

Dipolar Pty Ltd

Licence & Maintenance Terms & Conditions

1 Scope of these terms and conditions

In these terms and conditions a reference to:

“Licence” means any licence to use Software which is granted to you subject to these terms and conditions;

“Software” means any of our software which you have been authorised to use by us and also includes any associated programs, files, libraries and documentation which we elect to provide to you. The “Software” also includes any additional modules or future enhancements or replacement versions of the Software we make available to you but only to the extent that you are entitled to use them as a result of the payment of applicable fees;

“we”, “us” and “our” means Dipolar Pty Ltd (ACN 081 623 181) of 64 Clarence Street, Sydney, New South Wales 2000.

“you” or “your” means the party authorised by us to use any of the Software.

Unless otherwise expressly agreed by us these terms and conditions govern all use of the Software and any of our other software. Your completion of any registration process or payment of licence or other fees to us or downloading or installation of any of our software on any of your computers or your use of any of our software signifies your acceptance of these terms and conditions.

2 Details of Licence

Upon payment of the applicable Licence fees to us, we grant you a personal, non-exclusive, non-transferable licence permitting use of the Software subject to any constraints applicable to the category of Licence you have paid for. Constraints may include limits on (a) the number of workstations on which the Software may be installed or used; (b) the maximum number of questions; (c) maximum number of responses per questionnaire; (d) the use of sections in questionnaires; (e) the use of 360 degree questionnaires; (f) the available methods for distribution of questionnaires; (g) use of a multi-user database; (h) ability to transfer reports to pdf files; (i) ability to use questionnaire flow control; (j) data import/export; (k) availability of statistics; (l) respondent logon security; (m) use of reminder emails; (n) real time web statistics; (o) web based response management; (p) the number of simple response credits. You must only use the Software in accordance with the constraints applicable to your category of Licence, the Licence fees paid and (where relevant) the simple response credits purchased.

If you wish to increase the maximum number of workstations on which the Software may be installed or vary any other applicable constraints, then (assuming we are willing to agree to vary the constraint) you must pay us our then applicable additional Licence fees before we will permit such use.

The Software is protected against unauthorised use. You must not attempt to decode or circumvent the protection of the Software or remove any copyright or Software protection statements embedded in the Software.

We are not responsible for the supply of any operating system or application software or any other items which may be required by you to use the Software.

Unless otherwise agreed by us in writing, you are responsible for the installation of the Software.

You are not permitted to sublicense or assign the Licence. Under the Licence you acquire no rights to use or access the source code associated with the Software. You may make additional copies of the Software solely for the purpose of back-up.

You agree not to (a) reverse assemble, reverse compile or decode the Software or to ascertain the source code by any means; or (b) use the Software in or for any other company or other legal entity.

You agree (a) the Software is a valuable asset of ours and is supplied to you on a restricted and confidential basis; (b) the Software will be kept secret and confidential by you at all times; (c) all copyright in the Software and all our other software (including files, libraries and documentation) is retained by us and title to the copy of the Software which is delivered to you and to any copies, reproductions, adaptations, enhancements or translations made of the Software and any interfaces with the Software is also retained by us and to the extent necessary you hereby assign intellectual property rights in same to us; (d) to reproduce and include the copyright notice and any other legend specified by us on any copies of the Software you make; (e) at all times to take reasonable steps to protect the Software from unauthorised access and use; (f) to give us notice of any infringement of copyright or any of our rights which comes to your attention; and (g) before disposing of any media, to ensure any of the Software contained on it has been erased or destroyed.

3 Maintenance & support

If you have paid us the relevant fees to receive Enterprise support, then during the period covered by those fees you will be entitled to (a) receive (without additional charge) any enhancements to the Software which we elect to make generally available; (b) submit support requests by internet or facsimile transmission; (c) access our Help Desk services by telephone subject to our then applicable conditions regarding such access; (d) receive any patches to the Software that we may generally make available for the purposes of correcting defects; and (e) receive defect support as specified below. Enterprise support requests will be given priority over Base Level support requests.

Unless you have paid us to provide Enterprise support, you will only be entitled to receive the following Base Level support services from us (which we may suspend or vary at any time in our discretion) – (a) basic defect support via email and facsimile transmission; and (b) any minor releases which we elect to make generally available without additional charge (note that where any significant additional functionality is provided in a release or upgrade, we will normally require payment of additional fees as a pre-condition to the supply of the release or upgrade).

If you intend to use the software to generate income from outside of your company (eg. using the software to provide a service to your clients) you require a “consultant’s licence”. This licence is similar to a standard licence in every respect, except that it permits you to onsell such services, and it is provided under a different fee structure. Under no circumstances can income be derived by providing a service using this software on any other licence apart from a “consultant’s licence”.

In order to receive maintenance and support services, you must do all things reasonably required by us to enable us to provide these services.

We may arrange for a contractor to provide maintenance and support.

The costs of delivery and installation of any new release of the Software are not covered by maintenance and support. You agree to meet these costs. It is your responsibility to test the Software before making productive use of it to ensure it operates correctly in your environment and for your required purposes.

A "defect" is where the Software is not working as specified in our user documentation. To gain defect support you agree to provide us with particulars of the defect in a format specified by us and to provide us with any required assistance in the diagnosis of the defect. Provided we can reproduce the reported defect in an operating environment we consider suitable, we will issue at our discretion one or more of the following remedies: (i) a defect correction; (ii) a by-pass which temporarily or permanently provides an alternative similar function; or (iii) a restriction which temporarily or permanently revokes the use of a function.

Defect support is only available for the current standard release of the Software at any time and for the immediate prior standard release for a period of six (6) months after the date the current standard release is made generally available by us. Without limitation, defect support does not cover altered Software, improper use of the Software, failure to comply with any of our recommendations or requirements including any requests for assistance, use of the Software with equipment or third parties' programs or services other than those approved by us, or supplying information available through training or in the user documentation. If services are provided and we reasonably conclude that they are not covered by defect support, then you must pay for those services at the rates specified by us from time to time.

4 Additional Services

We are only liable to provide the services specified in this Licence or which we have agreed to provide in writing. Without limitation, we are not obliged to provide any training, installation, configuration or implementation services unless we have agreed to do so in writing. If you require any additional services, then you may request us to submit a proposal for the provision of those additional services. If we feel able to provide those additional services, then we will prepare a proposal identifying the additional services we will provide, our estimated schedule for the provision of the additional services and the fees payable for the additional services. In some circumstances we may require you to pay us to prepare a proposal relating to the provision of additional services.

5 Discontinuance and Termination of Licence

You may terminate this Licence at any time on 30 days written notice to us. This Licence will terminate immediately without further notice to you if you fail to pay a Licence fee when due or fail to remedy any breach of this Licence within 14 days after receipt of written notice requiring the breach to be remedied. On termination of this Licence you must delete all copies of the Software and provide us with a certification that you have done so.

The termination of this Licence will be without prejudice to any rights which we may have. Upon termination of this Licence by us for whatever cause, we are discharged and released from all obligations under this Licence. Your obligations of confidentiality and non-disclosure specified in this Licence will survive the termination of this Licence and you must continue to comply with those obligations notwithstanding the termination.

6 Limited warranty and disclaimer

We warrant that we have the right and authority to grant a Licence for the Software and that the Software, when used in an operating environment approved by us, conforms as nearly as practicable to its published specifications. We will use reasonable endeavours to deliver Software and provide any services to you within agreed time frames but we shall not be liable for any delay in the provision of services arising from events of force majeure or any other cause whatsoever.

Some laws (such as the Trade Practices Act) imply conditions and warranties into certain contracts. Some laws do not allow those contracts to exclude, modify or restrict those implied terms (“non-excludable terms”). These conditions are limited so that they do not exclude, restrict or modify those non-excludable terms. To the extent permitted by law, our liability for breach of any non-excludable terms is limited, in our discretion, to re-supplying the software or services or the cost of re-supply.

SUBJECT TO THE ABOVE WARRANTIES AND THE ABOVE PROVISO REGARDING NON-EXCLUDABLE TERMS, THE SOFTWARE AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND,

EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE NEITHER MAKE NOR APPROVE THE MAKING OF ANY WARRANTY OR REPRESENTATION THAT THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. YOU ARE RESPONSIBLE FOR ENSURING THAT THE SOFTWARE AND ANY SERVICES WILL SATISFY YOUR REQUIREMENTS.

If circumstances arise where you are entitled to claim damages from us or any other party involved in the supply, support and maintenance of the Software or the provision of services relating to the Software (a "relevant party"), then notwithstanding the other provisions of this Licence, our liability (and the liability of any other relevant party) to you for the aggregate of all such claims (regardless of the basis on which you are entitled to claim including, without limitation, negligence) is limited to the lesser of (a) the amount of any actual direct loss or damage which you sustain; (b) the amount of the Licence fee most recently paid by you; and (c) our cost of replacing or repairing any defective Software. We are not liable for losses or damages of third parties claimed against you caused by our negligence. In no event will we be liable for actual or anticipated lost profits, lost savings, lost or damaged data or any incidental or consequential damages even if we have been advised of the possibility of such damages.

7 Additional Terms

Neither party is responsible for failure to fulfil any obligation due to causes beyond their control. Due to the on-going nature of these provisions, we may vary them by giving you at least one month's notice in writing before the variation takes effect and you may discontinue the Licence before the variation takes effect. If any provision of this Licence is found to be invalid, unenforceable or illegal, then that provision will be deemed to be deleted to the extent necessary to remove the invalid, unenforceable or illegal portion and the balance of this Licence will remain binding. You agree that this is the complete and exclusive statement of the agreement between you and us and that it supersedes all proposals or prior agreements, oral or written, and all other communications between all parties relating to the subject matter of this Licence. This Licence is made in accordance with, and is subject to, the laws of New South Wales. You irrevocably agree to submit all disputes arising in connection with this Licence to the jurisdiction of the courts of New South Wales.