

CONQA END USER LICENCE AGREEMENT

1. APPLICATION OF AGREEMENT

- 1.1. This Agreement applies to your use of the Software (as that term is defined below). By downloading, installing and/or using the Software:
 - a. you agree to this Agreement; and
 - b. where you download, install and/or use the Software on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to this Agreement on that person's behalf and that, by agreeing to this Agreement on that person's behalf, that person is bound by this Agreement.
- 1.2. If you do not agree to this Agreement, you are not authorised to access and use the Software, and you must not download, install and/or use the Software.

2. INTERPRETATION

- 2.1. In this Agreement:

Conqa means QA Tech Limited, company number 4117838, trading as Conqa.

Documentation means the user and technical documentation for the Software provided by Conqa, and includes any update of the documentation.

Fees means the fees Conqa has quoted to you or as agreed otherwise in writing between you and Conqa, as may be updated from time to time in accordance with clause 6.6.

Intellectual Property Rights includes copyright, and all worldwide rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Software means the software supplied to you by Conqa (and its licensors), including any Update.

Support Services means the support services described in clauses 5.2 to 5.4.

Update means a new version of the Software released to you by Conqa.

You or your means you, or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.

- 2.2. In this Agreement:
- a. clause and other headings are for ease of reference only and do not affect the interpretation of this Agreement;
 - b. words in the singular include the plural and vice versa;
 - c. a reference to:
 - i. a **party** to this Agreement includes that party's permitted assigns;
 - ii. **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include Conqa;
 - iii. a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iv. **including** and similar words do not imply any limit; and
 - v. a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
 - d. no term of this Agreement is to be read against a party because the term was first proposed or drafted by that party; and

3. LICENCE

Conqa grants to you, and you accept, a non-exclusive and non-transferable licence for the duration of this Agreement to use the Software and the Documentation solely for your internal business purposes and on the terms and conditions of this Agreement.

4. LICENCE CONDITIONS

- 4.1. You must:
- a. use the Software and the Documentation for lawful purposes only and must not copy (except making a single copy for your own back-up purposes), reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-licence or otherwise deal in the Software or the Documentation except:
 - i. as expressly provided for in this Agreement; or
 - ii. to the extent expressly permitted by law;
 - b. ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;

- c. maintain all proprietary notices on the Software and the Documentation;
- d. not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or your rights under this Agreement;
- e. not challenge Conqa's ownership of (including the Intellectual Property Rights in) the Software, the Documentation or any other item or material created or developed by or on behalf of Conqa under or in connection with this Agreement; and
- f. notify Conqa in writing immediately after you become aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation.

5. SUPPORT SERVICES

5.1. Conqa will provide you with the Support Services, provided you have:

- a. paid all Fees due;
- b. maintained a proper operating environment for the use of the Software in accordance with any guidance from Conqa, including in the Documentation; and
- c. complied with this Agreement and the Documentation.

5.2. Where you consider on reasonable grounds that there is a material failure of the Software to perform in accordance with the Documentation (**Issue**), Conqa will:

- a. provide telephone and email support in the form of consultation, assistance and advice in relation to the Issue; and
- b. use reasonable efforts to assist in the resolution of the Issue (taking into account the nature and severity of the Issue).

5.3. The provision of support by Conqa under section 5.2 is conditional on you:

- a. first using reasonable efforts to resolve the Issue by referring to the Documentation; and
- b. contacting Conqa during the business hours publicised on its website, via the support contact details published on its website.

5.4. Conqa may, at its discretion, from time to time provide you with Updates, in which case the terms set out below will apply.

- a. Where Conqa provides an Update, you must promptly install the Update.
- b. If you fail to install the Update, Conqa may, at its option:

- i. cease providing the Support Services; or
 - ii. increase the Fees with immediate effect by an amount Conqa considers reasonable to cover any additional cost of Conqa continuing to provide the Support Services.
- 5.5. New versions of the Software that provide new features or additional functionality may, at Conqa's discretion, be subject to payment of an additional fee.
- 5.6. Nothing in this Agreement requires Conqa to provide Support Services where the support is required as a result of a circumstance described in clause 8.4a or 8.4b.
- 5.7. Either party may terminate Support Services on [30 days'] notice.

6. FEES

- 6.1. You must pay the Fees to Conqa for the Software under this Agreement and for the provision of the Support Services.
- 6.2. Conqa will provide you with valid GST tax invoices [*monthly in advance*] for the Fees due in the following [*month*].
- 6.3. The Fees exclude GST, which you must pay on taxable supplies under this Agreement.
- 6.4. You must pay the Fees:
 - a. by the 20th of the month following the date of invoice; and
 - b. electronically in cleared funds without any set off or deduction except to the extent required by law. If you are required by law to make any deduction, you must pay Conqa any additional amount that is necessary to ensure receipt by Conqa of the full amount which Conqa would have received but for the deduction.
- 6.5. Conqa may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by Conqa's primary trading bank as at the due date (or if Conqa's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.
- 6.6. Conqa may increase the Fees by giving at least 30 days' notice. If you do not wish to pay the increased Fees, you may terminate this Agreement on no less than 10 days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate this Agreement in accordance with this clause, you are deemed to have accepted the increased Fees.

7. INTELLECTUAL PROPERTY

- 7.1. From the date of creation or development, Conqa owns all Intellectual Property Rights in:
- a. the Software and the Documentation; and
 - b. any other item or material created, developed or provided by or on behalf of Conqa under or in connection with this Agreement.
- 7.2. If you provide Conqa with ideas, comments or suggestions relating to the Software or the Documentation (together **feedback**):
- a. all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by Conqa; and
 - b. Conqa may use or disclose any feedback for any purpose.
- 7.3. *[Conqa indemnifies you against any claim or proceeding brought against you in the Territory to the extent that claim or proceeding alleges that your use of the Software in accordance with this Agreement constitutes an infringement of a third party's Intellectual Property Rights in the Territory (**IP Claim**). The indemnity is subject to you:*
- a. *promptly notifying Conqa in writing of any IP Claim;*
 - b. *making no admission of liability and not otherwise prejudicing or settling the IP Claim, without Conqa's prior written consent; and*
 - c. *giving Conqa complete authority and information required for Conqa to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for Conqa's account.*
- 7.4. *The indemnity in clause 7.3 does not apply to the extent that an IP Claim arises from or in connection with:*
- a. *your breach of this Agreement;*
 - b. *the use of the Software in a manner or for a purpose not reasonably contemplated by this Agreement or otherwise not authorised in writing by Conqa;*
 - c. *any third party data or data owned by you; or*
 - d. *modification or alteration of the Software by a person other than Conqa.*
- 7.5. *If at any time an IP Claim is made, or in Conqa's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, Conqa may (at Conqa's option):*

- a. *obtain for you the right to continue using the items that are the subject of the IP Claim; or*
- b. *modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing.]*

8. WARRANTIES

8.1. Conqa warrants that:

- a. to the best of its knowledge, the use of the Software by you in accordance with this Agreement will not infringe the Intellectual Property Rights of any other person; and
- b. during the period of [90 days] from the date the Software is supplied to you, the Software will materially perform in accordance with the Documentation, although you acknowledge that the Software is of a technical nature and may not be error-free or bug-free.

8.2. Subject to clause 8.3, if the Software does not meet the warranty in clause 8.1b, Conqa will, at its option and cost, remedy, repair, enhance or replace the defective item so that the Software meets and satisfies that warranty. The remedy, repair, enhancement or replacement of a defective item as described in this clause will be your sole remedy against Conqa for a breach of warranty under clause 8.1b.

8.3. Conqa is not obliged to remedy, repair, enhance or replace any defective item under clause 8.2 to the extent that the defect arises from or in connection with:

- a. modification or alteration of the Software by any person other than Conqa; or
- b. a breach of this Agreement by you, including use of the Software by you or your personnel in a manner or for a purpose not reasonably contemplated by this Agreement or not authorised in writing by Conqa.

8.4. To the maximum extent permitted by law:

- a. Conqa's warranties are limited to those set out in this Agreement and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under the Sale of Goods Act 1908) are expressly excluded;
- b. Conqa makes no representation concerning the quality of the Software or the Support Services, and does not promise that the Software will be error-free, bug-free, or will operate without interruption; and

8.5. You agree and represent that you are acquiring the Software and the Support Services, and entering this Agreement, for the purpose of a business and that the Consumer

Guarantees Act 1993 does not apply to the supply of the Software or the Support Services, or this Agreement.

9. LIABILITY

- 9.1. The maximum aggregate liability of Conqa under or in connection with this Agreement or relating to the Software or the Support Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any 6 month period exceed an amount equal to the Fees paid by you under this Agreement in the previous 6 months (which in the first 6 months is deemed to be the total Fees paid by you from the Date of Supply to the date of the first event giving rise to liability).
- 9.2. Conqa is not liable to you under or in connection with this Agreement for any:
- a. loss of profit, revenue, savings, business, data and/or goodwill; or
 - b. consequential, indirect, incidental or special damage or loss of any kind.

10. TERMINATION

- 10.1. Conqa may, by notice to you, immediately terminate this Agreement if you are in breach of this Agreement:
- 10.2. On termination of this Agreement, you must return to Conqa or destroy all copies of the Software and Documentation in your possession or control.

11. GENERAL

- 11.1. Conqa is not liable to you for any failure to perform its obligations under this Agreement to the extent caused by events beyond its reasonable control.
- 11.2. Any illegality, unenforceability or invalidity of a provision of this Agreement does not affect the legality, enforceability or validity of the remaining provisions of this Agreement.
- 11.3. Any variation to this Agreement must be in writing and signed by both parties.
- 11.4. This Agreement sets out everything agreed by the parties relating to the Software and the Support Services and supersedes and cancels anything discussed, exchanged or agreed prior. The parties have not relied on any representation, warranty or agreement relating to the Software and the Support Services that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986.
- 11.5. This Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with this Agreement.