End User Licence Agreement - Standard Terms and Conditions

Between Outcross Systems Pty Ltd ABN 633 938 799 of Suite R7C, 195 – 197 Beardy Street, ARMIDALE NSW 2350 (the "Licensor);

And: "You". In this document You and Your means the natural person(s) or legal entity which has entered into a licence to use any Software owned by the Licensor.

Introduction:

A. The Licensor is the owner of, and has the right to license, the Software and the Materials.
B. You wish to use the Software and the Materials.
C. The Licensor has agreed to license the Software and the Materials to You.

What follows are the standard terms and conditions that apply when the Licensor licences to You any of its software. By using the Licensor's software that the Licensor licences to You, You acknowledge that You have read and understood these Terms and Conditions and you accept and agree to be bound by these Terms and Conditions. If You do not agree with any of the Terms and Conditions You may not use the Licensor's software.

1. Definitions

In these Terms and Conditions the following terms shall have the meanings ascribed to them below unless their context otherwise requires:

Commercial Terms Sheet	the separate document signed by You which sets out the commercial terms of the License to use the Licensor's Software.
Copyright	those rights of copyright under the Commonwealth Copyright Act in respect of the Software and the Materials and other rights of copyright throughout the World.
Future Rights	jointly and severally all those rights (statutory and otherwise) comprised in the definition of Patent Rights, Trade Mark Rights or Copyright and which may be granted or acquired in any way whatsoever in relation to the Software and which shall be developed by the Licensor or You in the future by or on behalf of the Licensor or You and in respect of all media either in existence now or in the future.
Improvement	any method which can be adapted to the Software which could make its operation or conduct cheaper, more effective or in any way easier or more preferable to commercialise.
Intellectual Property Rights (referred to as IPR)	jointly and severally the Future Rights, Patent Rights, Copyright, Trade Mark Rights and Technical Information.
Licence	those rights granted by the Licensor to You as set out in these Terms and Conditions to use the Software.
Licence Fee	the fee charged by the Licensor to You to use the Software as set out in the Commercial Terms Sheet.
Material	domain names, trade marks, web-sites, graphs, models photographs, letters, client lists, formulae, notes, correspondence, drawings, manuals

	and other written material or software relating to or included in the Software.
Patent Rights	jointly and severally any registered patents and patent applications (if any) in respect of the Software and the right to register related patent applications throughout other countries of the World.
Purpose	means the purpose for which the Software may be used by the Licensee as set out in the Commercial Terms Sheet.
Software	means the software and other IPR owned by the Licensor and licenced to You in accordance with the Commercial Terms Sheet.
Technical Information	all information relating to the Software which is confidential to the Licensor prior to or during the subsistence of any licence with you.
Term	the period of time which the Licensor has licensed the Software to You as set out in the Commercial Terms Sheet.
Territory	the location or locations where the Software licenced to You can be used as set out in the Commercial Terms Sheet.
Trade Mark Rights	those rights in registered trade marks and trade mark applications (if any) and such other names and symbols developed or acquired by the Licensor or You in the future or which might describe the Software or the operation of the Licensor and capable of protection under the Trade Marks Act (as amended) and the Trade Mark Regulations of the Commonwealth of Australia and by other laws throughout the World, and the Corporations Act (Cth) in relation to the provisions dealing with business names.

1. Interpretation

1.1 References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under, the legislation.

1.2 Words denoting the singular include the plural and vice versa; words denoting individuals or persons include bodies corporate and vice versa; references to documents or agreements also mean those documents or agreement as changed, novated or replaced, and words denoting one gender include all genders.

1.3 References to a party are intended to bind their executors, administrators and permitted transferees.

1.4 The Licence and these Terms and Conditions will be governed by the laws of the New South Wales, Australia. You agree to submit to the non-exclusive jurisdiction of the courts of New South Wales in the event of a dispute arising out of, or in connection with the Licence or these Terms and Conditions.

2. Licence

2.1 In consideration of the payment by You to the Licensor of the Licence Fee the Licensor grants to You for the Term a personal, non-exclusive, non-transferable Licence (without the right to sublicence) to use the Software in the Territory.

2.2 You accept the Licence granted to You in the clause above.

2.3 You are responsible for obtaining all approvals necessary to exercise Your rights under this Licence including without limitation, obtaining any necessary approval from any governmental agency.

2.4 You may access and use the Software on multiple devices.

2.5 You do not have any rights to the source code of the Software, nor to use, reproduce, modify or otherwise exercise the IPR subsisting in the Software or any database that the Software may create as a result of Your use of the Software.

2.6 You acknowledge that:

(a) the Licensor may change the Software in minor or substantial and material ways in updates, patches, recalibrations or later versions. You acknowledge that such changes may modify the Software's functionality, but unless the changes render the Software unfit for the Purpose, You shall not be entitled to any refund;

(b) the Licensor may cease to offer the Software on the giving to the Licensee a minimum of 90 days' notice;

(c) the Licensor may release software which is capable of fulfilling the Purpose which has different fees and/or functionality to the Software. If so, such software will not be available under this Licence.

3. Licence Fee

3.1 You must pay the Licence Fee to the Licensor during the Term.

3.2 The Licensor will provide to You a tax invoice for the Licence Fee at the intervals in the Commercial Terms Sheet.

3.3 The Licence Fee may be varied from time to time by agreement in writing between the Licensor and You. Failing such agreement the Licence Fee will remain at the rate specified in the Commercial Terms Sheet increased annually in accordance with increases in the Australian Bureau of Statistics 6401.0 Australian Consumer Price Index, Weighted Average of Capital Cities.

3.4 If the Licence Fee or any other money payable by You to the Licensor remains unpaid for fourteen days after the due date for payment, whether or not formal demand has been made, then You shall pay, in addition to any money actually owing to the Licensor, interest at the rate of 10% per annum on such money from the date the payment actually fell due until such money is recovered and paid to the licensor.

3.5 If You do not pay the Licence Fee as and when it falls due then the Licensor reserves the right to terminate the Licence in accordance with the terms of clause 10.

4. Your undertakings and obligations

4.1 Throughout the subsistence of Licence, You undertake:

(a) to use Your best endeavours to preserve the value and validity of the Software and any IPR in the Software; and

(b) not to allow or facilitate the use of the Software or the IPR in the Software in a manner or in any way detrimental to the operation of the Licensor;

(c) not to disassemble, de-compile, decrypt, or reverse engineer the Software or the IPR or assist any person to do so;

(d) not to reproduce, modify or adapt the Software or the IPR or create any derivative software based on the Software or the IPR;

(e) not to distribute or transfer the Software or IPR to any person;

(f) not to assign, sublicense, lease or sell the use of the Software or IPR to any person;

(g) not at any time to contravene, deny, contest, contribute nor object to in any way directly or indirectly in respect of the rights subsisting in the Software or the IPR in the Software and to take such steps as may be appropriate and available to You to prevent the infringement of any and all the rights subsisting in the Software and the IPR in the Software;

(h) in connection with the exploitation of the Software refrain from giving a warranty in respect of the IPR in the Software:

(i) beyond that which You are obliged in law to give; or

(ii) which warranty or guarantee has not been approved in writing by the Licensor to You;

(i) to treat as confidential the Software, Material and Technical Information except that which at the time of its disclosure to You was generally available or subsequently became known to the public provided always that this covenant shall continue in full force and effect notwithstanding that this Licence has terminated;

(j) to disclose the Software and Materials only to Your employees, affiliates, agents and contractors who need to access such information so that You can exercise Your rights and obligations under this Licence; and

(k) devote Your best endeavours to the conduct of the Licence.

4.2 You are responsible for ensuring that Your hardware systems and software environment meet the minimum system requirements for the Software as amended and advised to you from time to time.

4.3 You agree that in using the Software the Licensor is not responsible for any data loss, equipment or other hardware damage or malfunctions You may suffer arising as a result of Your use of the Software or interaction of the Software with any third party Software.

5. Intellectual Property and Data Ownership

5.1 You acknowledge and agree that the Licensor is the owner of all IPR in the Software and the Materials.

5.2 You must not alter, remove or obscure any trade mark or copyright symbol or legend or other proprietary mark on the Software and the Materials.

5.3 The Licensor acknowledges that the data collected by You during the operation of the Licence and resultant intellectual property (“Licensee’s Data”) is Your property and will keep it confidential.

5.4 The Software may enable the Licensor to access, review or collect Your data and if this is the case the Licensor will act as the custodian of Your data and, subject to clauses 5.5 and 5.6, may not distribute, transfer or use Your data without Your consent.

5.5 You grant to the Licensor a perpetual, non-exclusive, royalty-free licence to use, reproduce, modify and otherwise exercise IPRs in the Licensee's Data for the purpose of creating, publishing and commercialising aggregated data and information and/or preparing, using and commercialising derivative works provided that in so exercising the rights set out in this clause the Licensor does not directly identify You or your clients/customers.

5.6 You acknowledge that the Licensor may access, collect and share Your data for the sole purpose of reporting of market statistical information to authorised, industry representative bodies.

5.7 It is agreed that the Licensor may encrypt the Licensee's Data.

6. Software Escrow

The parties agree that source code is not required to be placed in escrow.

7. Indemnities and warranties

7.1 You indemnify the Licensor and You agree to keep the Licensor indemnified against any and all claims, demands, losses, damages and costs (including third party claims) that the Licensor incurs or may incur as a result of or arising out of:

(a) a breach by You (or any of Your subcontractors, agents or employees) of any of Your obligations or warranties under this Licence; or

(b) any act or default or omission or wilful misconduct or negligence by You (or any of Your affiliates, subcontractors, agents or employees) relating to the subject matter of this Licence;

(c) any third party claim arising out of the use of the Software by You.

7.2 You acknowledge that You have not relied on any warranties other than as may be set out in this Agreement in deciding to accept this Licence and the Software the subject of the Licence.

7.3 The Licensor warrants that it has the right to license the Software and the Materials to You and Your use of the Software will not infringe the IPRs of any third party.

7.4 The Licensor:

(a) neither gives nor makes any warranty in relation to the Software or the uses to which the Software may be put by You or the Software's fitness or suitability for any particular purpose;

(b) makes no warranty that the Software will operate without any downtime or other interruption; and

(c) excludes to the fullest extent permitted by law all terms, conditions, guarantees and warranties, express or implied, arising under statute or common law in relation to the Software.

8. Limitation of Liability

8.1 Other than in respect of a party's:

(a) breach of the confidentiality provisions of this Licence; or

(b) infringement of another party's IPRs; or

(c) indemnification obligations under this agreement; or

(d) wilful misconduct,

neither party will be liable to the other for any consequential, special or punitive damages arising out of this Licence and each party's cumulative direct damages will be limited to the Licence Fee payable under this Licence in the prior 12 month period. This clause survives the termination or expiration of this Licence.

8.2 To the maximum extent permitted by law You assume all risk as to the Software's use, quality and performance.

9. Improvements

You must not during the Term attempt to develop any Improvements to the Software. In the event that You do make any Improvements to the Software then You acknowledge that the Licensor will own such Improvements. To the extent necessary to give effect to this clause You:

(a) assign on its creation all right title and interest in the IPRs in such Improvements; and

(b) must procure the assignment from any other person who is an author or inventor or owner of any or any part of any Improvement of the rights referred above; and

(c) must procure the consent of any natural person who is an author of any work contained in any Improvement in favour of the Licensor to any activity would otherwise be an infringement of any moral rights of the author in the Improvements.

10. Assignment of this Agreement

The Licensee may not assign this Agreement.

11. Termination

11.1 This Licence may only be terminated in one of the following ways:

(a) upon expiration of the Term as set out in the Commercial Terms Sheet;

(b) immediately by either party by notice in writing to the other party if the other party is in default in performing or observing any of the terms of this Licence and that default continues for a period of one (1) calendar month after written notice has been given to the party in default to remedy the default; or

(c) The Licensor may by notice in writing immediately terminate this Licence upon:

(i) the making or filing of any application to wind You up under any law or government regulation relating to bankruptcy or insolvency; or

(ii) the appointment of a receiver, agent or manager for all or substantially all of Your property or Your deregistration; or

(iii) the making by You of any assignment, arrangement or composition whether formal or informal for the benefit of Your creditors; or

(iv) the institution by You of any proceedings for the liquidation or winding up of Your business; or

(v) Your failure to pay the Licence Fee within fourteen business days of its due date for payment; or

(vi) by written agreement between the parties.

11.2 Upon the termination or expiration of this Licence for any reason:

(a) You shall not be released from any liability arising from any antecedent breach of the terms of this Licence;

(b) any Licence Fee previously paid remains the property of the Licensor and will not be refunded;

(c) any Licence Fee due but unpaid as at the date of the termination must be paid by You to the Licensor; and

(d) all Your rights under the Licence shall terminate and You shall take such steps as may be necessary to ensure You immediately:

(i) cease to use directly or indirectly the Software or the IPR in the Software and uninstall the Software and IPR from any computer system or other device in Your possession or control; and

(ii) return to the Licensor all Materials.

(e) The Licensor will undertake best efforts to ensure continued access to Your data by providing, at minimum, transfer to You of an Access Database file containing all historical data collected using the Software.

12. Dispute Resolution

12.1 If a dispute arises in connection with this Licence, a disputant may give the other disputant a notice specifying the dispute. Within five (5) Business Days after the notice is given, the disputant (each represented by its chief executive officer or other person authorised by the disputant to bind it in connection with the dispute) must confer to resolve the dispute or to decide the method of resolving the dispute. Unless the disputants otherwise agree, the dispute must be referred to mediation if not resolved within fifteen (15) Business Days after the notice is given.

12.2 If the parties are not able to resolve the dispute under the provisions of clause 11.1 then the disputants must appoint a mediator within twenty (20) Business Days after the notice is given. If they fail to agree, the mediator must be nominated by the then current President of the Law Society of New South Wales or nominee. The mediation must be conducted in New South Wales, Australia in accordance with the Mediation Rules of the Law Society of New South Wales.

12.3 The mediator assists in negotiating a resolution of the dispute. The mediator may not make a decision binding on the disputants, unless the disputants have so agreed in writing. The mediation ends if the dispute is not resolved within twenty (20) Business Days after the mediator's appointment.

12.4 Each disputant must keep confidential:

(a) any information or documents disclosed in the course of the mediation;

(b) any discussions between the disputants in the course of the mediation.

12.5 Unless disclosure is required by law:

(a) each disputant must keep confidential all information about the existence, conduct, status or outcomes of the mediation and the terms of any mediation settlement agreement; and

(b) this information and these terms may be published or announced only with the consent of the disputants and in terms agreed by them in writing.

12.6 The dispute resolution process does not affect any party's obligations under this Licence.

12.7 Neither disputant may commence court proceedings in respect of the dispute until the mediation period ends. This does not affect a disputant's right to seek injunctive or urgent declaratory relief.

12.8 Each disputant must pay its own costs in respect of the dispute resolution process. The disputants must pay in equal shares the mediator's costs and the costs of third party reports and enquiries requested by the mediator.

12.9 Neither party may publish any disparaging comment or remark in relation to the other, or in relation to the Software or its results unless the processes of this clause 12 have been fully exhausted. For the avoidance of doubt, this subclause does not authorise defamation or limit any party's rights to respond to disparaging comments or remarks after the processes of this clause have been followed.

13. Notice

Any notice which a party may wish to give pursuant to this Licence should be made to the nominated representatives at the address for notices as set out in the Commercial Terms Sheet and dispatched:

(a) by prepaid registered mail, which shall be deemed to have been properly given five (5) working days after posting;

(b) by email, which shall be deemed to have been properly given (if transmitted during business hours) on receipt by the sender of a delivery receipt noting confirmation of receipt by the recipient at the email address noted in the Commercial Terms Sheet and if not during business hours of the receiving instrument, 9.00am on the next working day;

unless actual receipt at an earlier date or time is established and proof that:

(c) the email was sent; or

(d) a letter was properly addressed and deposited;

shall be sufficient evidence of service on the intended recipient.

14. Merger

These Terms and Conditions set out the entire agreement and understanding between the parties as to the subject matter of this Licence and merges all prior discussions and agreements between them, and the parties shall not be bound by any conditions definitions warranties or representations in respect of the subject matter of this Licence other than those contained in these Terms and Conditions and the Commercial Terms Sheet.

15. Waiver

15.1 Should there be any delay on the part of a party in the exercise of any of their rights under this Licence such delay shall not be deemed to be a waiver of any such rights by a party and except where a party shall expressly by notice in writing waive compliance with any term of these Terms and Conditions, there shall not be deemed to be a waiver by a party of any of the terms of these Terms and Conditions.

15.2 The waiver by a party of any default by a party of any of the obligations of these Terms and Conditions shall not be in any way construed to operate as a licence to a party to repeat or continue any such alleged default nor shall any such waiver be construed or operate as a waiver of any subsequent default whether of like nature or not by a party.

16. Further assurances

Each party shall execute and deliver such further documents and shall perform such further acts as may be necessary and desirable to carry out, all obligations contained in this Licence and these Terms and Conditions.

17. Entire agreement

This Agreement records the entire agreement between the parties about its subject matter. The parties exclude all terms implied by law, where possible. Neither party has given any warranty or made any representation to the other party about the subject matter of this Agreement, other than those warranties and representations appearing in this Agreement.

18. Force majeure

A party is not liable for a breach of these Terms and Conditions, to the extent that the breach is caused by circumstances outside that party's direct control and for the period that those circumstances continue, if that party:

(a) immediately notifies the other party; and

(b) tries to remedy the cause quickly.

19. Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this agreement continue in force.