

BUILDISOFT PTY LIMITED

SOFTWARE ASSURANCE AGREEMENT

1. INTRODUCTION

- 1.1 Buildsoft has developed and is the owner of the Software.
- 1.2 Pursuant to the Perpetual Licence Agreement or the Subscription Licence Agreement, Buildsoft has granted a licence to the Customer to use the Software.
- 1.3 This Software Assurance Agreement is made in connection with the Software which is licensed under the Licence Agreement.

2. DEFINITIONS

- 2.1 In this Software Assurance Agreement, unless the contrary intention appears:
 - (a) **Existing Customer** means a customer who presently holds a Perpetual Licence Agreement or has previously been licence by Buildsoft to use the Software;
 - (b) **Initial Term** means one year from the date of this Agreement, unless Buildsoft expressly agrees to a longer term;
 - (c) **New Customer** means a customer who has never previously been licensed by Buildsoft to use any proprietary software belonging to Buildsoft or acquired a licence to use other software sold by Buildsoft;
 - (d) **Non-payment** means suspension of all services including but not limited to; access to products, support, updates and data due to lapse of payment.
 - (e) **Perpetual Licence Agreement** means a perpetual licence agreement entered into between Buildsoft and the Customer for use of the Software by the Customer upon the payment of an annual licence by the Customer;
 - (f) **Software** means the Buildsoft software including but not limited to Offsider Estimating, Global Estimating and Cubit;
 - (g) **Software Assurance Fee** means the fee specified in clause 6 of this Agreement which is payable by a Customer with a Perpetual Licence Agreement;
 - (h) **Subscription Licence Agreement** means a subscription licence agreement entered into between Buildsoft and the Customer for use of the Software which:
 - i. includes automatic access to the Software Assurance Agreement;
 - ii. renews automatically after the Initial Term and subsequent terms unless the Customer elects to opt out in writing of the Subscription Licence Agreement in accordance with the terms of such agreement;
 - (i) **Support Services** means the services specified in clause 5 of this Agreement;
 - (j) **Updates** means any improvements or alterations or updated versions of the Software developed and released by Buildsoft from time to time.

3. COMMENCEMENT OF SOFTWARE ASSURANCE AGREEMENT

Perpetual Licence

- 3.1 For New Customers of Buildsoft, this Software Assurance Agreement shall commence upon the commencement date of the Perpetual Licence Agreement between Buildsoft and the Customer.
- 3.2 For Existing Customers of Buildsoft who presently have a Perpetual Licence Agreement or have previously been licensed to use the Software, this Software Assurance Agreement shall commence upon the date upon which the Customer notifies Buildsoft of acceptance of the terms of this Software Assurance Agreement.
- 3.3 A Customer with a Perpetual Licence Agreement irrevocably agrees to pay the Software Assurance Fee to Buildsoft when it becomes due and payable in accordance with the terms of this Software Assurance Agreement.

Subscription Licence

- 3.4 For Customers licensed to use the Software pursuant to a Subscription Licence Agreements, this Software Assurance Agreement forms part of the Subscription Licence and shall commence upon the commencement date of the Subscription Licence Agreement between Buildsoft and the Customer.
- 3.5 A Customer with a Subscription Licence Agreement is not able to opt out of the Software Assurance Agreement.

4. TERM

Perpetual Licence

- 4.1 Subject to its terms, this Software Assurance Agreement shall remain in force during the Initial Term.
- 4.2 After the Initial Term and subject to compliance with the terms of this Software Assurance Agreement, it continues for further terms of 1 year until such time as the Customer opts out of the Software Assurance Agreement by provision of written notice received by Buildsoft on or before the last business day of the Initial Term or subsequent terms.
- 4.3 Subject to this clause 4, the Customer acknowledges the terms of this Software Assurance Agreement will continue and an annual Software Assurance Fee shall be payable to Buildsoft upon issue of an invoice or quote to the Customer.

Subscription Licence

- 4.4 A Subscription Licence Agreement renews automatically after the applicable term (subject to payment of the relevant fees under the Subscription Licence Agreement) unless the Customer opts out in writing of the Subscription Licence Agreement at least 1 business day before the expiry of the applicable term. This means if you do not opt out at least 1 business day prior we will automatically renew your subscription and your nominated account/credit card will be charged.

- 4.5 For Customers with a Subscription Licence, this Software Assurance Agreement remains in force while the Subscription Licence is valid. If the Subscription Licence Agreement is suspended or terminated, this Software Assurance Agreement shall be similarly suspended or terminated.

5. SUPPORT SERVICES

- 5.1 Subject to compliance with the terms of this Software Assurance Agreement, upon request by the Customer, Buildsoft shall perform such Support Services as are reasonably necessary, in the opinion of Buildsoft, to ensure that the Software operates substantially in conformity with Buildsoft's published operating specifications current at the date of this Software Assurance Agreement by providing the following assistance and information to the Customer:
- (a) Telephone, email and remote support, during Buildsoft's usual business hours; and
 - (b) To provide access to any updates and upgrades to the Software.
- 5.2 If the Customer requests that Buildsoft provide the Support Services set out in Clause 5.1, Buildsoft shall use reasonable endeavors to do so as soon as practicable within the usual business hours of Buildsoft.
- 5.3 Immediately after making a request for the provision of the Support Services, the Customer shall supply Buildsoft with a documented example of the defect or error which it alleges prevents substantial conformity of the Software with Buildsoft's current published operating specifications.
- 5.4 If requested by Buildsoft, the Customer shall provide a listing of output and other data, which Buildsoft may need to reproduce operating conditions when any defect or error in the Software is discovered.
- 5.5 The Customer acknowledges that Buildsoft may, at its discretion, suspend or refuse to provide the Support Services if:
- (a) The Customer fails to make any payment in accordance with terms of this Software Assurance Agreement; or
 - (b) The Customer breaches any term of this Software Assurance Agreement;
 - (c) The Customer breaches any term or condition of the Licence Agreement (whether a Perpetual Licence Agreement or a Subscription Licence Agreement);
 - (d) The Customer has not made payment in accordance with the terms of the Perpetual Licence Agreement or Subscription Licence Agreement, as applicable.

and that Buildsoft may continue to suspend or refuse to provide the Support Services until such time as payment has been made or the breach has been rectified. Payment is still payable once the service has been suspended, customer is obligated to make payment, may incur penalty and or administration fee at Buildsoft's discretion including but not limited to all cost towards recovering the unpaid amount.

5.6 The Customer acknowledges that it will be required to pay charges additional to the Software Assurance Fee if the Customer requests Buildsoft to provide:

- (a) The training to the Customer's personnel; or
- (b) Any support service which is excluded from the Software Assurance Agreement at Buildsoft's discretion.

6. SOFTWARE ASSURANCE FEES FOR CUSTOMERS WITH PERPETUAL LICENCE AGREEMENTS

6.1 For new Customers of Buildsoft, no Software Assurance Fee is payable during the Initial Term but shall become payable on each anniversary of the commencement of this Software Assurance Agreement.

6.2 For existing Customers of Buildsoft, the Software Assurance Fee is payable upon the commencement of this Software Assurance Agreement and each subsequent anniversary of its commencement.

6.3 Subject to clauses 6.4 and 6.5, the Software Assurance Fee payable by the Customer is:

- (a) For new Customers of Buildsoft, 20% of the Recommended Retail Price of the Software payable upon the commencement of this Software Assurance Agreement and thereafter on the anniversary of the commencement of this Software Assurance Agreement;
- (b) For existing Customers of Buildsoft, 20% of the Recommended Retail Price of the Software payable on each anniversary of the commencement of this Software Assurance Agreement.
- (c) For existing Customers of Buildsoft with a current Software Assurance Agreement, at the time of purchasing additional software, 20% of the Recommended Retail Price of the additional software prorated daily is payable as the Software Assurance fee to have the additional software fall in line with the original commencement date of the Software Assurance Agreement Anniversary. There after the additional software will then be bound by clause 6.3 (b).

6.4 Buildsoft, in its absolute discretion, shall be entitled to increase the Software Assurance Fee at any time. The increase to the Software Assurance Fee shall be notified to the Customer at the time of issue of the subsequent invoice to the Customer following the increase.

6.5 Further to clause 6.4, the Customer specifically acknowledges that Buildsoft may, without limitation, increase the Software Assurance Fee in circumstances where:

- (a) The Customer has not complied with the terms of this Software Assurance Agreement;

- (b) The Customer has not paid the Software Assurance Fee or any other monies payable in accordance with the terms of this Software Assurance Agreement;
- (c) The continuity of the Software Assurance Agreement has been interrupted by the Customer opting out or termination of this Software Assurance Agreement.

6.6 Buildsoft will issue a Tax Invoice to the Customer for payment of the Software Assurance Fee. The Customer acknowledges that the Tax Invoice must be paid in accordance with the terms of the Tax Invoice issued by Buildsoft.

7. SOFTWARE ASSURANCE FEES FOR CUSTOMERS WITH SUBSCRIPTION LICENCE AGREEMENTS

7.1 For Customers with Subscription Licence Agreements, this Software Assurance Agreement is bundled with the Subscription Licence Agreement.

7.2 As the Software Assurance Agreement is bundled with the Subscription Licence Agreement, no separate fee is payable by Customers with Subscription Licence Agreements for access to the services under this Software Assurance Agreement

7.3 It is not possible for Customers with Subscription Licence Agreements to opt out of the Software Assurance Agreement. If a Customer with a Subscription Licence Agreements seeks to opt out of this Software Assurance Agreement, it shall effectively be terminating the Subscription Licence Agreement and the Software Assurance Agreement.

7.4 If a Customer with a Subscription Licence Agreement does not pay the fees due under that agreement, the Subscription Licence Agreement and this Software Assurance Agreement shall be suspended (including suspension of access to the Software and the benefits of this Software Assurance Agreement) and possibly terminated.

8. EXCLUSIONS

8.1 The Support Services to be provided by Buildsoft pursuant to this Software Assurance Agreement exclude:

- (a) Correction of errors or defects caused by the incorrect or improper use of the Software;
- (b) Correction of errors or defects caused by any modifications or adaptations of or additions to the Software not authorised by Buildsoft;
- (c) Correction of errors or defects caused by the use of computer programs not licensed by Buildsoft for use in conjunction with the Software;
- (d) Correction of errors or defects caused by the operation of the Software on the relevant computer in a manner other than that approved by Buildsoft;
- (e) Correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained personnel to operate the Software;
- (f) Rectification of errors caused by a fault in the computer upon which the Software is used;

- (g) Operation of the Software on nonnative IBM compatible windows machines including Macintosh or other Apple Computer products;
- (h) Equipment support (including any accessories, attachments or associated items);
- (i) Diagnosis or rectification of errors not directly caused by the Software;
- (j) Correction of errors arising directly or indirectly from the Customer's failure to comply with this Software Assurance Agreement or the Licence Agreement;
- (k) Buildsoft staff performing installation of the Software;
- (l) Buildsoft staff travelling on site to diagnose or fix any issue;
- (m) Creation of custom reports or any custom content.

8.2 If the Customer so requests in writing, Buildsoft may, at its discretion, provide any of the services referred to in paragraph 8.1 on condition of payment an additional fee for the provision of such services. Buildsoft will issue a Tax Invoice for services provided under this clause 8.

8.3 The Customer irrevocably agrees to the payment of such additional fees for the services provided by Buildsoft under this clause 8 at the request of the Customer.

8.4 The Customer acknowledges that any employee, contractor, agent or representative of the Customer is deemed authorised to purchase additional fees upon acceptance of any quote or invoice for the provision of services contemplated by this clause 8.

9. ACCESS

9.1 The Customer shall ensure that Buildsoft's support personnel have full access to the relevant computer hardware, software data, databases and supporting files at all reasonable times for the provision of the Support Services. The Customer shall also ensure that Buildsoft's support personnel are provided with all necessary assistance, information and services in a timely manner and reasonably necessary for Buildsoft to carry out Support Services provided for in this Software Assurance Agreement.

9.2 Buildsoft's support personnel may request access to the "problem" computer by means of remote access using the internet to resolve an outstanding issue. Buildsoft will provide the remote access software in order to perform this.

10. LIABILITY

10.1 To the extent permissible by law all representations and warranties other than those expressly provided for in this Agreement are excluded.

10.2 It is agreed, to the extent permissible by law, that Buildsoft will not be liable for special, indirect or consequential damage (including loss of profits) of any kind suffered by the Customer or any of the Customer's employees, agents, customers or invitees arising in connection with any act or omission of Buildsoft in breach of any term of this Software Assurance Agreement or otherwise.

- 10.3 To the maximum extent permitted by law, Buildsoft's maximum aggregate liability to the Customer (whether under contract, tort, statute or in equity) arising out of or in connection to this Software Assurance Agreement is limited to the total amount of any fee paid under the current term of this Software Assurance Agreement.

11. FORCE MAJEURE

11.1 Excusable Delay.

Neither party shall be liable for inability to perform any of its duties or obligations, which are beyond its reasonable control including but without limitation, strikes, lockouts or other industrial bans, limitations and restrictions (in this clause collectively referred to as "strikes"), willful acts by employees in violation of industrial awards and/or agreements, acts of god, action or inaction of governments and/or governmental authorities acting in an executive or sovereign capacity. Wars, sabotage, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, washouts, fire, abnormally adverse weather conditions, arrests and restraints of rulers and peoples, civil disturbances and explosions.

11.2 Consultation.

In the event that such delays referred to in clause 11.1 exist for a continuous period of one (1) month then the parties shall forthwith consult together in good faith to consider all available alternatives to resolve such delays and to minimise the effect thereof on each of them and on the fulfillment of any obligation contained in this Software Assurance Agreement.

11.3 Termination

In the event that the parties are unable to reach agreement on the appropriate course of action to be taken within three (3) months of the date of commencement of such consultation and if such excusable delays continue to exist or, in the case of delay caused by strikes, such delays, although not continuous, have existed and are or have been recurring on a regular or rolling basis, then either party may terminate this Software Assurance Agreement by written notice to the other party.

12. TERMINATION

- 12.1 Buildsoft may terminate or suspend this Software Assurance Agreement (either in connection with Perpetual Licence Agreements or Subscription Licence Agreements) immediately if:

- (a) Any payment due from the Customer to Buildsoft:
 - i. under this Software Assurance Agreement remains unpaid for a period of fourteen (14) days; or
 - ii. pursuant to an invoice issued under this Agreement remains unpaid in accordance with the payment terms of the invoice;
- (b) The Customer breaches any of the terms of this Software Assurance Agreement and such breach which is capable of remedy has not been remedied within fourteen (14) days of written notice by Buildsoft to the Customer;

- (c) The Customer breaches any term or condition of the Licence Agreement;
- (d) The Customer becomes or in Buildsoft's opinion is likely to become involved in any form of insolvency administration; or
- (e) Any employee, contractor, agent or representative of the Customer engages in inappropriate or abusive behavior towards an employee, contractor, agent or representative of Buildsoft.

12.2 The Customer may terminate this Software Assurance Agreement immediately by notice in writing to Buildsoft if:

- (a) Buildsoft breaches any of the terms of this Software Assurance Agreement and such breach which is capable of being remedied within thirty (30) days of written notice by the Customer to Buildsoft; or
- (b) Buildsoft enters into any form of insolvency administration.

12.3 In the event of the termination of this Software Assurance Agreement, the Customer acknowledges:

- (a) Any monies payable by the Customer to Buildsoft under this Software Assurance Agreement shall become immediately due and payable;
- (b) The Customer shall not be entitled to any refund of a payment made by the Customer pursuant to this Software Assurance Agreement.

13. WAIVER

13.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.

13.2 A waiver by Buildsoft pursuant to clause 13.1 will not reduce its rights in respect of any subsequent breach of this Software Assurance Agreement by the Customer.

13.3 Subject to clause 13.1, any failure by Buildsoft to enforce any clause of this Software Assurance Agreement, or any forbearance, delay or indulgence granted by Buildsoft to the Customer will not be construed as a waiver of Buildsoft's rights under this Software Assurance Agreement.

14. ASSIGNMENT

This Software Assurance Agreement is personal to the Customer and shall not be assigned, sub-licensed or otherwise dealt with without the written consent of Buildsoft.

15. SEVERABILITY

If any provision of this Software Assurance Agreement is held invalid, unenforceable or illegal for any reason, this Software Assurance Agreement shall remain otherwise in full force and effect apart from such provision which shall be deemed to have been deleted.

16. PROPER LAW

This Software Assurance Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the Courts of that state in respect of all matters arising there under.

17. NOTICES

17.1 The Customer's notices, including notice of acceptance of the terms and conditions of this Software Assurance Agreement, may be communicated by email, post or agreeing to the terms electronically in the software and are effective as follows:

- (a) If by email or other electronic message, by receipt of an acknowledgement;
- (b) If by post, 3 business days after posting.

17.2 Notices to Buildsoft should be directed:

- (a) By email to: support@buildsoft.com.au;
- (b) By post to: Building B, Suite 301, 4 Hyde Parade Campbelltown NSW 2560

17.3 Buildsoft's notices, may be communicated by email sent to any email address given to us by the Customer or any email address that is publicly available or post to the Customer's registered address.