

MESSAGEmanager on Demand Gateway End User Licence Agreement

Warning

Permission to use this software is conditional upon you, the customer ("licensee"), agreeing to the terms set out below. This software is only offered to you on the condition that you read and accept all the terms of this licence and wish to become a licensee of the software.

Acceptance will bind you and all of your employees to the terms of the licence. By clicking "I Accept" at the end of these terms and conditions or installing, copying or using the software, you will be deemed to have accepted the following terms.

If you do not wish to accept the terms, you must not click "I Accept" and you may not install or use the software.

1. Licence

- 1.1 MESSAGEmanager Solutions Pty Limited ("MESSAGEmanager Solutions") grants the licensee a non-exclusive right to use the software known as the MESSAGEmanager on Demand Gateway strictly in conjunction with the MESSAGEmanager on Demand Service ("MMOD Service") and in accordance with the provisions of this licence.
- 1.2 The licensee may install and use multiple copies of the software provided that the software is only used in conjunction with the MMOD Service.
- 1.3 This licence applies to any update, upgrade, supplements or add-ons to the software which MESSAGEmanager Solutions may provide or make available to the licensee from time to time.
- 1.4 Third party Elements which may be distributed with the software will be subject to the terms and conditions of any third party licences which may be supplied with such third party elements or in the end user documentation.

2. Documentation

- 2.1 This licence extends to any documentation (including specifications and end user documentation) which accompanies the software.
- 2.2 The licensee may reproduce the documentation solely for the purposes of using the software under this licence but:
 - (a) must not render the documentation incomplete, inaccurate or misleading;
 - (b) may not copy, modify or use the documentation in any way not expressly authorised by this licence or permitted by law.
- 2.3 Any copies of the documentation made by the licensee in accordance with this licence must retain all copyright or other proprietary notices.

3. Licensee's obligations

The licensee must:

- (a) not copy, reproduce, translate, adapt, vary or modify the software except to the extent permitted by law (including the Copyright Act 1968) or with the express prior written consent of MESSAGEmanager Solutions;
- (b) supervise and control the use of the software in accordance with the terms of this licence;
- (c) ensure its employees, sub-contractors and other agents who have authorised access to the software are made aware of the terms of this licence;
- (d) not provide or otherwise make available the software in any form to any person other than those referred to in paragraph (c) without the prior written consent of MESSAGEmanager Solutions;
- (e) not rent, lease, sublicense, sell or otherwise transfer its licensed use of the software in whole or in part to another party without the express written permission of MESSAGEmanager Solutions;
- (f) if the software is an upgrade, not use the software unless the licensee holds a licence to use the original

software. After installing the upgrade, licensee must not use the original software (except as part of the upgraded software);

- (g) maintain records of the location of all copies of the software used by the licensee;
- (h) not disclose the Licence Keys provided by MESSAGEmanager Solutions to the licensee to any other party.

4. Warranty

4.1 MESSAGEmanager Solutions warrants that the software:

- (a) does not infringe the intellectual property rights of any third party; and
- (b) is free from defects in materials and workmanship for a period of 90 days from the date of dispatch from MESSAGEmanager Solutions.

4.2 In respect of the warranty described in clause 4.1, MESSAGEmanager Solutions:

- (a) shall indemnify the licensee and keep the licensee indemnified against all claims, actions, proceedings, costs and damages brought by or awarded to any third party for breach of intellectual property rights arising from the licensee's use of the software in accordance with this agreement;
- (b) agrees to defend at its cost proceedings brought against the licensee so far as they are based on a claim that the software infringes the intellectual property rights of a third party;
- (c) (if the licensee is a government instrumentality) agrees to comply at all times with government policy relevant to the conduct of the proceedings referred to in clause 4.2(b);
- (d) shall pay all damages and costs finally awarded in those proceedings against the licensee in relation to the infringement;
- (e) will not indemnify the licensee under clause 4.2(a) unless the licensee notifies MESSAGEmanager Solutions in writing at least 2 business days before any deadline set in relation to the third party claim but in any event within 10 business days of becoming aware of the claim or proceedings and gives MESSAGEmanager Solutions full authority, information and assistance (at the licensee's expense) to defend it.

4.3 In the event any statute implies terms into this licence which cannot be lawfully excluded, such terms will apply to this licence. To the extent permitted by law, the liability of MESSAGEmanager Solutions for breach of any such implied term or the warranty in clause 4.1(b) will be limited, at the option of MESSAGEmanager Solutions, to any one or more of the following:

- (a) return the amount paid (if any) for the software; or
- (b) repair, replace or modify the software to render it non-defective or non-infringing, provided the software continues to provide the licensee with equivalent functionality and performance.

4.4 Except as expressly provided to the contrary in this licence, MESSAGEmanager Solutions will not be liable to the licensee for any loss or damage, including special, indirect or consequential damages or loss of profits arising out of:

- (a) a breach of this licence;
- (b) an accident, fire, abuse or misuse, misapplication, abnormal use, water damage or a virus introduced into the software after acceptance of the terms and conditions of this licence or modification by any person other than a person authorised by MESSAGEmanager Solutions;
- (c) a failure by the licensee to comply with:
 - (i) the instructions in any documentation supplied to the licensee by MESSAGEmanager Solutions;
 - (ii) MESSAGEmanager Solutions' prerequisites set out in the MESSAGEmanager Solutions Prerequisites published from time to time at <http://www.mmanager.com>.

(d) the supply of defective software.

4.5 The licensee acknowledges that it has exercised its independent judgment in acquiring the software and has not relied on any representation or warranty made by MESSAGEmanager Solutions which has not been stated expressly in this agreement or upon any written documentation (including without limitation descriptions, illustrations or specifications, catalogues or publicity material produced and provided to the licensee by MESSAGEmanager Solutions).

5. Copyright

5.1 The licensee agrees that MESSAGEmanager Solutions and its licensors are the sole and exclusive owners of the intellectual property (including copyright) in the software and documentation. The licensee must not, during or any time after the expiry or termination of this licence, do or permit any act which infringes that intellectual property or copyright.

5.2 The licensee will indemnify MESSAGEmanager Solutions fully against all liabilities, costs and expenses which MESSAGEmanager Solutions may incur as a result of the licensee's breach of the intellectual property of the MESSAGEmanager Solutions and its licensors.

5.3 This licensee's rights to use the software vest in contract only and the licensee does not obtain any proprietary rights or interest in the software.

6. Confidentiality

6.1 The licensee acknowledges and agrees that the software contains information confidential to MESSAGEmanager Solutions and will not use or disclose or permit any third party (including without limitation its employees, agents or contractors) to use or disclose the software other than in the usual course of the licensee's business and always in accordance with the terms of this licence.

7. Term of licence

7.1 The license is granted in perpetuity, but may be terminated by MESSAGEmanager Solutions in the following circumstances:

- (a) If the licensee is in breach of any term of this licence or of the MMOD Terms and Conditions;
- (b) If the licensee, being a corporation, becomes the subject of insolvency proceedings;
- (c) If the licensee, being a firm or partnership, is dissolved;
- (d) If the licensee destroys the software and documentation for any reason; or
- (e) If the licensee discontinues using the MMOD Service.

7.2 Upon termination, the licensee or its representative will destroy any copies of the software and documentation in its possession or under its control or otherwise return or dispose of such material in the manner directed by MESSAGEmanager Solutions.

7.3 Termination pursuant to this clause will not affect any rights or remedies which MESSAGEmanager Solutions may have otherwise under this licence or at law.

8. Assignment

8.1 MESSAGEmanager Solutions may assign or novate this licence (in whole or in part) to any person on written notice to the licensee.

8.2 The licensee may transfer the software to a different personal computer or similar device or a different operating system (whether physical or otherwise) provided the licensee within a reasonable period of time completely deletes and removes the software from the initial personal computer, device or operating system (whether physical or otherwise).

8.3 The licensee may assign the benefit of this licence to a third party (incoming licensee) provided that:

- (a) the licensee notifies MESSAGEmanager Solution of the incoming licensee;
- (b) the incoming licensee (by notice in writing to MESSAGEmanager Solutions) accepts the terms of this licence;

- (c) the licensee transfers to the incoming licensee all copies of the software held by it (including all components, upgrades, media, documentation and material whether electronic or otherwise); and
- (d) the licensee does not retain any copies of the software or documentation.

9. Waiver

Failure or neglect by either party to enforce at any time any of the provisions of this licence will not be construed or deemed to be a waiver of that party's rights under this licence.

10. Indemnities

Any indemnity given by a party under this licence is not the exclusive remedy of the party holding the benefit of the indemnity, which party may at its option, in addition or in the alternative, pursue remedies at common law, in equity or under statute.

11. Governing law

This licence will be governed by and construed according to the law of New South Wales, Australia.