

**Darzin Software Pty Limited ABN 95 010 692 154 (DS)**

**Licence Terms and Conditions**

This agreement (**Agreement**) sets out the terms and conditions on which Darzin Software Pty Limited ABN 95 010 692154 (**DS**) permits a registered user (**you or your**) to access and use the software system known as the Darzin Software as updated from time to time (**Darzin Software**).

**1. ENTITLEMENT TO USE SOFTWARE**

- 1.1 DS grants you a non-exclusive, non-transferable licence to access and use the Darzin Software for the sole purpose of undertaking the project or projects specified in your application form (**projects**) on the terms set out in this Agreement.
- 1.2 The licence entitles you to grant access to the Darzin Software to your staff, contractors, agents, advisers and clients for the sole purpose of undertaking one or more of the projects.
- 1.3 Unless you have obtained the prior written approval of DS, you may only use the Darzin Software for your own internal purposes and not for the purposes of providing advice or services to any other person.
- 1.4 If the scope of any of your projects changes or you wish to use the Darzin Software for additional projects, you must contact DS to obtain authorisation. This authorisation may be subject to your payment of an additional licence fee.
- 1.5 You may print and copy any documents and reports generated by the Darzin Software (**Reports**) and use the Reports as required by you to undertake a project. You may give copies of Reports to your staff, contractors, agents, advisers and clients as necessary to undertake a project. The Darzin Software does not store copies of your Reports. You permit DS to access the Reports for the purposes of providing problem resolution and other support services to you.
- 1.6 You agree to access and use the Darzin Software in accordance with any directions issued by DS from time to time provided they are not inconsistent with the terms of this Agreement.
- 1.7 You must not or authorise or permit any person to do any of the following:
  - (a) make copies, adaptations, extracts or derivative works of, or modifications to, the Darzin Software;
  - (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Darzin Software;
  - (c) communicate the Darzin Software or any part of it to the public by the Internet or any other means; or
  - (d) sell, resell, license, sub-license, lease rent or otherwise distribute or transfer the Darzin Software or any part of it to any person without the prior written consent of DS which consent may be given at the discretion of DS and subject to conditions imposed by DS.

**3. TERM OF AGREEMENT**

- 3.1 This Agreement commences from the date of the first invoice and continues for one year unless terminated earlier in accordance with paragraph 9 (the Term). At the end of the Term, and subject to Your payment of the applicable annual licence fee the Agreement will automatically renew for a Further Term of 1 year, during which either party may terminate by giving the other 1 months prior written notice.

**4. PAYMENT OF LICENCE FEE**

- 4.1 You must pay the licence fee for the whole of the Term before DS will register you as a user of the Darzin Software. Automatic renewal of this Agreement is subject to your payment of a licence fee for each Further Term, prior to the commencement of that Further Term. . If you do not pay the licence fee for the Further Term, your licence to access and use the Darzin Software terminates with effect from the end of the then current Term.

**5. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 5.1 The copyright, trade marks and other intellectual property rights in the Darzin Software are owned by DS or our licensors. The Darzin Software is protected by applicable laws including, without limitation the Copyright Act 1968 (Cth).
- 5.2 You acknowledge and agree that this Agreement does not transfer ownership of any copyright, trade marks or other intellectual property rights in the Darzin Software to you or grant you any other rights in relation to the Darzin Software except the limited licence rights specified in this Agreement.
- 5.3 The Darzin Software contains valuable trade secrets and confidential information of DS and our licensors. You agree that you will not disclose or authorise the disclosure of the trade secrets or confidential information to any person for any purpose.
- 5.4 DS warrants that:
  - (a) it is entitled to licence the Darzin Software to you; and
  - (b) the Darzin Software does not infringe the Intellectual Property Rights of any third partyand DS indemnifies you in respect of any loss in connection with a breach of the warranties in this paragraph.

**6. PERSONAL INFORMATION AND OTHER DATA**

- 6.1 DS will treat any personal information you provide for the purposes of the registration process or while accessing or using the Darzin Software (**personal information**) in accordance with DS's privacy policy which can be located at

<https://www.darzin.com/legal> DS will treat all other data provided by you while accessing or using the Darzin Software (**client data**) as your confidential information and will only use or disclose the information as necessary to provide services to you or to undertake its business. You acknowledge that DS may disclose your data to its advisers and to persons with whom it contracts in order to provide services to you. In all such instance, DS will get written warranties that those third parties will deal with such personal information in accordance with prevailing privacy laws, including the Privacy Act 1988 and National Privacy Principles.

6.2 You warrant that:

- (a) you are authorised to provide the personal information to DS;
- (b) you are authorised to load the client data into the Darzin Software or otherwise provide the client data while accessing or using the Darzin Software; and
- (c) that DS is entitled to use the personal information and client data for the purposes of providing services to you.

You indemnify and will keep DS indemnified from any loss, damages, claims or actions suffered, incurred or brought against DS arising from a breach of this paragraph 6.2.

## 7. IT SYSTEMS

7.1 You agree that you are responsible for providing and maintaining all hardware and software and telecommunications services that you will require to access the Darzin Software and generate Reports. DS will inform you of any changes to hardware, software or telecommunications requirements to access and use the Darzin Software.

7.2 You acknowledge that DS is not responsible for any disruptions to your use of the Darzin Software caused by any hardware, software or telecommunications services you use even if they meet requirements specified by DS. In particular, you acknowledge that access to and use of the Darzin Software is subject to interruption when telecommunications services are interrupted including access to the public Internet.

## 8. SOFTWARE SUPPORT

8.1 The software support services to be provided by us are as follows:

- (a) **Help Desk** We will provide you with reasonable help desk assistance during the Support Times (Monday through Friday, 9:00 a.m. through 5:30 p.m. (Sydney time), excluding all NSW proclaimed public holidays.) regarding the installation and implementation of the Darzin Software, and the identification, diagnosis and correction of Errors. We will attempt to resolve any support questions posed by you. At our discretion, we may provide you with help desk support during times other than the Support Time.
- (b) **Minor Enhancements** We will provide you with copies of all Minor Enhancements at no additional cost to you.
- (c) **Major Enhancements** Major Enhancements for the Licensed Software are not included under this Agreement.

8.2 **Procedures for Error Correction Services** - We will make reasonable efforts to correct and resolve Errors that you report to us and which we are able to reproduce. You will promptly provide us with all information requested by us to reproduce such Errors. For each such Error, we will use reasonable efforts to provide you with a workaround, a software patch or, if we are unable to provide you with either of the foregoing, a specific action plan for addressing the Error, including a good faith estimate of the time required to correct and resolve such Error.

8.3 **Response Times** - We will use reasonable commercial efforts to communicate with you, by telephone, e-mail, fax or our website, regarding Errors that you report to us during the Support Times; for purposes of this Agreement, a "response" means our acknowledgment of an Error, and does not necessarily mean that a resolution will be achieved.

### 8.4 Limitations on our Support Obligations

Notwithstanding anything to the contrary elsewhere in this Agreement, we will have no obligation to provide any support services to you if:

- (a) Such support relates to or involves any products, data, features, devices or equipment not provided by us;
- (b) You or a third party has altered or modified any portion of the Licenced Software in any manner without the prior written consent of us;
- (c) You have failed to replace earlier versions of the Licenced Software with the latest Minor or Major Enhancement provided by us to you;
- (d) You are not in full compliance with the other terms of this Agreement, the terms of the Licence Agreement, or any other agreement between us and the you; or
- (e) Our support obligations under this Agreement shall not include computer hardware, computer network, electrical, telephone, interconnection, or the installation or repair of accessories, alterations, parts or devices not furnished by us.

## 9. TERMINATION

9.1 This Agreement continues until it expires or is terminated.

9.2 DS may terminate this Agreement by giving you a written notice if you fail to comply with any material provision of this Agreement which is not capable of remedy. The termination is effective from the date of our notice or a later date specified in the notice.

9.3 DS may terminate this agreement by giving you written notice if you fail to comply with a provision of this agreement which is capable of remedy and you fail to remedy the breach within 14 days of a notice from DS requiring you to remedy the breach. The

termination is effective from the date of our notice or a later date specified in the notice.

9.4 You may terminate this Agreement by giving DS a written notice if DS fails to comply with any material provision of this Agreement which is not capable of remedy. The termination is effective from the date of our notice or a later date specified in the notice.

9.5 You may terminate this agreement by giving DS a written notice if DS fails to comply with a provision of this agreement which is capable of remedy and DS fails to remedy the breach within 14 days of a notice from You requiring DS to remedy the breach. The termination is effective from the date of our notice or a later date specified in the notice.

9.6 With effect from termination of this Agreement, you cannot access or use the Darzin Software to generate new reports but you may continue to use any Reports generated by you prior to the effective date of termination.

## 10. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

10.1 Subject to this Agreement and except to the extent that applicable laws prohibit the exclusion or modification of particular warranties:

(a) DS does not make any warranties or representations in relation to the performance or availability of the Darzin Software or the correctness of the Darzin Software or any Reports, the purposes for which the Darzin Software or Reports can be used or the outcomes that will be obtained by using the Darzin Software or Reports; and

(b) all implied terms, conditions and warranties of any type are excluded including, without limitation, warranties in relation to fitness for purpose, non-infringement of intellectual property or other rights and accuracy.

10.2 You agree that, subject to applicable laws, your rights under this paragraph 10 set out DS's sole liability to you for breach of this Agreement or otherwise.

10.3 Other than for liability under clause 5.4 our maximum liability to you for direct loss is limited to the cost of providing the Darzin Software or generating the Reports again. Other than liability under clause 5.4 in no event shall our cumulative liability for any claim arising in connection with this Agreement exceed the amount of the total fees and charges paid to us for Support Services by Customer during the six (6) months preceding any such claim.

10.4 The support services under this Agreement will be provided in a workman-like manner by individuals who are knowledgeable in the operation of the Licenced Software. All software bug fixes, work-arounds, Error corrections and Minor or Major Enhancements are provided on an "AS IS" basis. This Agreement does not augment or alter the warranties provided under the Licenced Software's licence or any other agreements between the Customer and us.

10.5 Nothing in this Agreement limits or excludes our liability to you for fraud, personal injury or death caused by our negligence or for any liability which cannot be excluded by applicable laws.

10.6 Subject to paragraph 5.4 , you agree that we are not liable to you for:

(a) any special, indirect, exemplary, incidental or consequential loss or damage of any kind, however caused, even if we knew or should have known of the possibility of such damages and whether or not such damages are foreseeable; or

(b) loss of profits, loss of revenue, loss of savings or loss of data,

even if the possibility or likelihood of such loss has been communicated by you to us.

10.7 If applicable laws prohibit the exclusion of liability as set out above, DS excludes its liability to the maximum extent permitted under applicable laws.

## 11. GENERAL

11.1 If a court or other competent authority decides that any of the provisions of this Agreement is void or otherwise ineffective in whole or in part then any other provisions of this Agreement that are effective will continue.

11.2 This Agreement constitutes the entire agreement of the parties in relation to its subject matter and supersedes all previous agreements, arrangements or understandings between the parties relating to its subject matter and any representations and warranties given or made by the parties.

11.3 You may not assign this Agreement nor any of your rights or obligations under this Agreement (in whole or in part) without our prior written consent which we will not unreasonably withhold.

11.4 You must send notices to us at Postal address **PO Box 115, Killara, NSW 2071, Australia**; Addressee: **Ms Allison Hendricks**; Email: [allison@darzin.com](mailto:allison@darzin.com)

We will send notices to you at the email address or postal address you provided during the registration process. A notice will be considered to have been received: if an email, when an email is received in full (or the next business day in New South Wales, Australia if it is received on a weekend in New South Wales); and if a letter, 4 days after posting.

11.5 This Agreement may not be amended except by agreement of the parties in writing.

11.6 This Agreement is governed by the law of New South Wales, Australia. You agree to submit to the exclusive jurisdiction of the courts of New South Wales, Australia and courts hearing appeals from those courts.

**12. ACCEPTANCE**

Receipt of payment and/or Support Order Form by us via e-mail, fax, postal mail, electronic form submission from website or any other means; or use of support services or acceptance by the Customer of updated software from us shall constitute your complete and unconditional acceptance of the foregoing.

**13 DEFINITIONS**

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Minor Enhancements** means software releases which have been produced primarily to overcome defects in, or to improve the operation of, the Darzin Software.

**Major Enhancements** means software releases produced primarily to extend, alter or improve the Darzin Software by providing additional functionality or performance enhancement (whether or not defects in the software are also corrected) while still retaining the original designated purpose of the Darzin Software.

**Project** means a grouping of data related to a specific program of work, work unit, division or any other categorization that suits you. A project contains stakeholders, properties, interactions with them, complaints, actions, classification tree (issues categories), various filters including contact groups, regions, custom fields, and users.

**Domain** means a separate database which can hold multiple projects. Data can be shared between projects within a Domain, and reports can be generated across one or more projects in a Domain.

**Reports** means charts, maps and lists that are produced as a result of analyzing the data or generating automatic collation of results from surveys and other data sources. Reports can be printed, emailed or exported to various formats including Excel, Word and PDF.

SIGNED by an authorised representative of  
**Darzin Software Pty Limited:**



\_\_\_\_\_  
Signature of authorised representative

Allison Hendricks  
\_\_\_\_\_  
Name

SIGNED by an authorised representative of  
**Client:**

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name