Data Tools ©

SOFTWARE AGREEMENT

BY PLACING YOUR ONLINE ORDER OR ACCEPTING THIS AGREEMENT THROUGH AN ORDER THAT INCORPORATES THESE TERMS, YOU (THE PRIMARY CONTACT OR BILLING CONTACT ON THE ORDER) AGREE TO COMPLY WITH AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU CONFIRM THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THE TERM "CUSTOMER" IN THIS AGREEMENT REFERS TO THAT ENTITY.

This Software Agreement (the "Agreement" or "Software Agreement") is valid for the applicable order and is effective between Data Tools Pty Ltd ABN 21 073 541 385 ("DataTools") and the Company specified in the order (the "Customer") (collectively referred to as "the parties"). It supersedes the DataTools Software End User Licence Agreement ("EULA") applicable to DataTools software products.

1. BACKGROUND

(a) DataTools offers address, e-mail and phone validation software products (the "Software") consisting of DataTools Materials and Validation Data, subject to the terms of this Agreement.

(b) The Customer wishes to purchase the Software from DataTools, and by ordering or using the Software, agrees to be bound by and comply with the terms of the Agreement, and agrees to pay DataTools the fees applicable.

(c) The parties acknowledge that some or all of the components supplied as part of the Software under this Agreement may be provided to DataTools by DataTools' licensors and that the provision of the Software to Customer is subject to Customer's compliance with the terms of this Agreement including the Schedules which are incorporated herein.

2. DEFINITIONS

"Agreement" is as described in clause 12(a).

"Confidential Information" means information disclosed by, or obtained from, one party (the Disclosing Party) to or by the other party (Receiving Party) that (i) is by its nature confidential; (ii) is designated by the Disclosing Party as confidential; or (iii) the Receiving Party knows or ought reasonably know is confidential, including the terms of this Agreement, the nature of the products or services being provided by DataTools to the Customer in accordance with this Agreement, information about the Disclosing Party's business, operations, strategy, administration, technology, affairs, clients, personnel, but does not include any such information that is in the public domain or is legally and properly obtained other than through a breach of an obligation of confidentiality. DataTools Confidential Information includes DataTools pricing, discounts, product information, or Documentation that is not publicly available.

"Customer" means the company specified in the order (including any online order).

"Customer Data" means all data or information (including any Personal Information) provided or made available to DataTools and/or a DataTools licensor by or on behalf of Customer or otherwise accessed or accessible by DataTools and/or a licensor in connection with DataTools providing the Software (however Customer Data excludes the data or Confidential Information owned or provided by DataTools or its licensors).

"DataTools Materials" means all materials, software, services, documentation, platforms, and any derivatives thereof owned and developed by DataTools or its group companies, but excludes the following third party materials (including third party materials provided by any DataTools affiliates, partners or resellers): data (including any Validation Data), software, third party materials, services and documentation.

"Documentation" means any user or technical documentation supplied by DataTools (including but not limited to guides available on the DataTools website).

"Fair Use Policy" is as set out herein – the Customer shall not knowingly or recklessly, and shall not knowingly or recklessly cause or allow third parties to use the Software:

(a) to perform or disclose any performance, availability, vulnerability testing or benchmarking of the Software or similar activities which intentionally generate an excessive number of transactions;

(b) to perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Software;

(c) to harass or cause any damage or injury to any person or property, or to promote racism, harm or hatred;

(d) to engage in, promote or encourage illegal activity or the violation of the legal rights of others, or for any unlawful, invasive, infringing, or fraudulent purpose;

(e) to publish any material that is obscene, defamatory or false;

(f) to violate the security, integrity or availability of any network, application, user account or computing device (this includes not intentionally distributing destructive applications or devices such as viruses, worms, Trojan horses, corrupted files);

(g) to perform, cause or allow a denial of service attack;

(h) to interfere with, disable or circumvent any aspect of the Software, or to use the Software, or any interfaces provided with the Software to access another product or service in a way that violates any applicable terms of use; or

(i) to send, generate or facilitate unsolicited spam, "junk" mail, mass email, promotions, advertising or other similar material.

"**Loss**" means loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind.

"**Personal Information**" is as defined in the *Privacy Act 1988 (Cth)*.

"**Software Output**" means any output response generated by the Software.

"**Third Party Agreement**" means the third-party licensor terms (including in the form of a schedule) applicable to the Software, as set out at https://datatools.com.au/terms-conditions/ .

"**Validation Data**" means the third-party licensor data component of the Software that is made available or licensed to the Customer by DataTools.

3. OWNERSHIP AND INTELLECTUAL PROPERTY

(a) The Customer's right to use the Software shall be on a non-exclusive, non-transferable, revocable basis, for the Customer's internal business purposes, and is subject to the Customer's compliance with the Agreement.

(b) The Software and Documentation and any derivatives (and any intellectual property rights therein) supplied by DataTools under this agreement remains the property of either or both DataTools and its licensors. This Agreement does not transfer any ownership or intellectual property rights to the Customer.

(c) The Customer agrees that it shall not (and shall not assist or allow a third party) to do or attempt to do any of the following:

   (i) reproduce, transfer, distribute, market, publish, sell, re-sell, rent, lease out, sub-license, supply, commercialise, modify, adapt, disassemble, merge, decompile, copy, reverse engineer or create derivative works of the Software, Software Output or the Documentation or the mechanism through which the Software is made available to the Customer;

   (ii) remove, alter, or obscure any copyright notices, trademarks, or other proprietary rights notices included in the Software or Documentation;

   (iii) use the Software to create any product or service which competes with any component of the Software;

   (iv) undertake any data cleansing activities unless otherwise permitted under this Agreement;

      (i) extract or attempt to extract the Validation Data from the Software;

   (v) use the Software in any manner that may result in a breach of a third party's intellectual property rights; or

   (vi) perform any act or omission to circumvent the restrictions in this Agreement.

(d) The Customer may only permit its employees, contractors, agents, and service providers who are authorised by the Customer to use the Software on the Customer's behalf in accordance with this Agreement, and the Customer agrees to be responsible for their acts and omissions as though they are the acts and omissions of the Customer.

(e) The Customer is responsible for ensuring that access details including any account details and passwords are kept secure, and ensuring that no third party shall access the Software (unless otherwise permitted under this Agreement), and shall notify DataTools if it becomes aware of any unauthorised use of the Software or use that is in breach of this Agreement.

4. WARRANTIES

(a) Each party represents and warrants to the other party that the first party:

   (i) has full corporate power to enter into this Agreement and each order, and perform its obligations under this Agreement; and

   (ii) has all licences, authorisations, consents, approvals and permits required by applicable laws to perform the obligations under this Agreement.

(b) Subject to the limitations set out in this Agreement, DataTools warrants that for the respective software licence term, it has the right to provide the Software to the Customer, and that the DataTools Materials will not infringe any third party's intellectual property rights.

(c) The Customer warrants that any Customer materials or Customer Data made available to DataTools will not infringe any third party's intellectual property rights.

(d) Subject to the limitations set out in this Agreement, DataTools warrants that for the term of the software licence, that the Software will materially function in accordance with the description of the Software as set out in the order (the "Description"). In the event that the Software does not materially function in accordance with the Description, and the Customer notifies DataTools of the non-compliance within 30 days, DataTools shall use commercially reasonable endeavours to correct and provide (at its election) a patch or new release for that part of the Software which does not so comply, provided that such non-compliance has not been caused by:

   (i) any modification, variation, configuration or addition to the Software not performed by DataTools;

   (ii) incorrect use, abuse or corruption of the Software or any breach of this Agreement by the Customer;

   (iii) use of the Software with other software, data or on equipment with which it is incompatible; or

   (iv) as a result of the third-party updates.

   (v) For any breach of this warranty, the Customer's exclusive remedy and DataTools' entire liability is to correct the deficient component of the Software causing the breach, or if DataTools deems that it is not possible to correct the Software in a commercially reasonable manner, either party may terminate the affected Software, and subject to the terms of this Agreement, the Customer is entitled to a pro-rata refund of any unused, prepaid fees from the date of termination.

(e) To the extent permitted by law, DataTools excludes all other warranties, express or implied including warranties of merchantability, fitness for purpose, quality, completeness or accuracy of the Software.

(f) The Customer acknowledges and agrees that:

    (i) the Software is supplied "as-is";

    (ii) its use and reliance on the Software is at its own risk;

    (iii) while DataTools may use commercially reasonable endeavours to ensure that the Software is virus-free, DataTools does not warrant or guarantee that the Software shall be error, defect or virus-free, up to date or that it shall meet the Customer's requirements.

(g) The Customer warrants and agrees that it shall comply with the Agreement and any reasonable directions from DataTools as required to comply with DataTools' licensors' requirements from time to time.

5. USE OF THE SOFTWARE

(a) Subject to the terms of this Agreement, including the Customer's payment of the applicable fees, DataTools grants the Customer a licence to use the Software and any updates made available to the Customer for the software licence term and at the quantities agreed in the order (including any limitations on the number of users or servers). Where the Software is purchased through a reseller, details of the software licence may be issued on a separate DataTools Licence Certificate or equivalent documentation to record the quantities and type of software licence purchased.

(b) The Customer agrees:

    (i) to use the Software in accordance with this Agreement, including the Fair Use Policy and any further rights and restrictions set out in the Third Party Agreements and schedules;

    (ii) to provide reasonable access and information in relation to its use of the Software, as and when required in order for DataTools to audit the Customer's compliance with the Agreement, and agrees that Customer Data and usage information may be provided to licensors in connection with this Agreement; and

    (iii) that resellers or affiliates purchasing the Software on the Customer's behalf may have access to Customer account records if they have been nominated to access such records on behalf of the Customer.

(c) The Customer further agrees that its use of the Software is conditional upon the Customer agreeing:

    (i) to comply with DataTools' technical recommendations as required from time to time (including implementing any patches or updates, and to cease using expired versions of the Software);

    (ii) to ensure that any of the Customer's systems that rely upon the use of Software for data entry or data lookup, also have a reasonable alternative manual means to continue to operate in the event that the Software is unavailable; and

    (iii) to ensure that the Customer's technical implementation to use the Software use only the provided service endpoints (service URL) that make use of the standard DataTools load balanced service.

(d) The parties agree that:

    (i) DataTools may deliver the Software by whatever means it determines to be appropriate;

    (ii) DataTools is not responsible for the installation or integration of the Software;

    (iii) the Software is subject to updates, maintenance, modifications and enhancements which may impact the Software from time to time, however such operational interruptions to the Software do not constitute a breach of the Agreement; and

    (iv) any support provided by DataTools to Customer shall be provided in accordance with Schedule 1.

6. FEES AND PAYMENT

(a) Unless otherwise expressly stated, all fees or other sums payable under or in accordance with this Agreement are expressed as being exclusive of GST.

(b) The Customer agrees to:

    (i) pay DataTools the fees as set out in the relevant order, in addition to any related third party order form issued by DataTools (such as an Australia Post "royalty" order form), and any applicable GST as set out in the relevant DataTools invoice;

    (ii) pay any other tax, duties or deductions where applicable; and

    (iii) pay DataTools within 14 days of the invoice date.

(c) The Customer acknowledges that due to the nature of the Software, except where otherwise stated in this Agreement:

    (i) once an order is placed, fees are non-refundable; and

    (ii) once access to the Software has been provided to the Customer, the order is non-cancellable and non- refundable; and

    (iii) if the Customer exceeds the quantity of Software ordered, the Customer shall promptly pay DataTools for any such excess quantity.

(d) While DataTools shall use commercially reasonable endeavours to provide the Software in a timely fashion, the Customer agrees that DataTools shall not be liable for any Losses that arise as a result of any delay in DataTools' delivery of or Customer's access to the Software.

(e)   The Customer agrees that:

   (i)   the Customer must pay the relevant invoice before it is permitted to access the Software;

   (ii)   fees may be adjusted upon renewal, and the Customer shall be provided prior notice to such adjustment and will be deemed to accept such adjustments if it renews or otherwise continues to use the Software; and

   (iii)   DataTools reserves the right to charge interest at the equivalent of the overdraft lending rate of DataTools' bankers upon late payment of any fees by the Customer.

7.   CONFIDENTIALITY & SECURITY

(a)   Each Receiving Party agrees to:

   (i)   protect all Confidential Information and data of the Disclosing Party to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care;

   (ii)   use Confidential Information of the Disclosing Party disclosed or made available to it in connection with the Agreement solely to exercise its rights and perform its obligations under the Agreement; and

   (iii)   not disclose or otherwise provide or make available any Confidential Information to any person except as permitted under this clause 7 or with the prior written consent of the Disclosing Party.

(b)   Notwithstanding clause 7(a), the Receiving Party may disclose Confidential Information:

   (i)   to its officers, employees, contractors or agents, and legal, financial or other advisers (an "Authorised Person"), provided that the Authorised Person has agreed to confidentiality obligations to protect the Confidential Information in a manner no less protective than the provisions of this Agreement, and only to the extent that the Authorised Person has a need to know for the purposes of this Agreement; or

   (ii)   if the Receiving Party is required to disclose in any legal proceeding or to a government entity, to the extent required by law (and in such case the Receiving Party must, to the extent not prohibited by law, give the Disclosing Party reasonable prior notice of any proposed disclosure of Confidential Information and reasonably cooperate with the Disclosing Party to contest any required disclosure, and seek to minimise the extent of the disclosure of the Confidential Information); subject to the Receiving Party accepting all responsibility and liability for the acts or omissions of any person to whom it discloses or otherwise provides or makes available the Disclosing Party's Confidential Information in accordance with this clause 7(a).

(c)   If requested to do so by the Disclosing Party, the Receiving Party must immediately cease all use of the Confidential Information and must, at its own expense, return to the Disclosing Party or destroy, as the Disclosing Party directs, all Confidential Information that it holds or controls, and provide written confirmation of the same to the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of any notes and other records that the Recipient is required by law to retain.

(d)   The Customer shall treat any data supplied by the Supplier as Confidential Information and shall not disclose it to any third party without the prior written consent of the Supplier, except as required by applicable law or where such third party is using the Confidential Information for the Customer's internal business purposes in which case the Customer agrees to be responsible for the acts and omissions by the third party in relation to the Confidential Information.

(e)   The Customer shall implement reasonable security measures within its own environment including measures to protect the confidentiality and integrity of the Confidential Information and Customer Data, and protect the Customer environment from viruses and other similar malware.

8.   PRIVACY

(a)   The Customer agrees that DataTools may use Customer Data (including contact and account information) and disclose Customer Data to third party licensors in order to provide the Software.

(b)   DataTools' use of the Customer's contact information shall be in accordance with the DataTools Privacy policy available at https://datatools.com.au/privacypolicy/ .

(c)   The Customer represents and warrants that the Customer shall only disclose information to the extent required by DataTools to fulfil its obligations under this Agreement; the Customer agrees that it shall not send whole records containing multiple classes of Personal Information and that it shall comply with all applicable privacy laws, including providing any required notices and obtaining all necessary consents for any Personal Information collected, used or disclosed.

(d)   Subject to the Customer fulfilling its obligations as set out above, DataTools shall not store multiple validation data types together.

9.   TERM AND TERMINATION

9.1. Term

(a)   This Agreement, including the Customer's right to use the Software, shall be valid for the term of the order.

(b)   FOR SOFTWARE LICENCES, DATATOOLS SHALL ISSUE THE CUSTOMER A NOTICE OF RENEWAL IN THE FORM OF A RENEWAL INVOICE BETWEEN 30 TO 60 DAYS PRIOR TO THE EXPIRY DATE OF A SOFTWARE LICENCE TERM, AND UNLESS ONE PARTY NOTIFIES THE OTHER IN WRITING THAT IT DOES NOT WISH TO RENEW, OR THE CUSTOMER FAILS TO PAY THE RENEWAL INVOICE BY THE DUE DATE, THE SOFTWARE SET OUT IN THE ORDER SHALL AUTOMATICALLY RENEW FOR AN ADDITIONAL

SOFTWARE LICENCE TERM AND SHALL BE INVOICED ON THE SAME DAY OF THE SUBSEQUENT YEAR ("RENEWAL DATE") UNTIL IT IS TERMINATED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT OR WHERE A PARTY HAS PROVIDED THE OTHER PARTY WITH 30 DAYS' NOTICE IN WRITING PRIOR TO THE RENEWAL DATE.

9.2. 9.2   Suspension or Termination for Cause

(a) The Customer agrees that DataTools may at its election, suspend or terminate the Customer's rights under the Agreement at any time upon notice (including suspending access to the Software) if:

    (i)   the Customer breaches the Fair Use Policy or any of the Third Party Agreements or schedules; or

    (ii)   DataTools, acting reasonably, determines that the Customer's usage is in excess of the licensed quantities or types set out in the order; or

    (iii)   the Customer has not paid an invoice by the due date.

    Any suspension or termination for the causes set out in this clause 9.2(a) shall not relieve the Customer's payment obligations.

(b) The Customer agrees that DataTools may, at its election, suspend or terminate the Customer's rights under the Agreement at any time upon notice (including suspending access to the Software) if there is a material event in relation to DataTools' agreement with its licensors, including a material degradation or failure by DataTools' licensors to provide the Validation Data to DataTools. In the event of DataTools' termination for cause as set out in this clause, and subject to the terms of this Agreement, Customer shall be entitled to a pro-rata refund of any unused, prepaid fees at the termination date.

(c) Where DataTools suspends or terminates the Customer's rights to access the Software as set out in this clause 9.2, DataTools shall, where possible, provide the Customer with at least 7 business days' prior written notice to remedy the breach before exercising its rights under this clause, except where the breach is a material breach of this clause 9.2 that is incapable of remedy or where the contravention or breach by the Customer relates to misuse of the Software, in which case DataTools may immediately suspend or terminate the Customer's rights and the Agreement without providing the Customer with an opportunity to remedy the contravention or breach.

9.3. Termination for Cause – Material Breach

(a) For all other breaches not set out in clause 9.2, either party may terminate the Agreement (including all related orders) with 30 days' prior written notice if the other party materially breaches this Agreement and fails to correct the breach within the 30 day notice period, or immediately upon notice whereby such material breach is incapable of remedy. A material breach includes a party's material contravention of any laws.

9.4. Termination for Convenience

(a) Either party may terminate the Agreement (including all related orders) for convenience with 90 days' prior written notice, subject to clause 9.5 below.

9.5. Consequences of Termination

(a) Upon termination, the Customer's right to access or use the Software terminates and the Customer must cease using the Software, and at DataTools' request return or permanently delete any materials made available to the Customer as part of the Software. Unless otherwise specified, termination shall not relieve the Customer of its payment obligations, and any outstanding amounts must be paid to DataTools within the 30 day notice period.

(b) Any refunds permitted under this Agreement are subject to the Customer not being in breach of this Agreement, and the Customer's payment of a minimum software licence term of 12 months for each annual software licence year (including software licences that have been renewed). Where termination is permitted, the Customer agrees that the exercise of such termination right is the Customer's sole remedy, and the amount refunded is subject to the minimum software licence term set out above and the amount recoverable from DataTools' licensors. Any Software paid for by a reseller may require refunds to be issued to the reseller and the reseller shall be responsible for refunding such amounts to the Customer.

10. LIABILITY

10.1. Limitation of Liability

(a) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES arising out of or in connection with this Agreement. NEITHER DATATOOLS NOR ANY OF ITS AFFILIATES OR LICENSORS SHALL BE LIABLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING FROM: (I) THE CUSTOMER'S INABILITY TO USE THE SOFTWARE, INCLUDING AS A RESULT OF ANY (A) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SOFTWARE, (B) DATATOOLS' DISCONTINUATION OF ANY OR ALL OF THE SOFTWARE; OR (II) THE CUSTOMER'S COSTS INCURRED IN OBTAINING ALTERNATIVE GOODS OR SERVICES; (IV) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY THE CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR THE CUSTOMER'S USE OF OR ACCESS TO THE SERVICES; OR (V) ANY DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF THE CUSTOMER'S DATA.

(b) Subject to any other limitations in this Agreement (including clause 10.1(a) and the warranty limitations set out in clause 4, the maximum aggregate liability of either party with respect to all Losses arising out of or related to this Agreement or the Customer's order (whether under statute, in contract, in tort or otherwise), shall be limited to the equivalent of the fees paid and payable under the order in the 12 months immediately preceding the event giving rise to such liability.

(c) The limitations of liability set out in clauses 10.1(a) and 10.1(b) do not apply in respect of a party's liability for:

(i)   damage to tangible personal property or real property caused by that party;

(ii)   any fraudulent act or omission, gross negligence, wilful misconduct or deliberate breach of this Agreement by that party;

(iii)   that party's breach of applicable laws;

(iv)   personal injury, sickness or death caused by that party;

(v)   any indemnity provided by that party under this Agreement;

(vi)   a party's breach of its intellectual property obligations set out in clause 3;

(vii)   in the case of the Customer, any fees payable under this Agreement; or

(viii)   breach by that party of any privacy or confidentiality obligations set out in this Agreement.

(d)   Each party must take reasonable steps to mitigate any Loss it suffers or incurs under or in connection with this Agreement.

(e)   The liability of a party for any Loss under or in connection with this Agreement will be reduced proportionately to the extent that such Loss has been caused or contributed to by the other party's acts or omissions.

11. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

(a)   This Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia. Any disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of Sydney, New South Wales.

(b)   Any disputes arising out of or in connection with this Agreement shall be resolved through good-faith negotiations between the parties. If the dispute cannot be resolved amicably, the dispute may, at DataTools' election, be submitted to binding arbitration or mediation.

12. GENERAL

(a)   ORDER OF PRECEDENCE: The main terms of this Agreement and applicable schedules to this Agreement (including any Third Party Agreements) available at https://datatools.com.au/terms-conditions/, the terms of the relevant order confirmed by DataTools (which may be an online order), and any supplied invoice together form the "Agreement" between the Customer and DataTools. To the extent there is any conflict, the documents that appear earlier in the list herein shall prevail (but with respect to the Third Party Agreements, only to the extent the provisions directly apply to the Customer).

(b)   ENTIRE AGREEMENT: To the extent permitted by law, this Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, representations, and understandings, whether written or oral, relating to the Software. Notwithstanding, nothing in this Agreement is intended to exclude, restrict, or modify any consumer rights under the *Competition and Consumer Act 2010 (Cth) (CCA)* or any other legislation which may not be excluded, restricted, or modified by agreement. No other terms (including Customer purchase order terms) shall apply.

(c)   INTERPRETATION: Headings are for convenience only. If any part of the Agreement is deemed unenforceable by a court of competent jurisdiction or any other competent authority, that specific part will be separated from the rest of the Agreement. The remaining parts of the Agreement will continue to be valid and enforceable to the fullest extent permitted by law.

(d)   FORCE MAJEURE: If either party is prevented from performing its obligations under this Agreement due to circumstances beyond its reasonable control, such as acts of God, natural disasters, or government actions ("Force Majeure Event"), the affected party's obligations shall be suspended for the duration of the Force Majeure Event. The affected party shall promptly notify the other party of the Force Majeure Event and both parties shall use reasonable efforts to mitigate the impact of the Force Majeure Event. Upon the cessation of the Force Majeure Event, the parties shall resume performance of their obligations under this Agreement. If a Force Majeure Event continues for a period of more than 30 consecutive days, either party may terminate the Agreement, and both parties acknowledge that there will be no compensation due from either party to the other for termination in such circumstances.

(e)   AMENDMENTS: DataTools may amend this Agreement from time to time by posting a revised version on the DataTools website and sending a message to the primary contact for the Customer's account, as set up in the DataTools customer portal; such amended terms are effective as set out in the notice or if no date is specified, upon posting. The Customer agrees that it is responsible for ensuring that their contact details including e-mail addresses are kept current in the DataTools customer portal. The Customer agrees that if it continues to use the Software after the effective date of any amendments to this Agreement and does not notify DataTools within 30 days, or the amendments are required by law, the Customer agrees to be bound by the amended terms; if however the amendments are not required by law and the Customer, acting reasonably deems the amendments to be unacceptable, the Customer may terminate this Agreement by ceasing its use of the Software and providing notice to DataTools within 30 days of receiving notice of the amended terms. No other variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each party.

(f)   WAIVER: Any waiver of a breach of the Agreement will not be considered a waiver of any other breach or term of the Agreement or a future instance of that breach. Waivers will only be effective if they are made in writing.

(g)   SEVERABILITY: If at any time any part of this Agreement becomes void or unenforceable under any applicable law it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected. In

such circumstances, the parties will use reasonable endeavours to substitute the omitted provision with a valid replacement which achieves to the closest extent reasonably and lawfully possible, the intention of the omitted provision.

(h) RELATIONSHIP BETWEEN THE PARTIES: Nothing in this Agreement is to be construed to create a partnership, joint venture or agency relationship between the parties.

(i) ASSIGNMENT: Neither party is permitted to assign or transfer their rights or obligations under this Agreement without the prior consent of the other party, except where the assignment or transfer is the result of a merger, acquisition or sale of substantially all of that party's assets and prior notice is provided to the other party.

(j) SUBCONTRACTORS: DataTools may subcontract and assign any or all of its obligations and rights pursuant to this Agreement, without requiring prior consent from the Customer.

(k) SURVIVAL: The liability and indemnity clauses and any other obligations which are expressed to or by their nature survive expiry or termination of this Agreement, will survive expiry or termination and are enforceable at any time at law or in equity.

(l) CAUSE OF ACTION: Except for actions for non-payment or breach of the Supplier's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than 12 months after the cause of action has accrued.

(m) EVALUATION: Where the Customer is using the Software on a trial or evaluation basis, the Customer agrees not to use any component or variation of the Software provided for evaluation purposes (collectively known as the "Evaluation Offerings") for any commercial purpose whatsoever, nor within any form of live environment whereby the Customer or a third party could suffer any form of Loss as a result. To the extent permitted by law, DataTools will not be liable for any Losses caused by or in relation to Evaluation Offerings. The Customer further agrees not to use the Evaluation Offerings in any manner whatsoever after the expiration of any evaluation period granted by DataTools.

(n) NOTICES: Any notices to DataTools in relation to this Agreement, must be sent in writing to the Legal Department, DataTools Pty Ltd, Office 310/20A Lexington Drive, Bella Vista NSW 2153 or by e-mail to legal@datatools.com.au. Notices will only be validly served pursuant to this Agreement by the Customer, where the notice has been sent by tracked delivery (which can be used to reasonably demonstrate that the notice was received by DataTools) or where receipt of the notice is acknowledged in writing by DataTools.

Schedule 1 – Support

1. During the software licence term, DataTools shall provide technical support to Customer for the Software set out in the order, on Australian business days (Monday to Friday) between 9am and 5pm AEST. Typically, such support may consist of remote off-site (such as over the telephone or by e-mail) advice and documentation in respect of set-up arrangements or post set-up issues relating to the DataTools Materials.

2. DataTools' provision of such support shall be unlimited during the term of the Customer's order however shall be provided subject to reasonable use, meaning that DataTools at its sole discretion reserves the right to limit or adjust the level of support provided as required to, amongst other things, ensure that a minimum level of support is provided to all DataTools customers. In addition, DataTools reserves the right to charge for any out of scope support requests (at DataTools' standard rate as in force at such time) or refuse any support requests in its sole discretion, to the extent that DataTools considers that the support requests are over and above what DataTools considers would be reasonable in view of the free and limited nature of such support, or is unable to provide the requested out of scope support request.

3. The Customer acknowledges that no SLA applies unless the Customer purchases the SLA Premium Option, and where this applies the liability limits set out in the SLA Premium Option shall prevail over the liability limits set out in the main terms of this Agreement.

4. For any out of scope support, DataTools' liability will be limited to the same amount applicable to the Software.

5. The Customer agrees that unless otherwise agreed as an amendment to this Agreement in writing by both parties, where the Software have been purchased through a reseller, the Customer shall seek first level support from the reseller.