue of the operation of the Treasury Laws Amendment, upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law:

(a)   time is of the essence in respect of all obligations of that party under this agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and

(b)   any breach of this agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Governing law and jurisdiction

20.9   This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of South Australia, Australia.

20.10   The parties irrevocably agree that the courts of South Australia, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims).

Your concerns

20.11   Should you have any questions concerning the Software, Support and Maintenance and/or this agreement, please contact us at admin@dothenumbers.au

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Schedule 1 – Subscription Terms

Product	Dothenumbers Software and Accounting Software
Fees	**Three (3) users or less:** $180.00 per month plus GST **For every additional user thereafter**: Additional $60.00 per month plus GST per additional user
Minimum Term	Two (2) months initial subscription term required