

## Accurate Construction Services information technology Licensing Agreement

The Builder means ..... (ABN.....)

**Start Date:** .....

**End Date:** .....

Accurate Construction Services Pty Ltd ABN 85 145 495 209 ("**ACS**") and the builder identified above ("**Builder**") wish to enter into an agreement for ACS to sub-license to the Builder the use of:

- a. "**Databuild Lite Software**" a fully maintained price file and purchase order raising software package known as "Databuild Lite" specifically designed for use in the construction industry that is licensed by ACS; and
- b. "**Job Track Software**" a construction work flow management software package known as "Job Track" specifically designed for use in the construction industry that is licensed by ACS,

(Collectively "**Licensed Software**").

ACS has the rights to sub-license the Licensed Software to the Builder.

The parties agree as follows:

### 1. Term

- 1.1. The term of this Agreement will commence on the Start Date and continue until the End Date (**Initial Term**).
- 1.2. The term of this Agreement will be renewed, subject to clause 8.8, automatically for successive terms of one year (each a "**Rollover Term**") unless either party provides the other with notice of non-renewal at least thirty (30) days prior to the expiration of the Initial Term or previous Rollover Term, as the case may be.
- 1.3. The "**Term**" consists of the Initial Term and each Rollover Term unless terminated earlier in accordance with clause 7. However, the licence and access to the Licensed Software will not commence until the Builder has paid the Initial licensing fee and first monthly installment of the Term or each renewal period.

### 2. ACS obligations

- 2.1. Subject to the Builder paying all fees required under this Agreement, ACS grants the Builder a non-exclusive, non-transferable sub-license to the Software for the Term, which includes providing the Builder's authorised users with access during the Term to:
  - i the Databuild Lite Software, with a login for 1 user;
  - ii the Job Track Software, with a maximum of 3 logins, each for a different user; and
  - iii support, service and training to the Builders' authorised internal users only.
- 2.2. Following the builder's completion of the Ezyppay Online Application, ACS will deduct from the Builder via Ezyppay:
  - i Licensing fees as set out in Schedule 1 and as elected by the builder for the Initial Term, along with the first monthly installment and subsequent monthly installments;
  - ii Fees as set out in Schedule 1 for each Rollover Term, on the commencement anniversary.
- 2.3. ACS will invoice or schedule payment via Ezyppay for any additional authorised users as requested by the Builder for any extra users requested by the Builder in accordance with the fees specified in Schedule 1.
- 2.4. ACS may update the Licensed Software from time to time as updates become available.



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### 3. Builder obligations

3.1. The Builder acknowledges and understands that by completing the Ezypay Online Application, the Builder is agreeing to Ezypay deducting fees as specified in Schedule 1 when they fall due, being on the same day each month as the Builder's commencement date. The Builder must ensure adequate funds are available on the due date. The Builder acknowledges and understands that access to the Licensed Software is dependent on the payment of License fees. The builder undertakes a commitment of an initial 12 month Term, with a renewal of each anniversary period thereafter, unless advised 30 days prior to anniversary.

3.2. The Builder:

- i acknowledges that all information contained in or produced by the Licensed Software, including but not limited to information about products, suppliers, prices and availability ("**ACS Data**"), other than data input by the Builder, is proprietary information that is confidential to ACS and is made available to the Builder solely through the Licensed Software for the purpose of generating cost estimates and purchase orders from participating suppliers ("**Approved Purpose**");
- ii agrees that all right, title and interest in and to the Licensed Software and ACS Data, and any content created or derived from any of the foregoing, is the exclusive property of ACS or its licensors;
- iii must not download, copy, store or share any ACS Data except for the limited Approved Purpose;
- iv must not use the Licensed Software to generate cost estimates or purchase orders other than for genuine transactions;
- v must not attempt to decompile, reverse-engineer, disassemble, attempt to derive source data, modify, or create derivative works of the ACS Data or the Licensed Software or any part of either of them.

3.3. The Licensed Software requires an internet connection in order to access the latest available ACS Data. The Builder is responsible for maintaining such an internet connection and all associated costs, including any data charges caused by use of the Licensed Software.

3.4. The Builder acknowledges the ACS Data and the Licensed Software is continually updated and requires constant maintenance (both scheduled and unscheduled) and may not be available at all times. While ACS will use reasonable endeavors to procure that the licensors of the Licensed Software will provide maintenance for the Software in accordance with the terms of the Databuild EULA and Jobtrack EULA, it is not (to the maximum extent permitted by law) liable to the Builder for any loss, damage or expense that the Builder may suffer or incur as a result of such maintenance (including the Builder's inability to access or use the Licensed Software during the conduct of such maintenance).

### 4. Licence Terms

4.1. The "End User License Agreement - Databuild" document ("**Databuild EULA**") annexed to this Agreement (or otherwise provided to Builder on or around the time of this document), is hereby incorporated into this Agreement, and will apply to the Databuild Lite Software, subject to the following alterations:

- i each reference to ITW Australia Pty Ltd (ACN 004 235 063) of 2-10 Nina Link, Dandenong South, Vic, 3175, Australia (or "ITW") will be taken to be a reference to ACS;
- ii each reference to "the customer specified in Item 1 of Schedule 1" (or "Customer") will be taken to be a reference to the Builder; and
- iii each reference to "the software described in Item 2 of Schedule 1" (or "Software") will be taken to be a reference to the Databuild Lite Software.



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- 4.2. The "SaaS Subscription Agreement for the Tech Creations Customer Relationship Management Platform" document ("**Jobtrack EULA**") that is made available to the Builder at the time of registering and or accessing the Jobtrack Software online is hereby incorporated into this Agreement, and will apply to the Jobtrack Software, subject to the following alterations:
- i each reference to "Tech Creations Pty Ltd", "Tech Creations", "us" or "we" will be taken to be a reference to ACS; and
  - ii each reference to "you" is a reference to the Builder.
- 4.3. The terms of this document prevail over the terms of the Databuild EULA and Jobtrack EULA to the extent of any inconsistency.
- 4.4. The Builder indemnifies ACS for any loss, damage or expense suffered or incurred by ACS in connection with any claim by any person against ACS which is caused by the Builder's breach of this Agreement, including the Databuild EULA and Jobtrack EULA.

## 5. Force Majeure

- 5.1. ACS will not be liable for any breach of contract due to any matter or thing beyond ACS's control (including but not limited to any fire, flood, earthquake, act of God, strike, lock out, work stoppage, war, riot or civil commotion, intervention of public authority, external infrastructure failure (including internet failure), explosion or accident).

## 6. Confidentiality

- 6.1. For the term of this Agreement and for a period of 3 years after, the parties will at all times keep confidential and not publish, disclose or permit access to any person or corporation, except with prior written approval of the other party, any information or knowledge in relation to the business or affairs of the other party, its staff, agents, customers, suppliers, products, price lists, commercial and business practices.
- 6.2. For the avoidance of doubt, all ACS Data is deemed to be confidential information of ACS for the purposes of clause 6.1. The Builder acknowledges and agrees that the ACS Data is confidential and of significant commercial value to ACS and that any unauthorised disclosure of the ACS Data would cause loss or damage to ACS and/or its related bodies corporate.
- 6.3. This clause 6 applies to any confidential information disclosed or acquired whether before, on or after the date of this Agreement.
- 6.4. The Builder must, at its own cost, deliver to ACS (or, with prior written consent of ACS, destroy or erase) all confidential information of ACS, including the Licensed Software and ACS Data, in the possession, power or control of the Builder or its officers, employees, agents and representatives within 5 business days of ACS requesting the Builder to return (or destroy or erase) it. Returning, destroying or erasing confidential information does not release the Builder from its obligations under this clause 6.
- 6.5. Each party agrees to comply with all privacy laws, including those under the *Privacy Act 1988* (Cth), in relation to any personal information received from the other party and must only use such personal information for the purposes of exercising its rights and performing its obligations under this Agreement and for no other purpose.



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## 7. Termination

7.1. Either party may immediately terminate this Agreement by providing the other party with written notice of termination, if the other party:

- i commits a breach of this Agreement and fails to remedy such breach within 30 days of receiving notice requiring it to do so; or
- ii enters or threatens to enter into bankruptcy, liquidation or any other form of insolvency, administration, management or receivership.

7.2. If the Builder falls in arrears with any outstanding debts owed to ACS or to any supplier engaged with the assistance of the Licensed Software, ACS may, in its discretion:

- i suspend the Builder's access to the Licensed Software until ACS receives written confirmation the outstanding debts have been cleared; or
- ii give notice to terminate this Agreement in accordance with clause 7.1.i.

## 8. Miscellaneous

8.1. The Builder acknowledges and agrees that the Licensed Software and its content and related services are provided on an 'as is' and 'as available' basis and may not be accurate and up to date. The Builder acknowledges that the Licensed Software cannot be guaranteed to be error free and further acknowledge that the existence of any such errors will not constitute a breach of the Agreement.

8.2. To the fullest extent permitted by law, the Builder acknowledges that:

- i ACS will not be liable to the Builder in contract, tort, law or otherwise for any special, indirect or consequential loss or damage of any nature whatsoever incurred by the Builder in connection with its use of the Licensed Software under this Agreement and no such loss may form part of any claim made against ACS by the Builder; and
- ii the total cumulative liability of ACS for any claim by the Builder in connection with this Agreement will not exceed the value of the fees paid to ACS in respect of the 12-month period immediately preceding the date the relevant claim was made by the Builder.

8.3. To the full extent permitted under applicable law, ACS excludes all representations or warranties or conditions of any kind or nature whatsoever, other than those expressly set out in this Agreement.

8.4. Nothing in this Agreement is intended to exclude, restrict or modify the application of any applicable statutory warranties, guarantees and conditions under statute (including the Australian Consumer Law) which by law cannot be excluded. To the full extent permitted by law, ACS' liability for breach of any term, condition, guarantee or warranty implied or imposed under any statute that cannot lawfully be excluded but which can be limited is limited to, at ACS's option, supplying the services again or to paying the cost of having the services supplied again; or in relation to any goods, to supplying the goods again or to paying the cost of having the goods supplied again.

8.5. If any supply made by ACS under or in connection with this Agreement is a taxable supply, the Builder must pay to ACS, in addition to any amount or consideration payable by the Builder in relation to that supply, the amount of any GST payable in respect of the taxable supply at the same time the consideration for the supply is payable.

8.6. This Agreement is governed by the laws of the State of Victoria and the Builder submits to the non-exclusive jurisdiction of the courts of that state.

8.7. This Agreement constitutes the entire agreement between the parties and supersedes all previous terms and conditions imposed by ACS.

8.8. The Agreement terms that apply in any Rollover Period may be amended by ACS if notified to the Builder at least 60 days before the start of that Rollover Period. Payment of the licensing fees by the Builder following receipt of such notice is deemed to be acceptance of the varied terms.



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**SCHEDULE 1:**

**DATABUILD AND JOB TRACK FEE STRUCTURE**

DATABUILD & JOB TRACK STRUCTURE	OPTION 1		OPTION 2			
	Paid in Full		Payment 1 (Paid annually)		12 x Monthly (Installment Fee)	
	Code	Amount	Code	Amount	Code	Amount
Databuild Lite License Holder incl. Job Track	(DBLite1)	\$3,150.00	(DBLite2)	\$800.00	(DBLite2.1)	\$200.00
Full Databuild License Holder incl. Job Track	(FDB1)	\$2,250.00	(FDB2)	\$800.00	(FDB2.1)	\$125.00
Job Track (Compulsory Software) only	(JT1)	\$1,600.00	(JT2)	\$450.00	(JT2.1)	\$100.00

\* All rates are excluding GST

**PLEASE NOTE**

- Option 2 – **Payment 1** (paid annually) will be deducted along with **Month 1** Installment Fee
- All fees will be direct debited via Ezyppay
- Payments can be deducted from either a nominated bank account or credit card.
- We do NOT accept American Express



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