



# Smartware

## C o r p o r a t i o n

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## LICENSE AGREEMENT FOR

# SmartTimer

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### Between

**Smartware Corporation Pty Ltd**, A.B.N 72 091 261 531 of Suite 3, Level 10 Cairns Corporate Tower, Lake Street, Cairns, Queensland, 4870, Australia (hereafter "Smartware")

### And

**You**, the company, business or individual identified in the License Order Form and who reads and accepts the Terms and Conditions contained in this License Agreement (hereafter the "User").

For the purposes of this agreement, a Designated Authority is an independent entity that performs functions on behalf of Smartware.

Smartware licenses the SmartTimer software (the "Software") to the User on the terms and conditions contained in this License Agreement and upon a payment by the User of the applicable Software Subscription or Purchase Price.

- Note. User nominated credit card account(s) will be automatically billed quarterly for all outstanding fees and charges unless otherwise instructed by the User.

The Software may include, but is not limited to, any of the following components, combination of such components or Beta versions of the components: SmartTimer Client, SmartTimer Administration Module, SmartTimer Evaluation, SmartTimer Server Interface, SmartTimer WiFi Hotspot and SmartTimer Credit Card Gateway.

## **LICENSE AND WARRANTY:**

The Software that is subject to this license is the property of Smartware and is protected by copyright law. By accepting or signing this License Agreement, the User is bound by, and unconditionally accepts, the terms and conditions. Except as may be modified by a License Addendum which accompanies this license, the User's rights and obligations with respect to the use of this Software are as follows:

### **THE USER IS GRANTED A REVOCABLE NON-EXCLUSIVE LICENSE TO:**

- (i) Use a copy (or copies) of the client component of the Software in a standalone or network situation, the number of client copies and site location being nominated in the License or Software Order Form or .

**Note.** Operators with network facilities in multiple locations must complete a separate License or Software Order Form for each location.

### **THE USER MAY:**

- (i) access User database files independently for the purpose of manipulating tables of these database files only. Stored procedures or queries that may be included in the database files must be treated as included Software components except in so far as they are copied incidentally;
- (ii) access configuration files independently;
- (iii) maintain one copy of the Software and related documentation for back-up and archival purposes provided the copy contains all the original Software's proprietary notices;
- (iv) if subscribing for a Software license, obtain complimentary technical support plus free Software updates, upgrades and enhancements, exclusively from Smartware or it's Designated Authority, as they become available during the subscription license period;
- (v) if purchasing a Software license, obtain by telephone or email, installation support (maximum 2 hour) and ongoing technical assistance (maximum 4 hours), during normal business hours;
- (vi) request that Smartware provide and maintain a database of PINs and serial numbers and, upon agreement, enable such database so that the PIN and serial number information can be utilised on certain other computer networks.

### **THE USER MUST NOT:**

- (i) use the Software and related documentation in a manner that conflicts applicable laws in the jurisdictions where the Software and related documentation are to be used;
- (ii) sublicense, rent, lease, lend, distribute, transfer or assign any portion of the Software;

- (iii) copy, reverse engineer, de-compile, disassemble, modify, translate, attempt to discover the source code or create derivative works of the Software;
- (iv) use a previous Software version after the User has received a replacement, enhanced or upgraded Software version;
- (v) increase the number of computers using one or more Software components without prior written consent from Smartware.

**THE USER ACKNOWLEDGES:**

- (i) that upon replacing, upgrading or enhancing the Software all copies of the prior Software version must be destroyed;
- (ii) the Software, the copyright and the intellectual property rights in respect of the Software and related documentation are the property of Smartware Corporation Pty Ltd. This License does not grant the User any title or ownership of the Software or any rights to the source code and related documentation;
- (iii) any hardware provided to the User remains the property of Smartware;
- (iv) that Smartware must be notified in writing, one calendar month in advance, of any intended change to the location of the Software licensed computers;
- (v) that license fees, accrued and related charges, are to be paid duly and all accounts must be maintained in good standing;
- (vi) that where Smartware, or it's Designated Authority, provides a PIN and serial number database for the User, that the database is specifically intended for use only on the assigned, licensed, computer network/s. The User must not transfer or allocate any information from the database to another network without the prior written consent of Smartware;
- (vii) that certain charges may apply for the provision and maintenance of the PIN and serial number database;
- (viii) that it is the responsibility of User to contact Smartware or it's Designated Authority, in a timely manner, for any activation codes or date imbedded keys required for the proper functioning of the Software;
- (ix) that failure to comply with any term hereof may result in the execution of the imbedded date activated programming code that prevents proper Software functioning;
- (x) that their service may be terminated when their fees and charges are overdue. A reconnection fee of \$50 per location will apply;
- (xi) that where funds are held by third parties such as PayPal, a bank or other financial institution, these are held at the User's risk.

**BETA RELEASE VERSION:**

- (i) In the event that the Software is a Beta release version, the terms of this Section shall apply. The User's license to use the Software expires 21 days after installation (or such other period as indicated by the Software) and the Software may cease to function. The Software may contain more or less features than the commercial release that Smartware intends to distribute. While Smartware intends to distribute a commercial release of the Software, Smartware reserves the right at any time not to release a commercial release of the Software or, if released, to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the commercial release. The User agrees that the Beta release versions are not suitable for production use and may contain errors affecting their proper operation. The User agrees not to do anything to circumvent or defeat the features designed to stop the Software from operating after the license expires.

## **PAYMENT SCHEDULE:**

### **A) LICENSE, SUBSCRIPTION AND SOFTWARE FEES**

- (i) Software subscription license fees are to be paid to Smartware Corporation or its Designated Authority, by the User quarterly in advance.
- (ii) The User must make prompt and timely payments of subscription license fees in accordance to the applicable amount as defined on the Smartware website ([www.smarttimer.com](http://www.smarttimer.com)) or, where the User deals directly through an Designated Authority, as specified by Smartware under arrangements made by it through the Designated Authority;
- (iii) The User shall be liable for all collection costs and expenses, including those of third party agencies, relating to the recovery of any unpaid fees and charges;
- (iii) Smartware reserves the right to alter license or PIN fees at any time without notice.
- (iv) Smartware reserves the right to offset all outstanding fees and charges against money owed to the User.

### **B) PIN AND SERIAL NUMBER DATA BASE**

- (i) An initial PIN and serial number database may be provided to the User by Smartware, or its Designated Authority, for an applicable fee. Where a PIN is re-charged, refreshed, activated or newly assigned, by the User or, by Smartware or its Designated Authority on behalf of the User, or other PIN characteristics altered, a fee (plus GST where applicable) per PIN is charged as defined on the Smartware website ([www.smarttimer.com](http://www.smarttimer.com)). Accrued PIN charges are to be paid quarterly with license fees;
- (ii) **Note:** PIN fees can vary depending on the type of service requested by the User

## **CUSTOMISED PROGRAMMING**

Where the User requires additional or custom programming to the Software, such services will be charged at the rate of AUD\$85.00 (plus GST) per hour.

## **LIMITED WARRANTY AND LIABILITY:**

- (i) Smartware does not warrant that the Software will meet the User's requirements or that operation of the Software will be uninterrupted or that the Software will be error-free or secure;
- (ii) The above warranty is exclusive and in lieu of all other warranties, whether express or implied, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement;
- (iii) User remedies for Software problems shall be in Smartware's sole discretion. Remedies may include (a) replacing defective Software, (b) advising the User how to achieve substantially the same function with the Software as that described in the related documentation, or (c) if (a) and (b) remedies are impracticable, to refund up to a maximum of three months value in license fees. Beta release versions are excluded from the above remedies;
- (iv) Smartware, or its Designated Authority, accepts no liability for loss, damage, failure, theft, corruption, interruption or inaccuracy of the User's data including PINs, serial numbers, time credits and statistics held on Smartware's, the User's, or third party servers, client computers or related electronic and storage equipment.

## **DISCLAIMER OF DAMAGES:**

- (i) The Software and the accompanying files are licensed "as is" and without warranties as to performance or merchantability or any other warranties whether expressed or implied. Because of the various hardware and software environments into which the Software may be put, no warranty of fitness for a particular purpose is offered;
- (ii) Under no circumstances and under no legal theory whether in tort contract or otherwise shall Smartware, or its Agent, be liable to the User for any indirect, special, incidental, or consequential damages of any character without limitation damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses even if Smartware has been advised of the possibility of such damages or any claim by any other party;
- (iii) In no event shall Smartware's liability under any provision of this agreement exceed the license fees paid by the User for the Software.

## **TERMINATION OF LICENSE AGREEMENT:**

- (i) This License Agreement will automatically terminate if the User fails to comply with any term hereof. No notice shall be required from Smartware to effect such termination;
- (ii) The User may also terminate this License Agreement at any time by giving Smartware a minimum of 90 days written notice of their intent to terminate;
- (iii) Upon any termination of this License Agreement, the User shall immediately discontinue use of the Software and shall within three (3) days return to Smartware, or certify destruction of, all copies of the Software and its components including documentation and related materials provided by Smartware;
- (iv) The User's obligation to pay accrued charges and outstanding fees shall survive any termination of this License Agreement.
- (v) Upon termination, or when directed by Smartware, the User must promptly return within 7 days, at their expense, all hardware provided to the User by Smartware.

**GENERAL:**

- (i) This Agreement is governed by the laws of the State of Queensland, Australia. Any and all unresolved disputes arising out of, or relating to, the Software, the User's use of the Software or this License Agreement shall be submitted for arbitration in the State of Queensland;
- (ii) This License Agreement may only be modified by a license addendum which accompanies this license or by a written document which has been duly signed by an authorised officer of both the User and Smartware;
- (iii) This License Agreement is personal to the User and may not be assigned without Smartware's express written consent. In the event that the User is an entity that merges with another entity or is acquired by another entity during the License Term, the User shall provide written notice of such merger or acquisition not later than the date on which any public announcement is made. If Smartware does not consent to assignment of this License Agreement to the new or acquiring entity in such merger or acquisition, Smartware may terminate this Agreement on thirty (30) days' written notice. Both parties shall perform under this Agreement until such termination is effective;
- (iv) This License Agreement shall constitute the complete and exclusive agreement between Smartware and the User, notwithstanding any variance with any purchase order or other written instrument submitted by the User, whether formally rejected by Smartware or not. The acceptance of any purchase order the User places is expressly made conditional on the User's consent to the terms set forth herein. If any provision of this License Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances;