

EzeSuite End User License Agreement

Version August 2017

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

Engagis - refers to Engagis Pty Ltd of 213 Miller Street, 2060 North Sydney, NSW, ABN 98 098 945 469.

EULA means this End User Licence Agreement;

Business Day - means a day on which Engagis offices are open for business in Sydney, excluding Saturday, Sunday or a public holiday in Sydney.

Device- refers to a single device owned or controlled by you.

Government Agency - means any government or judicial body, department, authority, agency or entity in any part of the world and includes any organization established under statute.

Intellectual Property – means any and all intellectual property throughout the world, whether subsisting now or in the future, including rights of any kind in inventions (including patent rights), copyright, rights in circuit layouts, registered designs, registered and unregistered trade marks (including service marks), trade secrets, know-how and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields or any application or right to apply for registration of any of those rights.

EzeSuite Purchase Order - means the Purchase Order between Engagis and you subject to the terms defined in the “Customer Terms and Conditions” available at the following link: www.engagis.com/terms-and-legal.

Services - means services offered by Engagis by means of the EzeSuite Software.

Software - means the ‘EzeSuite ’ software application licensed by Engagis for use on compatible Devices.

Update - means an update supplied by Engagis that has been produced to overcome defects in, or improve the operation of, or supplements the original EzeSuite Software.

“You” means the licensee.

1.2 Interpretation

In this EULA unless a contrary intention is expressed:

- (a) headings and italicized, highlighted or bold type do not affect the interpretation of this EULA;
- (b) the singular includes the plural and the plural includes the singular;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this EULA have a corresponding meaning;
- (d) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (e) a reference to a document (including this EULA) includes all amendments or supplements to, or replacements or novations of, that document;
- (f) a reference to a party to any document includes that party's successors and permitted assigns;
- (g) a reference to an agreement other than this EULA includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (h) a reference to a document includes any agreement or Purchase Order in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (i) a provision of this EULA may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this EULA or the preparation or proposal of that provision;
- (j) a reference to a body, other than a party to this EULA (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (k) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this EULA do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (l) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia;
- (m) a reference to time is to time in Sydney, New South Wales, Australia;
- (n) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (o) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (p) if anything under this EULA is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

2. Terms of EULA

2.1 General

This **EULA** sets out the terms that apply between you and **Engagis** in respect of your use of the **EzeSuite** Software and the Services.

2.2 Acceptance of terms

The EzeSuite Software and Services are offered to you on the condition that you read and accept this document and agree to be bound by its terms. If you do not agree with or otherwise do not wish to accept the terms set out in this EULA, do not install, use or access the **EzeSuite** Software and/or the Services.

2.3 Installation use and access

If you install, use or access the **EzeSuite** Software or Services, you are deemed to have accepted the terms set out in this EULA. The commencement date of this Agreement will be the same day you install, use or access the EzeSuite Software or Services. As such, please read this licence agreement carefully before installing, using or accessing the Software of Services.

1.4 Purchase orders

Your Engagis Purchase Order terms sets out further terms in relation to the use of the Software and Services. In the case of inconsistency between the Engagis Purchase Order terms and this EULA, the terms of the Engagis Purchase Order will prevail.

1.5 Amendments

Engagis may amend this EULA from time to time. Any amendments will be notified to you at:

(a) the following link on the Engagis website - www.engagis.com/ezesuite/eula and/or

(b) via email to you.

The amendments will be effective 14 days after notification, or earlier at Engagis's election if required to be made by law.

1.6 Termination due to amendment

You may terminate the EULA in accordance with the appropriate clause of this agreement if you disagree with any changes made under clause 2.5. Note that if you continue to access and use the Engagis Software or Services after the effective date, this action will mean that you agree to be bound by the amended EULA. .

3. Software

3.1. Software license

Engagis grants you a non-exclusive, non-transferable license to:

(a) use the EzeSuite Software on as many devices as defined in purchased volume license ; or

(b) use the Software on a single Device, in case of a Trial license .

3.2 Term

Subject to clause 10, the term of the license granted to you in clauses 3.1 is for the period of time from the point you installed, used or accessed the EzeSuite software until you cease to have the EzeSuite Software installed on the relevant Device.

3.3 Restrictions

(a) Renting, leasing, lending, selling, transferring, redistributing, sublicensing or otherwise parting with possession of the EzeSuite Software is absolutely prohibited under this EULA. Any copies of the EzeSuite Software must be removed from your device upon selling, disposing or otherwise parting with possession of your device.

(b) You must not attempt to or copy, decompile, reverse-engineer, reverse assemble, reverse compile, disassemble, attempt to derive the source code of, modify, or create derivative works of the EzeSuite Software, or any part of the EzeSuite Software, any output from the software or any files related to the EzeSuite Software or Services.

3.4 Intellectual Property

Engagis owns all Intellectual Property rights subsisting in the EzeSuite Software, any Updates, and any part of the EzeSuite Software.

3.5 No transfer

This EULA does not constitute a transfer or conveyance of any Intellectual Property owned by Engagis as at the date of this EULA, including but not limited to all Intellectual Property associated with the Software and the Services, and its functionality, features and content, or operate as a future transfer of any Intellectual Property owned by Engagis any time thereafter.

3.6 Acknowledgement

You acknowledge that the Software and materials provided in the course of the Services are protected by copyright and may also be protected as other forms of Intellectual Property owned by Engagis. You will not during or at any time after the termination of this document undertake or permit any act which infringes or attempts to infringe those Intellectual Property rights. You

specifically acknowledge that you must not copy the Software except as otherwise expressly authorized by this document.

This clause 3 survives termination of the EULA.

4. Services

4.1 Services offered via the EzeSuite Software

- (a) Subject to availability, Services provided through the Software may include:
- (i) applying for an EzeSuite Feature or Product;
 - (ii) managing EzeSuite features.
- (b) Engagis may, at its election, modify or cease to offer the Services, or any part thereof, at any time without prior notice to you.
- (d) Information regarding the status of your EzeSuite Software when accessed via the EzeSuite Software may not always be up to date and Engagis is unable to give any warranties in this regard.

4.2 Risk

- (a) You use the EzeSuite Services at your own risk.
- (b) To the extent permitted by applicable law, Engagis does not accept liability for any claims or losses arising directly, or indirectly from:
- (i) a failure to provide any Engagis Software or Service, or any part of an Engagis Software or Service;
 - (ii) any suspension or discontinuance of any Service, or any part of any Service; or
 - (iii) any use of the EzeSuite Services by other users, including any use of the EzeSuite Services by other users in manner which contravenes this EULA.

5. User account

5.1 Requirement

- (a) You are required to create a user account in order to use the EzeSuite Software and Services.
- (b) Engagis may require additional personal information (including but not limited to your email address, mobile phone number and billing details) to verify your identity, to facilitate your use and access to the EzeSuite Software and Services.

5.2 Your use of the EzeSuite Software

- (a) You must ensure that: you do not allow multiple people to use the same user account.
- (b) You are responsible for protecting the confidentiality of your password.

(c) You are responsible for any activities engaged in using your account, whether or not access is authorized by you.

(d) You may be required to change your password if Engagis suspects the security of your account has been breached.

5.3 Disabling of features and functionality

Engagis may disable features and/or functionality of the EzeSuite Software and/or Services until you have paid any amounts by the due date for payment. This is without any limitation to Engagis's other rights and remedies under this EULA.

6.4 Update to account details

You must promptly update your account details if your contact details change. If you do not advise us of any changes to contact details, you are liable for any unauthorized access or use of your account that results from your failure or delay to notify us of changes to your contact details.

6. Updates

7.1 Terms of updates

If Engagis provides any Updates, this Agreement governs any Updates (unless such an Update is accompanied by a separate license supplied by Engagis).

7.2 Acknowledgements

You acknowledge that Engagis:

- (a) is not obliged to provide any Updates;
- (b) can use Updates to add, remove, modify or otherwise alter features of the EzeSuite Software in its sole discretion (and that such changes will not be a breach of this EULA and will not give you the right to terminate this EULA)
- (d) may require you to install Updates to the Software in order to continue using the EzeSuite Services.

7.3 Other software

You may be required to update third party software on your Device in order to obtain, install, update, access, use, or continue to access or use the EzeSuite Software and/or Services ("Third party updates").

You acknowledge and agree that:

- (a) Engagis is not responsible for such third party updates;
- (b) such third party updates may be subject to their own terms and conditions – you should review these prior to implementing the third party update; and
- (c) you may be unable to obtain, install, update, access, use, or continue to access or use the EzeSuite Software in cases where you are unwilling or unable to install third party updates.

(d) Specific security settings on the device may prevent EzeSuite delivering its full functionality.

7. Your obligations

7.1. Third party services

(a) Access to the Engagis Software and/or Services will require your Device to be connected to the internet, or may require other third party services.

(b) Your use of third party services may be subject to fees and separate terms and conditions. You must make your own enquiries and arrangements in this regard. You acknowledge and agree that Engagis is not liable for the activities of any such third parties.

(c) You must comply with any applicable third party terms of agreement when using the EzeSuite Software and/or Services. Engagis is not liable if your installation and use of the EzeSuite Software cause you to exceed any data usage quotas, or other limitations that may apply to your Internet service or other services acquired from third parties.

7.2 Restrictions

You agree that you will not:

(a) attempt to disrupt the normal operation of the EzeSuite Software, or any infrastructure operated by Engagis or other business activities of Engagis ;

(b) attempt to gain unauthorized access to the Engagis Software and/or the Services;

(c) impersonate any other person in using of the Software and/or Services; or

(e) use the EzeSuite Software and/or the Services in connection with the actual or attempted contravention of any applicable laws.

8. Support

Engagis will not be obliged to support the Software or the Service. Any support services provided by Engagis to you, if provided, will be the subject of a separate agreement.

9. Termination and suspension

(a) Engagis can terminate this EULA in the following circumstances:

- (i) you are in breach of any term of this document;
- (ii) you are in default of your Engagis Purchase Order or you elect to terminate your Engagis Purchase Order ; or
- (iii) you become insolvent, bankrupt, are wound up or become subject to administration or receivership or any similar deed of scheme or arrangement under any law.

In these cases, the termination will take place immediately.

(b) You may terminate this EULA at any time by deleting the EzeSuite Software from your device, and removing any remaining copies of the EzeSuite Software.

(c) Termination pursuant to this clause will not affect any rights or remedies which a party may have otherwise under this document or at law.

(d) If Engagis reasonably believes your access should be suspended, including situations where Engagis believes that there is a risk of fraud or security breach; or you have not accessed the EzeSuite Software for a period of 6 months or more, it may suspend your access to the Software or Services. .

(e) Engagis may nominate to suspend your access to the EzeSuite Software and Services instead of terminating the EULA. In such cases, it may elect to notify you of the breach giving rise to the right to terminate and request that you rectify the breach within the period specified in that notice. If you fail to rectify the breach within this period, Engagis may then terminate the EULA (from the date specified in the notice).

10. Warranties, liability and indemnity

(a) You warrant that it has not relied on any statement, written or verbal, other than those expressly stated in this Agreement.

(b) In the case of Engagis, any representation, warranty, undertaking, guarantee or condition that is implied by legislation, is, to the extent it is able to be, expressly excluded to the fullest extent. Engagis's liability for breach of any term, condition, guarantee or warranty that is implied by law and cannot lawfully be excluded by Engagis, including the consumer guarantees set out in the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and all similar or equivalent legislation (including rules and regulations), is limited to (at Engagis's option):

- (i) in the case of goods, including the EzeSuite Software (to the extent the Software is considered a good under applicable law) – repairing, replacing or supplying equivalent goods, or paying the cost of any of those remedies to you; or
- (ii) Without limiting or affecting any other provision of this EULA, to the full extent permitted by applicable law, Engagis’s maximum aggregate liability to you for any loss, damage, liability or expense you incur or claims you make against Engagis in connection with this EULA is limited to the total license fee for the previous six months.
- (a) Engagis does not warrant that the EzeSuite Software and Services will be free from faults errors or interruptions.
- (b) Engagis is not liable for data loss under any circumstances.
- (c) Except as expressly provided to the contrary in this document, and to the full extent permitted by applicable law, Engagis will not be liable to you for any loss, including special, indirect or consequential damages (such as loss of profits), or claim, arising out of breach of this document or arising out of the supply of defective EzeSuite Software.
- (d) The Client indemnifies Engagis, its employees and agents, against all loss, Claims, costs, expenses or other liability which Engagis incurs or suffers arising from the Client’s breach of this EULA, or the Client’s willful, unlawful or negligent act or omission.

The obligations under this clause 11 will survive termination of this EULA.

11. Security

- (a) Engagis does not warrant and cannot ensure the security of any information transmitted to it by you. Any information transmitted to Engagis is transmitted at the risk of the sender. Once Engagis receives transmissions from you, it will take reasonable steps to preserve the security and confidentiality of your personal information.
- (b) Users must take their own precautions to ensure that the process which they employ for accessing the EzeSuite Software and the Services does not expose them to the risk of viruses, malware or other forms of interference, third party or otherwise, which may damage their Devices. Engagis does not accept responsibility for any interference or damage to Devices, which arises in connection with use of the EzeSuite Software and the Services.
- (c) It is your responsibility to take steps to protect the security of your Device, including by ensuring you don’t have any viruses or other mechanisms such as keystroke loggers capable of recording your passwords or access codes to the Software.
- (d) You must notify Engagis immediately if you suspect there has been an unauthorised breach of your account, and change your account password.

12. Privacy, data and geographical information

12.1 Privacy statement

(a) Use of the Software and Services is subject to Engagis 's **Privacy Policy**. Engagis privacy policy may be located at www.engagis.com/legal-documents and www.engagis.com/ezesuite-eula.

13. General

13.1 Assignment

(a) You may not assign, novate or otherwise transfer any of your rights or obligations under this EULA without the prior written consent of Engagis (which may be withheld in the absolute discretion of Engagis).

(b) Engagis may assign, novate or otherwise transfer any of its rights or obligations under this EULA at its sole discretion, on written notice to you. Engagis may subcontract the performance of its obligations under this document to any person and without notice to you.

13.2 Waiver

(a) A waiver of a right, remedy or power by Engagis must be in writing and signed by Engagis.

(b) A delay in Engagis exercising, failing to exercise or only partially exercises that right, remedy or power, does not mean that Engagis has waived the right remedy or power.

(c) A waiver given by Engagis in accordance with clause 14.2(a):

(i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and

(ii) does not preclude Engagis from enforcing or exercising any other right, remedy or power under this EULA nor is it to be construed as a waiver of any other obligation or breach.

13.3 Severability

If any provision of this EULA is for any reason held to be invalid, illegal or unenforceable in any respect, prohibited by law or judged by a court to be unlawful, the provision shall, to the extent required, be severed from this EULA and rendered ineffective as far as possible without modifying the remaining provisions of this EULA, and shall not in any way affect any other circumstances of or the validity or enforcement of this EULA.

13.4 Governing law and jurisdiction

This EULA is governed by and construed and interpreted in accordance with the laws of New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts New South Wales..

13.5 Further assurances

You agree that you will, at your own expense, do all things and execute all further documents necessary to give full effect to this EULA and the transactions contemplated by it.

13.6 No reliance

You acknowledge and agree that you have not relied on any statement by Engagis that has not been expressly included in this document.

13.7 Entire agreement

(a) This EULA constitutes the entire agreement between you and Engagis regarding access and use of the EzeSuite Software and Services, and subject to sub-clause 14.7(b), supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

(b) This EULA does not supersede any Engagis Purchase Order in respect of any Engagis Software Product or Service.

(c) Your use of other products, Devices, software or services may be subject to further terms.

13.8 Exercise of rights

(a) Unless expressly required by the terms of this document, Engagis is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this document.

(b) Engagis may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this document. You must comply with any such conditions when relying on the consent, approval or waiver.

13.9 Clauses that survive termination

(a) Clauses that survive termination are set out in the body of this EULA. In addition, each indemnity given by you in this EULA is a continuing obligation, independent from the other obligations of the parties and survives the termination of this EULA. It is not necessary for Engagis to incur expense or make payment before enforcing a right of indemnity against you under this EULA.

14. Contact

In the event that you need to contact Engagis regarding this EULA, the EzeSuite Software and the Services, please use the following details.

Engagis Pty Ltd
Level 12, 213 Miller Street, North Sydney, NSW 2060, Australia
Telephone +61 (2) 8039 0647
Email support@engagis.com