

END USER LICENCE AGREEMENT

Dated:

Parties **Cogito Group Pty Ltd ACN 151 795 998**
Suite 3, 9 Sydney Ave Barton ACT 2600

("the **Licensor**")

AND

[insert User full name / ABN or ACN]

[insert address of User]

("the **User**")

Background

- A. The Licensor is in the business of developing, supplying (and re-supplying), installing and supporting software and cyber security platform products, including *Cogito Jellyfish* (the **Software**).
- B. The Licensor agrees to supply the Software and associated support services to the User in accordance with the terms and conditions of this agreement.
- C. The User agrees to pay the relevant support and licence fees and to use the Software and support services in accordance with the terms and conditions of this agreement.

Operative Provisions

1. Definitions and Interpretation

1.1 In this agreement, unless the context otherwise requires:

Agreement means this document including all schedules to it and any amendments.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Module means a specific module or modules of *Cogito Jellyfish* that is downloaded, installed or otherwise accessed by a User.

Party means either the Licensor or the User and a reference to Parties means both of them.

Services means the support services to be provided by the Licensor under this agreement, as described in Item 4 of Schedule 1.

1.2 In this agreement:

- (a) the clause headings are for ease of reference only and shall not be relevant to the interpretation of the provisions to which they refer;

- (b) a reference to "dollars" or "\$" is to Australian currency;
- (c) a reference to a clause refers to a clause in this Agreement; and
- (d) a reference to an Item refers to Items in Schedule 1 of this Agreement.

2. Acknowledgment

2.1 By downloading, installing or using the Software, the User is deemed to:

- (a) have read this Licence Agreement;
- (b) fully understand the terms of this Licence Agreement;
- (c) agree to be bound by the terms of this Licence Agreement; and
- (d) understand that this Licence Agreement is a legal agreement between the User and the Licensor and can be enforced accordingly.

3. Licence for retail version of Software

3.1 The Licensor grants the User, a paid up, personal, non-exclusive and non-transferable licence to use the Software subject to the terms and conditions of this Licence Agreement.

3.2 The User may:

- (a) install the Software, and enable the User's authorised employees to use the Software via the relevant web interface on the User's computers; and
- (b) subject to the payment of the associated fees, access any additional functionality made available by the Licensor in support of the Software under the terms and conditions of use contained in this Licence Agreement.

4. Trial Version and Use of Modules

4.1 If the User installs a trial version of the Software:

- (a) it is only licensed to use the Software for the trial period of 30 days (or for such period as otherwise specified);
- (b) it acknowledges and agrees that the Licensor may end the trial period at any time in accordance with clause 11.2(b);
- (c) it must not use the Software beyond the trial period unless it pays the relevant licence fee before the end of the applicable trial period;
- (d) the Software may display reduced functionality or may cease to function beyond the trial period if it does not pay the relevant licence fee;
- (e) it must remove the Software, including any copies made, from all of its computers and any electronic devices after the trial period ends

unless it has paid the relevant licence fee before the end of the applicable trial period; and

- (f) it must remove the Software from its computers after the trial period ends unless it has paid the relevant licence fee before the end of the applicable trial period; and
- (g) if it wishes to upgrade to the full retail version of the Software at any time, the relevant licence fee set must be paid to the Licensor in full, at which time:
 - (i) use of the Software will become subject to clause 3 of this Licence Agreement; and
 - (ii) further details of the upgrade, including installation and use, to the full retail version of the Software will be sent to the User's registered email address.

4.2 The User is only permitted to access and use the Modules for which it has paid the applicable licence fees.

4.3 The User must not access or use any Modules for which it has not paid the relevant licence fee.

5. Payment and Waiver of fees

5.1 The User will pay the Licensor the fees and expenses in Item 12 of Schedule 1 by the payment method specified in the invoice within 30 days of invoice receipt.

5.2 The fees specified in Item 12 of Schedule 1 are exclusive of GST.

5.3 Notwithstanding any other provisions of this Agreement, the Licensor may at its discretion waive or vary the requirement to pay the relevant licence fee in Item 12 of Schedule 1 by giving the User prior written notice.

5.4 Any variation or waiver of the licence fee in clause 5.3 does not operate as a waiver or variation of the requirement to pay the relevant support fees in Item 12 of Schedule 1, unless otherwise specified by the Licensor.

6. Ownership and Intellectual Property Rights

6.1 The User agrees and acknowledges that:

- (a) all intellectual property rights in the Software including, without limitation, patents, copyright and trade marks are owned or licensed by and remain at all times with the Licensor;
- (b) For the avoidance of doubt, ownership of the Licensor's intellectual property rights in the Software referred to in clause 6.1(a) will include any improvements, developments, modifications and adaptations of the Software made by the User or any other third party as a result of its use under this Agreement, unless agreed otherwise between the parties in writing;

- (c) nothing in this Licence Agreement operates to give the User any ownership rights in the Software; and
 - (d) use of the Software by the User, or any other person or entity, not in accordance with this Licence Agreement is a breach of this Licence Agreement.
- 6.2 Nothing in this Licence Agreement affects the ownership of moral rights in the Software.

7. User Obligations and Restrictions on use

- 7.1 To the maximum extent permitted by law, the User must not copy, alter, modify, adapt, translate, rent, lease, lend or commercially exploit or create derivative works of the Software or any part of the Software, but the User may make one back-up copy of the Software to be used solely in accordance with clause 3 above.
- 7.2 The User must not reverse engineer, decompile, or disassemble the Software or any part of that Software, other than as permitted by applicable law.
- 7.3 The User must not create or attempt to create the source code from the object code of the Software.
- 7.4 The User must use the Software strictly in accordance with the procedures set out in the user help file incorporated with the Software and otherwise in accordance with any user directions that may be issued by or on behalf of the Licensor from time to time.
- 7.5 The User must not, without the prior written consent of the Licensor, enter into or agree to enter into any form of a sub-licence arrangement with another user in relation to access to or use of the Software.
- 7.6 Except as expressly provided in this agreement, the Licensor is not required to provide updates or new releases of the Software pursuant to this Licence Agreement.
- 7.7 The User agrees that it must protect the Software at all times from unauthorised access, use or damage.
- 7.8 The User must pay and continue to pay the relevant support fees on time in accordance with clause 5 and use the support Services for the term agreed by the parties in order to maintain its licence to use the Software.
- 7.9 The User acknowledges and agrees that where it updates or receives new releases of the Software under clause 7.10, failures in that Software may arise. In such circumstances, the Licensor will, if requested by the User, provide additional Services (which may include an update or new release of the Software) to enable proper operation of Software. Any such additional Services will incur additional fees, quantum of which is to be agreed by the Parties at the relevant time.
- 7.10 The User acknowledges and agrees that due to the nature of the Software, it must agree to upgrade or update the Software from time to time when the

Licensor releases an updated version of any downloadable aspect of the Software in order to maintain the support Services.

- 7.11 For the avoidance of doubt, where the User updates or upgrades to a new version of the Software, this Agreement will automatically transfer to the new version and the agreed period of support Services under this Agreement will run from the date of payment of the corresponding licence fee for the product update or upgrade. All rights in respect of the original product will lapse and no party or person will be permitted to make further use of it.

8. Risk

- 8.1 The User will use the Software at its entire risk and it acknowledges and agrees that the Software is supplied 'as is'.
- 8.2 The User acknowledges and agrees that the Software does not necessarily provide definitive answers and solutions and that the effective and accurate use of the Software necessarily requires an element of human intervention and careful selection.
- 8.3 The User acknowledges and agrees that it is its sole responsibility on an ongoing basis to validate backups made using the Software whether by means of test restore or otherwise.
- 8.4 The User acknowledges and agrees that the Software will not function (whether in whole or in part) in all environments and that it is its sole responsibility on an ongoing basis to test for functionality in its current environment whether by means of test restore or otherwise.
- 8.5 The User acknowledges and agrees that the Licensor is not responsible for data consistency in relation to any underlying data backed up or to be backed up and, likewise, in relation to any resulting backup or restore.
- 8.6 The User acknowledges and agrees that it is solely responsible for satisfying itself on an ongoing basis as to the suitability of the Software for its own usage (whether general or particular) whether during the trial period or otherwise.

9. Liability

- 9.1 The User acknowledges and agrees that it remains liable at all times for use of the Software under its licence to which this Licence Agreement applies.
- 9.2 The User acknowledges that Australian laws may give it certain rights or limit the operation of certain provisions of this Licence Agreement. The limitation set out in this clause is subject to those laws.
- 9.3 All express or implied warranties, representations, statements, terms and conditions relating to this Licence Agreement, not contained in this Licence Agreement, are, subject to clause 9.4, excluded from this Licence Agreement to the extent permitted by law.
- 9.4 Nothing in this Licence Agreement excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified, which

may include Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and corresponding provisions of State or Territory legislation which contain provisions including implied terms and warranties which operate to protect the purchasers of goods and services in various circumstances.

- 9.5 If any condition or warranty is implied into this Licence Agreement under the *Competition and Consumer Act 2010* (Cth) or any equivalent State or Territory legislation and cannot be excluded, and the Licensor is able to limit the User's remedy for a breach of such a condition or warranty, then the Licensor's liability for breach of the condition or warranty is limited to one or more of the following at the Licensor's option:
- (a) in the case of goods, replacement of the goods or the supply of equivalent goods; repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or
 - (b) in the case of services, supplying of the services again; or payment of the cost of having the services supplied again.
- 9.6 Subject to the Licensor's obligations under the implied conditions and warranties referred to in clause 9.4, the Licensor's maximum aggregate liability for all claims under or relating to this Licence Agreement or its subject matter (including, if applicable, support and maintenance services under clause 12), whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity or on any other basis, is limited to an amount equal to half of the fees, if any, paid by the User under this Licence Agreement.
- 9.7 Subject to the Licensor's obligations under the implied conditions and warranties referred to in clause 9.4, the Licensor is not liable for, and no measure of damages will, under any circumstances, include:
- (a) special, indirect, consequential, incidental or punitive damages; or
 - (b) economic loss, loss of profits, revenue, goodwill, bargain, anticipated savings or loss or corruption of data, whether in an action in contract, tort (including without limitation negligence), product liability, statute, under an indemnity or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 9.8 In respect of any trial version of the Software, the User acknowledges and agrees that the trial Software is expressly provided with an understanding that the Software may be subject to defects and that you have no course of claim where any defect is found in the trial version of the Software.
- 10. Indemnity**
- 10.1 The User must indemnify the Licensor against any liabilities, losses, expenses or other costs (including, but not limited to, reasonable legal fees) arising from or in relation to any wilful, negligent or unlawful act or omission of, or breach of this Licence Agreement by the User, or (to the extent permitted by law) any use of or reliance by the User on the Software.

10.2 Where this clause refers to a person who is not a party to this Licence Agreement then the Licensor holds the benefit of this clause on trust for them.

11. Term and termination

11.1 This Licence Agreement remains in effect unless it is terminated under this clause 11.

11.2 Licensor may terminate this Agreement with immediate effect by giving written notice if:

- (a) the User breaches one or more obligations under this Licence Agreement and, within 14 days of receiving a written notice from Licensor, fail to rectify the breach;
- (b) the User commits a material breach which, in the Licensor's opinion, is not capable of being rectified;
- (c) one of the warranties given by the User is, or becomes, untrue;
- (d) the User, being a company, become, threaten or resolve to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (e) the User, being a partnership, dissolve, threaten or resolve to dissolve or is in jeopardy of dissolving;
- (f) the User suffers a change in control or ownership;
- (g) the User, being a natural person, dies;
- (h) the User ceases or threatens to cease conducting its business in the normal manner; or
- (i) the User fails to make payment of the fees and expenses within the time required under clause 5.1.

11.3 For the purposes of clause 11.2(f), control of a partnership, trust, joint venture, corporation or other entity (**entity**) means:

- (a) the ability to cast or control the casting vote of more than 50% of the maximum number of votes that might be cast at any general meeting (or equivalent) of the entity; or
- (b) the holding of more than 50% of the issued ordinary share capital, the equity, or other ownership interest in the entity.

11.4 **Trial version.** If the User is installing the trial version of the Software:

- (a) the User may terminate this Licence Agreement at any time by permanently removing the Software from each computer and/or network it operates;
- (b) the Licensor may terminate this Licence Agreement immediately for any reason by giving the User written notice;

- (c) upon notification of termination of the Licence Agreement by the Licensor, the User must destroy all of its copies of the Software; and
- (d) all provisions in this Licence Agreement relating to confidentiality, intellectual property rights and non-disclosure survive the termination of this Licence Agreement.

11.5 **Full subscriber version.** If the User is installing the fully paid-up and registered version of the Software:

- (a) the User may terminate this Licence Agreement at any time by permanently removing all of its copies of the Software from each computer and/or network it operates;
- (b) the Licensor may terminate this Licence Agreement if the User breaches any term or condition of this Licence Agreement and, upon such termination, the User must destroy the Software, together with copies, or return them to the Licensor;
- (c) on termination of this Licence Agreement, the User will not be entitled to a refund of any fees or charges paid by the User for the Software; and
- (d) all provisions in this Licence Agreement relating to confidentiality, intellectual property rights and non-disclosure survive the termination of this Licence Agreement.

11.6 Termination of this Agreement will be in addition to and not in lieu of any other remedies available to the Licensor.

12. Maintenance and support

12.1 This clause 12 applies to support and maintenance services from the Licensor.

12.2 Subject to any separate written support and maintenance agreement or as agreed otherwise by the Licensor, **the User acknowledges and agrees that by purchasing the licence to use the Software, it agrees to purchase in addition a minimum of 12 months of support and maintenance Services for the Software.**

12.3 Subject to the User complying with its obligations under clause 7, the support and maintenance services provided by the Licensor under clause 12 will be in accordance with the Licensor's policies and programs described in the user manual, in on-line documentation, and/or other materials provided by the Licensor for the period agreed between the parties (but no less than the period specified in clause 12.2) from the date of payment of the relevant licence fee and the support and maintenance fee and, unless otherwise agreed in writing by the Licensor, only in respect of the version licensed.

12.4 The User acknowledges and agrees that support and maintenance services do not extend to:

- (a) the remedying of defects in the Software caused by an action or omission by the User in breach of this Licence Agreement or by any

third party not previously approved by the Licensor to maintain the Software; or

- (b) the provision of upgrades or new releases and/or new versions of the Software,

unless otherwise agreed in writing by the Licensor.

- 12.5 To the maximum extent permitted by law, the Licensor disclaims all warranties, either express or implied, including without limitation warranties of merchantability and fitness for a particular purpose in relation to the support and maintenance services provided under or in relation to this clause 12.
- 12.6 If the User does not pay the support fees on time under clause 5.1 and the Licensor does not subsequently exercise its rights under clause 11.2, then the User must renegotiate the terms of its licence with the Licensor under this Agreement, and any variation of such terms will be subject to clause 15 unless otherwise specified by the Licensor.

13. Version upgrade

- 13.1 Where the Licensor releases an updated version of any downloadable aspect of the Software, this Licence Agreement will automatically transfer to the new version and the period for support and maintenance services under clause 12.3 will run from the date of payment of the corresponding licence fee for the product upgrade. All rights in respect of the original product will lapse and no party or person will be permitted to make further use of it.

14. Entire agreement

- 14.1 To the extent permitted by law, this Licence Agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- 14.2 Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of this Licence Agreement except as expressly provided in this Licence Agreement.

15. Variation

- 15.1 The Licensor may vary this Licence Agreement at any time in writing by notifying the User directly by any means including placing the varied terms and conditions on the Licensor's website. The User agrees that it must check the Licensor's website on a regular basis for any variations to this Licence Agreement.
- 15.2 Where the Licensor intends to vary this Licence Agreement and that variation is deemed by the Licensor to materially affect the obligations of either party to this Licence Agreement, then it will provide the User prior notice directly in writing.

16. Law

- 16.1 This Licence Agreement will be governed by and construed in accordance with the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the jurisdiction of the courts and tribunals of the Australian Capital Territory.

17. Waiver

- 17.1 No forbearance, delay or indulgence by a party in enforcing the provisions of this Licence Agreement will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach.

18. Assignment, novation and other dealings

- 18.1 The User must not assign or novate this Licence Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the Licensor's prior written consent, which may be withheld at the Licensor's absolute discretion.

19. Capacity and third party rights

- 19.1 The User warrants to the Licensor that it has legal capacity to enter into and be bound by this Licence Agreement. If the User is a natural person, it warrants to the Licensor that it is at least 18 years of age.
- 19.2 The User agrees that unless expressly provided otherwise in this Licence Agreement:
- (a) each person who executes this Licence Agreement does so solely in his, her or its own legal capacity and not as agent or trustee for or a partner of any other entity; and
 - (b) only those persons who execute this Licence Agreement have a right or benefit under it.

20. Severability

- 20.1 Should any part of this Licence Agreement be or become invalid, that part will be severed from this Licence Agreement. Such invalidity will not affect the validity of the remaining provisions of this Licence Agreement.

21. Privacy

- 21.1 All personal information collected by Licensor will be collected, stored, processed, used and otherwise handled in accordance with Licensor's current *Privacy Policy* as displayed upon the Licensor's website.

Schedule 1 – Agreement Details

Item number	Description	Clause reference	Details		
1.	User		[insert name, address and ABN]		
2.	User Representative		[insert position and/or name of User's Representative]		
3.	Licensor Representative		[insert position and/or name of Licensor's Representative]		
4.	Software and Support Services		Software	Version	Licence parameters
					Nature of Licence [enterprise wide or user number based] Users: [# users or # concurrent users or unlimited users] Site [note if Software is limited to a specific location] Devices: [# devices or # concurrent devices or unlimited devices] [Other: for example # processor cores]
5.	Licence Period		Licence start date: TBA Licence end date: [The Licensor may extend the Licence Period by any period or periods totalling up to 24 months by giving written notice to the User before the end of the current Licence Period.]		
6.	Documentation		[Insert a list of any specific documents that the Licensor is required to provide with the Software, including the required format]		
7.	Delivery Date		Software and Documentation: [insert date]. TBA		
8.	Delivery Location		Software and Documentation: [insert location]. Australian Parliament House		
9.	Specifications		[insert the User's functional and technical requirements for the Software]		
10.	Warranty Period		[insert warranty period if greater than 90 days after the User's first use of the Software]		
11.	Limitation of liability – cap	9.6	[specify the amount to which liability is to be limited in aggregate]		
12.	Agreement Price		Licence fees: [insert licence fees, exclusive of GST]. Support fees: [insert support fees, exclusive of GST]. Any other fees and charges: [insert any other fees and charges, exclusive of GST].		

Executed as an agreement.

Signed for and on behalf of **Cogito Group Pty Ltd ACN 151 795 998** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

.....
Signature of director / company secretary
(delete as applicable)

.....
Name of director
(BLOCK LETTERS)

.....
Name of director / company secretary
(BLOCK LETTERS)

Signed for and on behalf of **[insert full name of other party]** by authority of its representative in the presence of:

.....
Signature of authorised representative

.....
Signature of witness

.....
Name of authorised representative
(BLOCK LETTERS)

.....
Name of witness
(BLOCK LETTERS)