

TERMS AND CONDITIONS

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1. DEFINITIONS.

1.1 "Confidential Information" means all information (in whatever format) designated as such by either Party, together with such information which relates to the business, affairs, customers, products, developments, trade secrets, know-how and personnel of either Party and which may reasonably be regarded as the confidential information of the disclosing party and expressly includes these Terms and Conditions.

1.2 "Concurrent User" means End Users simultaneously running active sessions on the Software.

1.3 "Customer" means the legal entity described on page one of the Proposal.

1.4 "Designated System" means the server, operating system and database the Software is licensed to be used on.

1.5 "Documentation" means the user and other technical manuals provided to Customer with the Software, delivered in any form.

1.6 "End User" means a generic user of the Software and includes library staff and patrons.

1.7 "Fees" means Software Fees and Service Fees, and includes out of pocket expenses.

1.8 "Intellectual Property Rights" means all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and any other proprietary rights.

1.9 "Library User" means an End User with access to modules other than the OPAC, Library Home and Self Circulation modules.

1.10 "Proposal" means the document provided to the Customer by Softlink detailing the Software and Services offered for purchase.

1.11 "Property" is defined in clause 14.1.

1.12 "Services" means services and assistance, including Support Services, provided to Customer.

1.13 "Softlink" means Softlink Australia Pty Ltd (ABN 40 091 866 554).

1.14 "Softlink Group" means the group of companies controlled by Softlink International Limited ABN 12 010 822 143 irrespective of whether the control is direct or indirect (including through subsidiaries of Softlink International Limited) and whether it is because of control of shares, votes at general meetings of shareholders, votes at meetings of directors or the appointment or removal of directors or otherwise.

1.15 "Software Fees" means the total fee for the Software.

1.16 "Software" means the software program(s) (including all modules of the software program(s)), and any modified, updated, or enhanced versions of such program(s) that Softlink may provide to the Customer.

1.17 "Service Fees" means the fees for the provision of Services.

1.18 "Source Code" means the human-readable version of a software program that can be compiled into executable code excluding the source code for any Software (or portion of the Software) not owned by Softlink.

1.19 "Support Services" means Softlink's standard support and maintenance services for the Software (including the provision of Updates), as amended from time to time, that may be acquired by the Customer.

1.20 "Tax" means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a government authority (local, State, Federal or otherwise) from time to time, including any stamp, value added, goods and services or transaction tax, duty or charge, excluding taxes on profit or capital gains.

1.21 "Third Party Product" means a software program owned by a third party other than a member of the Softlink Group ("Third Party Supplier") and which is licensed by Softlink to the Customer.

1.22 "Update" means a subsequent release, correction or revision of the Software which Softlink makes generally available to its customers as part of the Support Services.

1.23 "Upgrade" means a subsequent release of the Software containing improvements or additional functionality.

2. INCORPORATION OF TERMS AND CONDITIONS. These Terms and Conditions are incorporated into each accepted Proposal to form a separate contract. Acceptance of Customer's purchase order will not constitute acceptance of any terms or conditions attached to that purchase order.

3. LICENSE.

3.1 License Grant. Softlink grants to Customer a non-exclusive, non-transferable license to use the Software solely for Customer's internal business purposes, during the term, on the Designated System, in accordance with the Documentation.

3.2 License Restrictions. The license granted is valid for a single legal entity and does not permit multiple legal entities to be included as branches or organizations within a single instance of the Software without the written permission of Softlink. For schools and educational institutions, a legal entity will be considered to be a single registered school with a unique registration number.

3.3 Software Copies. Customer may make a reasonable number of copies of the

Software solely for backup or archival purposes. Customer may also make a copy of the Software solely for testing or training purposes. These copies may not be used for production purposes. This Software and all copies shall be subject to these Terms and Conditions. Nothing in these Terms and Conditions shall be deemed to transfer title to or provide Customer with any rights in the Software or Documentation.

4. RESTRICTIONS ON USE. Customer agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) merge the Software with other software; (c) sublicense, lease, rent, loan, or otherwise transfer (subject to clause 14.6) the Software to any third party, (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for the Software; (e) otherwise use or copy the Software or the Source Code except as expressly allowed under clause 3; (f) publish the results of any benchmark tests run on the Software or any component of the Software; (g) use the Software to provide SaaS or bureau services; (h) use the Software to develop a product that is competitive with the Software; or (i) enable or use functionality in the Software that is not licensed to Customer.

5. DELIVERY.

Softlink will deliver to Customer the current version of the Software. Without limiting the warranties in clauses 9.1 and 9.2 the Software shall be delivered to Customer via a delivery source selected by Softlink, F.O.B. Softlink's offices.

6. SUPPORT SERVICES - GENERAL.

6.1 General. Support Services purchased shall commence on the later of delivery of the Software or an installation of the Software performed by Softlink. Support Services will continue for a period of 12 months. Unless terminated by either party by notice in writing, which notice must be received by the other party prior to the anniversary of the commencement date of the Services in accordance with clause 13, the Support Services shall automatically renew for successive 12-month periods. Softlink reserves the right to increase the annual fee for the Support Services. The Customer will be advised of any increase at least 30 days prior to the anniversary of the commencement date.

6.2 Support for Third Party Products. The Customer shall ensure that it adequately maintains the Designated System. Softlink may, on twelve (12) months written notice to Customer (a) elect to cease providing support for a particular Designated System; and (b) elect to cease providing Support Services for a version of the Software if that version of the Software is not one of the three most recent major releases of the Software made available to customers by Softlink.

6.3 Reinstatement. In the event that Customer has chosen to terminate Support Services and then Customer wishes to reinstate the Support Services:-

- (a) Customer must pay to Softlink a Reinstatement Fee, in addition to the Service Fee for the new term of Support Services;
- (b) The start date for the new term will be the anniversary of the commencement date of the original Support Services were first purchased for the Software; and
- (c) The Reinstatement Fee will be:-
 - (i) payable in advance
 - (ii) calculated at the then current rates applicable for the Software; and
 - (iii) equivalent to 50% of 1/12th of one full year's worth of Service Fees multiplied by the number of full or partial months between the last day of Support Services and the start date of the new term as defined in (b) above.

7. SERVICES GENERAL. Softlink will perform Services, including Support Services, in accordance with Customer's order. The Customer shall in a timely manner and at its own expense actively co-operate with Softlink and provide or make available to Softlink access to the Customer's premises, and all relevant resources, including, without limitation, all relevant information, documentation and staff reasonably required by Softlink to enable Softlink to perform its obligations. Softlink may suspend its obligations during such period that such conditions of access are not maintained and Customer agrees to reimburse Softlink for any reasonable costs incurred as a result of such suspension at its then current time and materials rates. Softlink shall not be liable for failure to meet time frames or completion dates for Services unless such failure is due solely to the negligence of Softlink. If either party proposes in writing a change to the scope or timing of the Services, the other party will reasonably and in good faith consider and discuss with the proposing party the proposed change and a revised estimate of the costs for such change. Each deliverable will be deemed accepted if no certificate of acceptance or rejection has been received by Softlink within five (5) business days after delivery, or if the deliverable is placed into live production use by the Customer.

8. FEES AND PAYMENT.

8.1 Payment. Customer acknowledges that the Software Fees are due and payable on acceptance of Customer's order. All Fees paid by Customer (including Service Fees) are non-refundable. All Fees must be paid in the invoiced currency and within 14 days of receipt of an invoice from Softlink. Any portion of Fees not paid when due will accrue interest at 1½% per month or the maximum rate permitted by applicable law; whichever is less, from the due date until paid. Softlink may (a) suspend performance of Services; and/or (b) recover or disable the Software if any portion of an invoice is not paid when

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due and is not the subject of a genuine dispute with the Customer. Softlink will not be obliged to resume performance of the Services or to enable the Software until the outstanding invoice is paid. In the event of a dispute in relation to an invoice, the Customer shall pay the undisputed portion to Softlink in accordance with this clause. The disputed portion shall be referred to the dispute resolution process in clause 14.7.

8.2 Expenses. Customer will reimburse Softlink for reasonable out of pocket expenses (including travel and accommodation expenses) incurred by Softlink in providing the Services.

8.3 Taxes - General. The Fees are exclusive of all applicable Taxes and Customer will pay any applicable Tax in addition to the Fees. Softlink may invoice the Customer for the amount of any applicable Taxes and the Customer shall pay that amount to Softlink in accordance with clause 8.1.

8.4 Withholding Tax. In the event that withholding tax is payable in relation to any supply of services or Software, Customer shall increase the amount of any payment to Softlink so that the amount actually received by Softlink is no less than the Fee.

9. WARRANTIES

9.1 General. Softlink warrants that it has the right to enter into a contract on these Terms and Conditions.

9.2 Media. Softlink warrants that the media on which the Software is provided to Customer will be free of defects in materials and workmanship under normal use for a period of 90 days after delivery of the Software to Customer.

9.3 Performance. Whilst the Customer is receiving Support Services, Softlink will ensure that the Software, when used as permitted by Softlink and in accordance with the instructions in the Documentation (including use on the Designated System), will operate substantially as described in the Documentation. Softlink does not warrant the Customer's use of the Software will be error-free or uninterrupted. Softlink will, at no additional cost and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Software reported to Softlink. This warranty shall immediately become void in the event of any modification being made to the Software, Software configuration, data base schema, or data required for the correct operation of the software without the prior written consent of Softlink.

9.4 Services. Softlink warrants that any Services provided to Customer will be performed with due care in a professional and workman-like manner and will conform in all material aspects to the Proposal for those Services.

9.5 Third Party Products. Customer acknowledges that it is the responsibility of the Customer to monitor its usage of the Software (including Third Party Products) to ensure that it is properly, legally licensed. Any increase in the Customer's usage of the Software over and above the relevant restriction may require an increase in the number of licenses for its Third Party Products.

9.6 Disclaimers. TO THE EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTIES IN THIS CLAUSE 9 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, SERVICES AND ANY MATERIALS DEVELOPED DURING THE PERFORMANCE OF THE SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. TO THE EXTENT THAT THIRD PARTY PRODUCTS ARE PROVIDED TO THE CUSTOMER, THE WARRANTIES AND INDEMNITIES PROVIDED TO THE CUSTOMER WILL BE LIMITED TO THOSE THAT SOFTLINK IS ABLE TO OBTAIN FROM THE SUPPLIER. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THESE TERMS AND CONDITIONS.

10. INFRINGEMENT CLAIMS.

10.1 Softlink will defend and indemnify the Customer against a successful third party claim that the Software infringes an Intellectual Property Right of any third party, provided that: (a) the Customer notifies Softlink in writing within thirty (30) days after it becomes aware of the claim; (b) Customer provides Softlink with sole control of the defense and all related settlement negotiations (other than negotiations that may impose an obligation or liability on Customer); and (c) the Customer provides Softlink with the assistance, information and authority necessary to perform Softlink's obligations under this clause. Reasonable out-of-pocket expenses incurred by the Customer in providing such assistance will be reimbursed by Softlink.

10.2 Softlink shall have no liability for any claim of infringement based on use of a superseded or altered version of Software or use not contemplated within the Documentation if the infringement would have been avoided by the use of a current unaltered version of the Software which Softlink offers to the Customer as contemplated in the Documentation.

10.3 In the event the Software is held or is believed by Softlink to infringe, Softlink will have the option, at its expense, to (a) modify the Software to be non-infringing; or (b) obtain for the Customer a license to continue using the Software. In the event that neither of these options is commercially reasonable, either party may terminate this contract to the extent that it relates to the infringing portion of the Software and may pursue its rights at law.

10.4 THIS CLAUSE 10 STATES SOFTLINK'S ENTIRE LIABILITY AND THE CUSTOMER'S

EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT.

11 LIMITATION OF LIABILITY. EACH PARTY'S TOTAL CUMULATIVE LIABILITY, WHETHER IN CONTRACT OR TORT, NEGLIGENCE OR OTHERWISE, (A) IN CONNECTION WITH ANY SOFTWARE PROVIDED WILL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID TO SOFTLINK; (B) SUBJECT TO (C) IN CONNECTION WITH ANY SERVICES, WILL NOT EXCEED THE AMOUNT OF SERVICE FEES PAID TO SOFTLINK; AND (C) IN CONNECTION WITH ANY SUPPORT SERVICES, WILL NOT EXCEED THE AMOUNT OF SUPPORT FEES PAID TO SOFTLINK IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR ANY LOST DATA, LOST PROFITS, LOST REVENUE, LOSS OF ANTICIPATED SAVING, LOSS OF PRODUCTION, BUSINESS INTERRUPTION, OR LOST OPPORTUNITY, ARISING FROM OR RELATING TO THESE TERMS AND CONDITIONS (INCLUDING ARISING FROM NEGLIGENCE), OTHER THAN IN RELATION TO A BREACH OF CLAUSE 12, REGARDLESS OF WHETHER THE LOSS WAS WITHIN THE CONTEMPLATION OF THE PARTIES AT THE TIME OF ENTERING INTO THESE TERMS AND CONDITIONS. EACH PARTY ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT THE OTHER PARTY WOULD NOT ENTER ACCEPT THESE TERMS AND CONDITIONS WITHOUT THESE LIMITATIONS ON THAT PARTY'S LIABILITY. IN ADDITION, CUSTOMER DISCLAIMS ALL LIABILITY OF ANY KIND OF SOFTLINK'S SUPPLIERS AND RELATED COMPANIES. THESE LIMITATIONS SHALL APPLY EVEN IF ANY OTHER REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL CUSTOMER RAISE ANY CLAIM RELATING TO OR UNDER THESE TERMS AND CONDITIONS MORE THAN 2 YEARS AFTER THE DISCOVERY OF THE CIRCUMSTANCES GIVING RISE TO SUCH CLAIM.

12 CONFIDENTIALITY

12.1 Subject to clause 12.2, each Party shall (a) only use Confidential Information for the purposes anticipated within the Customer's order; (b) only disclose Confidential Information to a third party with the prior written consent of the other Party; and (c) ensure that any third party to whom Confidential Information is disclosed is under similar obligations of confidentiality.

12.2 The provisions of clause 12.1 shall not apply to any Confidential Information that (a) is in or comes into the public domain other than by breach of this clause 12; (b) is or has been independently generated by the recipient Party; or (c) is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory body or stock exchange.

13 TERM AND TERMINATION

13.1 Term. Unless terminated earlier in accordance with clause 13.2, these Terms and Conditions will begin on the acceptance of the Proposal by Customer.

13.2 Termination. Either party may terminate by 90 days written notice.

13.3 Effects of Termination.

On Termination or Expiration of this contract all amounts relating to Software, product or Services provided by Softlink prior to termination become immediately due and payable, regardless of the contracted time for payment. The parties acknowledge that this is payment for obligations performed, and is not a penalty.

13.4 Survival. Clauses 1 (Definitions), 3 (License), 4 (Restrictions on Use), 11 (Limitation of Liability), 12 (Confidentiality), 13.3 (Effects of Termination), and 14 (General) will survive expiration or termination these Terms and Conditions for any reason.

14 GENERAL

14.1 Proprietary Rights. The parties agree that the intellectual property rights in any materials developed during the performance of any Services shall vest in Softlink on creation. The Software and Documentation and any materials developed during the performance of Services (Property), and all worldwide Intellectual Property Rights therein, are the exclusive property of Softlink and its suppliers. Customer acknowledges that the Property including where relevant its structure, organization, and any Source Code constitutes valuable trade secrets of Softlink and its suppliers. Nothing in these Terms and Conditions will be deemed to grant, by implication, estoppel or otherwise, a license to use any of Softlink's existing or future patents. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of Softlink or its suppliers on the Property.

14.2 Modifications. The Customer shall not make any modification (including a modification to the Source Code) or use the Software to develop any other product or derivative work, without the prior written consent of Softlink. In the event that the Customer makes a modification to the Software without Softlink's consent, the warranty in clause 9.3 shall be null and void. All right, title and interest in any modification or derivative work of the Software or any part of it including all Intellectual Property Rights, shall be owned by and exclusively vested in Softlink. The Customer agrees to execute, or have executed, any documents or instruments deemed reasonably necessary by Softlink to transfer to and vest all such right, title and interest in Softlink. Should Customer require use of source code to develop integration with the Software, Customer must send a written request to Softlink, identifying relevant details of the product with which integration is sought and the nature of the information required. Upon receipt of that notice, Softlink will make available to the Customer information that may reasonably be

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required to allow Customer to develop the integration.

14.3 Force Majeure. Neither party shall be liable for any delays in performance of any of the obligations hereunder due to causes beyond its reasonable control including, without limitation, fire, strike, war, riots, acts of any civil or military authority, acts of God, judicial action, unavailability or shortages of labor, materials or equipment, failure or delays in delivery of vendors and suppliers or delays in transportation.

14.4 Assignments. Customer may not assign or transfer, by operation of law or otherwise, any of its rights (including its licenses with respect to the Software) to any third party without Softlink's prior written consent and subject to any conditions set forth by Softlink. Any attempted assignment or transfer in violation of the foregoing will be void.

14.5 Notices. All notices, consents, and approvals must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail (postage prepaid and return receipt requested) to the registered address of the other party, and will be effective upon receipt or a facsimile confirmation message or three (3) business days after being deposited in the mail as required above, whichever occurs sooner.

14.6 Governing Law and Venue. Any claims related to these terms and conditions will be governed by the laws of the jurisdiction as specified in 14.7 as such laws apply to contracts between residents of that jurisdiction performed entirely within such jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Any action or proceeding arising from or relating to these terms and conditions must be brought in the courts as specified in 14.7 and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. If there is a dispute regarding intellectual property rights, the dispute shall be resolved with regard to the laws of the jurisdiction specified in 14.7.

14.7 For contracts with Softlink Australia Pty Ltd, jurisdiction is Queensland, Australia. For Softlink Europe Ltd, jurisdiction is England. For contracts with Softlink America, Inc, jurisdiction is Washington, USA.

14.8 Dispute Resolution. Upon any dispute, controversy or claim between the parties, relating in any way to these terms and conditions, (except as it relates to a confidentiality violation or an intellectual property right), each of the parties will designate a representative from the senior management to attempt to resolve such matter. The designated representatives will negotiate in good faith in an effort to resolve the dispute over a period of 30 days. If the dispute is not resolved in this 30 day period the parties may agree to submit the matter to binding arbitration in the jurisdiction listed in clause 14.8, by a single arbitrator, independent of both parties, who is skilled in the legal and business aspects of the software industry. In all other instances, either party may refer the dispute to the relevant court for resolution.

14.9 Remedies. Except as provided in clauses 9 and 10, the parties' rights and remedies are cumulative. Customer acknowledges that the Software contains valuable trade secrets and proprietary information of Softlink, that any actual or threatened breach of clause 4 will constitute immediate, irreparable harm to Softlink for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought by a party, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

14.10 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

14.11 Entire Agreement. An accepted Proposal, including these Terms and Conditions, will be the complete agreement between the parties and will replace any prior oral or written communications between the parties. In the event of any express conflict between the terms of the accepted Proposal and these Terms and Conditions, the terms of the accepted Proposal will prevail.

14.12 Independent Contractor. In all matters relating to these Terms and Conditions, Softlink will act as an independent contractor. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party.

14.13 Severability. If any provision of these Terms and Conditions is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Customer agrees that clause 11 will remain in effect notwithstanding the unenforceability of any provision in clause 9.

14.14 Construction. The headings of clauses of these Terms and Conditions are for convenience and are not to be used in interpretation. The word "including" means "including but not limited to."

14.15 Beneficiaries. The vendors of any Software not owned by Softlink that is provided to the Customer shall be third party beneficiaries.

14.16 Customer Lists. Unless Customer advises otherwise in writing, Customer consents to being included in any listing of Softlink's current customers for marketing purposes, or as Softlink may deem appropriate from time to time.

14.17 Contra Proferentum Rule. These Terms and Conditions may not be construed adversely to a party because that party prepared it.