**End User Licence Agreement**

**Background**

This End User License Agreement (**EULA**) is a legal agreement between [INSERT END USER] (**You**) and Search365 Pty Ltd ACN 126 470 380 (**S365**) for the Product.

By installing, copying or otherwise using the Product, or allowing S365 or a nominated third party to install or facilitate the use of the Product, You agree to be bound by the terms of this EULA.

# **Definitions**

* 1. In this EULA the following definitions apply:

**Confidential Information** means all information which is:

1. proprietary, confidential or trade secret information to the disclosing party (“Discloser”) or its customers, suppliers or other business partners (including, but not limited to, the Product, Documentation, algorithms, code, know-how, customer information, business opportunities, and research, product, business, financial and marketing data and plans);
2. specifically identified or marked as confidential or proprietary before or at the time of its disclosure; or
3. disclosed by Discloser to the receiving party (“Recipient”) under this EULA.

Notwithstanding the foregoing, the terms of this EULA shall be deemed Confidential Information of both parties, and the Product and Documentation shall be deemed Confidential Information of S365.

**Demonstration Licence** means a temporary, licence for You to use the Product for evaluation purposes only over the period specified in the Sale Document or, in the absence of a specified period, 30 days.

**Documentation** means the user manual and other documentation provided by the Company for End Users for use in conjunction with, and forming part of, the Product.

**Effective Date** means [insert date]

**GST** means the tax imposed or assessed by the GST Act and its related legislation and includes any similar or substitute impost introduced in the future.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means any and all intellectual and industrial property rights in any part of the world including rights in or in connection with:

1. inventions, patents (including supplementary protection certificates);
2. copyright (including the rights to secure copyright renewals and extensions of copyright, copyright not yet in existence but that comes into existence in the future and all other rights of a like nature by law in force in any part of the world), moral rights;
3. trademarks, service marks, business or trade names;
4. design rights, topography rights; and
5. database rights,

together with all other rights of a similar or corresponding nature whether or not now existing, or that come into existence in the future, and whether or not registered or registrable and includes all applications and rights to apply for registration of such rights and includes all renewals and extensions and (without limitation) all rights of action and remedies in relation to past infringements.

**Licence** means a licence of the Product granted under this EULA;

**Licence Fee** means the amount, exclusive of GST, payable for the Licence and provision of any technical Support Services outlined in the Sale Document;

**Licence Key Certificate** means a certificate provided by S365 that enables You to access and use the Product under the Licence;

**New Releases** means an extension, alteration, improvement or additional functionality of the Product;

**Order Date** means the date outlined in Exhibit A Item 3.

**Product** means the software and related product solutions available from time to time from S365.

**Reseller** means any S365 authorised reseller of the Product;

**Sale Document** means Exhibit A of this EULA.

1. **Support Services** means the support and maintenance services provided to You under Exhibit B of this EULA.

**Updates** means Product improvements or enhancements developed to maximise the performance of the Product.

**Use Licence** means a Licence to use the Product in accordance with the terms of this EULA and Sale Documents for the period set out in in the Sale Document or, in the absence of a specified period, 1 year.

# **Licence rights and duration**

* 1. This is not an agreement for sale. S365 grant a non-transferrable, non-assignable, non-exclusive licence to You to use the Product under the terms of this EULA. S365 retains all rights not expressly granted to You under this EULA.
	2. S365 grants use of the Product according to one of the licence types below as identified in the Sale Documentation:
		1. **Demonstration Licence**

A Demonstration Licence permits You to use the Product for evaluation purposes only. You are strictly prohibited from using the Product for commercial or business purposes.

The Product is fully functional, other than any feature limitations specified in the Sale Documentation, under a Demonstration Licence.

Any violation of this clause will result in the mandatory purchase of a Use Licence by You as well as expose You to other legal recourse for damages by S365.

A Demonstration Licence, once granted, will commence upon the Order Date, resulting in the provision of the Licence Key Certificate, allowing access to the Product by You.

* + 1. **Use Licence**

A Use Licence permits You to use the Product for the number of users specified in the Sale Document, in accordance with the obligations and restrictions in this EULA and the Sale Document.

The Use Licence may include making a specified number of complete or partial copies of the Product for the purposes of testing and backup.

You may make and keep copies of the Product at separate facilities for archival and emergency purposes. In making copies of the Product, You may not remove any copyright or proprietary rights notices contained in or placed on the Product.

A Use Licence, once granted, will commence upon the Order Date, resulting in the provision of the Licence Key Certificate, allowing access to the Product by You.

* 1. In no case may You rent, lease, lend, redistribute, sub-licence or re-licence the Product to any third-party individual or entity, without express written permission from S365.
	2. To the extent that You allow employees, agents or other contractors access or use the Product, You must require that all such parties comply with and adhere to restrictions provided herein, and You shall be fully liable for any breaches committed by such parties.

# **Confidential Information**

* 1. **Restrictions on Use**
		1. Recipient agrees to:
1. use the Confidential Information solely for the purposes of this EULA;
2. use the same care and discretion to avoid disclosure, publication or dissemination of Discloser's Confidential Information as it uses with its own highly confidential information; and
3. reproduce Discloser's proprietary rights notices in the same manner in which such notices were set forth in or on the original.
	* 1. You are strictly prohibited from reverse engineering, decompiling, disassembling, modifying, or adapting the Product (except as otherwise permitted by applicable law to facilitate interoperability and only to the extent permitted) or creating derivative works based on the Product.
	1. **Nondisclosure**
		1. Recipient shall not disclose, publish, or disseminate Confidential Information to anyone other than those of its employees and consultants, each of which has a need to know and is bound by an agreement that prohibits unauthorized disclosure or use as described herein. Recipient will be responsible for any violation of the terms of this EULA by any such employees and consultants.
	2. **Exceptions**
		1. Confidential Information does not include information that is:
4. already in Recipient’s lawful possession and was not obtained directly or indirectly from Discloser;
5. developed independently without use of or reference to Discloser's Confidential Information, as shown by documents and other competent evidence in Recipient's possession;
6. obtained from a source other than Discloser without any obligation of confidentiality and without a breach of such source's obligations of confidentiality; or
7. publicly available when received, or subsequently becomes publicly available through no fault of Recipient.
	* 1. If Recipient is required to provide Confidential Information of Discloser to any court or government agency pursuant to a written court order, subpoena, regulatory demand or process of law, Recipient must first provide Discloser with prompt written notice of such requirement and then provide Discloser with reasonable cooperation if Discloser seeks protective arrangements for the production of such Confidential Information. Recipient shall also (1) take reasonable steps to limit any such provision of Confidential Information to the specific Confidential Information required by such court or agency, and (2) continue to otherwise protect all Confidential Information disclosed in response to such order, subpoena, regulation or process of law. Except for such required disclosure, the Confidential Information shall remain subject to the terms of this EULA and may only be disclosed as set forth herein.
	1. **Term, Remedies and Breach**
		1. The parties hereby agree to be bound by the Confidential Information obligations, both during the EULA Term and for a period of five (5) years after termination or expiration of this EULA.
		2. Given the nature of the Confidential Information and the competitive damage that could result to S365 upon unauthorised disclosure, use or transfer of its Confidential Information to any third party, the parties hereby agree that monetary damages would not be a sufficient remedy for any breach of this Section. In addition to all other remedies, S365 shall be entitled to specific performance and injunctive and other equitable relief as a remedy for any breach or threatened breach of this Section.
		3. If You breach or is otherwise responsible for a breach of this Section, You will be liable for any and all reasonable costs associated with the return of information and/or defence of such breach.

# **Conditions of Licence**

* 1. This Licence is non-transferable.
	2. The use of the Product by You must comply with all relevant and applicable laws.
	3. If a New Release or Update from an earlier version of the Product is provided to You, the Licence will continue on the terms set out in this EULA and in the Sale Document.
	4. If You do not agree to the terms of this EULA, do not install or allow others to install, copy or use the Product. If the Product is already installed, You must promptly destroy and/or permanently delete any part of the Product You may possess.

# **Documentation**

* 1. S365 warrants that the Documentation will be adequate to enable You to operate the Product.
	2. You acknowledge S365's proprietary interest in the Documentation and You will not copy the Documentation except where necessary to enable proper use of the Product in the manner reasonably contemplated by this EULA and Sale Document.

# **Licence Fee and Licence Key Certificate**

* 1. As consideration for the Licence, You must pay the Licence Fee to S365, the Reseller or as otherwise directed by s365 or the Reseller and in accordance with the Sale Document for the Product.
	2. The Licence Fee is exclusive of all taxes, duties and surcharges payable in respect of the Product.

# **Ownership of Intellectual Property Rights**

* 1. S365 retains ownership of the Product whether in its original form or as modified during the term of the Licence. All Intellectual Property Rights in the Product are retained by S365.
	2. If copies of the Product are unmarked, You must mark all copies of the Product and the Media in which the copies are contained with a notice of:
		1. S365's ownership of the Product and the Media;
		2. the confidentiality of the Product; and
		3. such other information as S365 requires from time to time.

# **Modifications and reverse engineering**

* 1. You must not:
		1. modify the whole or any part of the Product or combine or incorporate the whole or any part of the Product in any other program or system;
		2. reverse engineer, reverse assemble, reverse compile, decompile, decrypt or disassemble the Product or any part of the Product; or
		3. otherwise reduce the Product or any part of the Product to human readable form.

# **Warranties**

* 1. S365 warrants that the Product will perform substantially in accordance with the specifications throughout the period of the Licence. S365 disclaims any warranties with respect to third party software.
	2. The warranty given in this clause:
		1. is subject to You having fully complied with your obligations under this EULA;
		2. is not a warranty that the results obtained from the Product will be in accordance with expectations of You; and
		3. does not operate where the substantial non-performance arises in any respect from the installation of the Product, the nature or operation of the equipment on which the Product is used or the use of any materials or products not provided by S365.
	3. Neither S365 nor its Resellers or suppliers warrant that the Product is error-free, will operate without interruption or will work in all combinations selected by You.
	4. The express terms and conditions of this EULA apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

# **Liability**

* 1. This clause sets out the entire liability of S365 (including any liability for the acts or omissions of its sub-contractors) in respect of:
		1. any breach of this EULA; and
		2. any representation, statement or tortious act or omission including negligence arising under or in connection with this EULA.
	2. S365 is not liable for any of the following losses or damage (whether or not such losses or damage were foreseen, direct, foreseeable, known or otherwise):
		1. loss of revenue; loss of actual or anticipated profits (including without limitation loss of profits on contracts); loss of the use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss of, damage to or corruption of data caused prior to the data being loaded into the Product;
		2. any indirect, special or consequential loss or damage howsoever caused whether or not such loss is covered in the clause above; and
		3. any losses arising as a result of any third party bringing a claim in respect of any of the above types of loss.
	3. Subject to clauses 9.1 to 9.2 and clause 9.4, the total aggregate liability of S365 arising out of, or in connection with this EULA (whether for negligence or other tort, breach of contract or breach of statutory duty) will not, in respect of any and all claims in respect of a Year exceed the amount of the Licence Fee paid in respect of the 12 month period in which the act or omission giving rise to the claim occurred.
	4. Where it is not lawful or it is found not to be lawful for S365 to limit its liability as set out in clause 9.3, S365’s liability is limited (at its election) to:
		1. the resupply of the goods and/or services that are the subject of the claim; or
		2. the payment of having the goods and/or services that are the subject of the claim, resupplied.
	5. In respect of any claim between the parties under or in connection with this EULA, the parties agree that to the maximum extent permitted by law, the operation of Part 4 of the Civil Liabilities Act 2002 (NSW) or of any laws having a similar effect in the Commonwealth and other states and territories of Australia with respect to proportionate liability, are excluded and have no application or effect.

# **Indemnity**

* 1. Subject to the terms and conditions of this EULA, S365 shall defend You against any third party claims that the Product infringes any registered patent or copyright, and, only to the extent the Product is found to be infringing, S365 will pay the damages that are specifically attributable to such claim provided that S365 is given prompt notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim.
	2. If the Product becomes, or in S365’s opinion is likely to become, the subject of an infringement claim, S365 may, at its option and expense:
		1. obtain for You the right to continue using the Product; or
		2. replace or modify the Product so that it becomes non-infringing while giving equivalent or better performance; or
		3. if neither 11.2.1 or 11.2.2 are commercially reasonable (as reasonably determined by S365), then terminate the EULA and refund a pro-rated portion of the License Fees to You.
	3. S365 shall have no liability to indemnify or defend You to the extent the alleged infringement is based on
		1. compliance with designs, guidelines, plans or specifications of You,
		2. any Product modification by anyone other than S365,
		3. any use of the Product in combination with other products, equipment, software, or data not supplied by S365,
		4. Your use of any older version of the Product when use of a newer version of the Product which S365 has made available to You under this EULA would have avoided the infringement, or
		5. any use other than in accordance with the Documentation (collectively, “Exclusions”).
	4. This paragraph states S365’s entire liability and Your sole and exclusive remedy for infringement claims and actions, and this indemnification obligation shall be effective only if You have made all payments (then due and payable) as required by the terms of this EULA. For the purposes of this Section, the definition of Product shall not include any components subject to open source licenses.
	5. You shall defend S365 against any third party claims arising out of or related to the following items and pay the damages, fees and costs (including defence costs and reasonable legal fees) arising out of or related to such claims:
		1. the negligent or willful misconduct of You (and its agents, if applicable);
		2. any of the Exclusions;
		3. material breaches of this EULA by You; or
		4. any misrepresentations or warranties provided by You (and its agents, if applicable) to third parties regarding functions and capabilities of the Product which differ from the functions and capabilities described by S365.
	6. For either party seeking indemnification under this Section, such party shall use reasonably commercial efforts to mitigate any damages, fees and costs it wishes to claim from the other party under this indemnity

# **Termination**

* 1. Subject to express written agreement from S365 to the contrary, upon termination or expiry of the Licence, You must delete and destroy all copies of the Product and all of its component parts, source code, associated documentation, related materials and backups. Evidence of the complete deletion of the Product must be provided to S365 within 14 days of the termination or expiry of the Licence.
	2. Without prejudice to any other rights, S365 may terminate this EULA if You fail to comply with the terms and conditions of this EULA.
	3. S365 may, without prejudice to any other rights which it has accrued or may accrue in its favour, terminate this EULA with 30 days’ notice in writing to You if:
		1. You are in breach of any term of this EULA and the breach:
			1. is not capable of being rectified; or
			2. is capable of being rectified, but You have not rectified within 14 days after receiving a notice of breach from S365;
		2. You become, or threaten to become, or are in jeopardy of becoming, subject to any form of insolvency activities;
		3. any material statement or representation made by You to S365 prior to, or in relation to, this EULA is found to be incorrect in any material respect;
		4. any other event or series of events, whether related or not, exists or occurs (including, without limitation, any material adverse change in the business, assets, management or financial condition of You), which in the reasonable opinion of S365 would affect the ability of You to comply with any of Your obligations under this EULA; or
		5. there is a change in control or ownership of You that in the reasonable opinion of S365, adversely affects Your ability to fulfil Your obligations under this EULA.
	4. All fees are non-cancellable and non-refundable.

# **GST**

* 1. In addition to paying the Licence Fee and any other amount payable in connection with this EULA, You will:
		1. pay to S365 or a Reseller, an amount equal to any GST payable from the supply of the Product which the Licence Fee or any other amount is payable under this EULA; and
		2. make such payment either on the date when the Licence Fee is due or as indicated in the Sale Documents You are issued.

# **General**

* 1. **Audit Rights**

You shall maintain complete and accurate records adequate to verify the use of the Product is in compliance with this EULA. You shall permit Your records to be examined by S365’s employees during Your business hours. In the event such audit discloses a departure or variance in use which differs from the permitted use described in this EULA, You shall pay for all expenses related to the audit process and S365 and You shall immediately negotiate additional fees to cover such use and/or compensate S365 if You decides to discontinue such use.

* 1. **Assignment**

Except as expressly permitted by this EULA, You must not assign any of your rights under this EULA without the prior written consent of S365. That consent may be given or withheld at S365’s absolute discretion.

* 1. **Entire agreement**

This EULA contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier EULA, or anything said or done by another party (or a director, officer, agent or employee of that party or the Reseller in the case of S365) before this EULA was executed.

* 1. **Governing Law and jurisdiction**

The Law of the Jurisdiction State of New South Wales, Australia governs this EULA. The parties submit to the non-exclusive jurisdiction of the Jurisdiction’s courts of the State of New South Wales, Australia. The parties will not object to the exercise of jurisdiction by those courts on any basis.

* 1. **Obligations survive termination**

Subject to anything to the contrary in this EULA, the obligations in this EULA survive the termination or purported termination of this EULA.

* 1. **Severability**

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this EULA, but the rest of this EULA is not affected.

* 1. **Waiver**

The fact that a party fails to do, or delays in doing, something that party is entitled to do under this EULA does not amount to a waiver of that party’s right to do it. A waiver by a party is only effective if it is in writing.

A written waiver by a party is only effective in relation to a particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

* 1. **No partnership**

Nothing in this EULA is intended to, or shall be deemed to establish any partnership or joint venture between the parties; constitute any party the agent of the other party; or authorise a party to make or enter into any commitments for or on behalf of the other party.

* 1. **Actions**

Except for actions for non-payment or breach of S365’s Intellectual Property Rights, no action, regardless of form, arising out of or relating to this EULA may be brought by either party more than two years after the cause of action has accrued

* 1. **Force Majeure**

Except for any obligation by You to make a payment required under this EULA, neither party will be liable for any failure or delay in performance due, in whole or in part, to causes beyond its reasonable control, such as natural disasters, wars, strikes and other upheavals.

* 1. **Open Source Software**

The Product contains third party owned components, some of which are subject to open source licenses. Except as permitted by any applicable open source licenses, You shall not use, or permit others to use, such third party owned components apart from the Product. Your license rights with respect to components subject to open source licenses are defined by the terms of such licenses; nothing in this EULA is intended to alter, enlarge, or restrict Your rights or obligations under the applicable open source licenses with respect to such open source code.

* 1. **Marketing**

You agree to act as a reference for S365 prospects who want to talk to a current customer, as long as such requests are not excessive and are made within a reasonable business manner and timeframe.

You agree to allow S365 to add Your name and/or company logo to a list of selected or representative customers, and in other promotional material (such as marketing presentations).

**EXECUTED as an Agreement**

**EXECUTED** for and on behalf of [Insert]:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Authorised Signature)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXECUTED** for and on behalf of **Search365** **Pty Ltd:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Authorised Signature)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**Sale Document**

**Capitalised terms are as defined in the EULA unless defined herein.**

|  |  |
| --- | --- |
| 1. **Parties**
 | You: [INSERT]S365: SEARCH365 Pty Ltd |
| 1. **Agreement**
 | End User License Agreement between You and S365, dated the Effective Date  |
| 1. **Order Date**
 | [INSERT] |
| 1. **Product**
 | [INSERT] |
| 1. **Your Project**
 | [INSERT] |
| 1. **License Type**
 | [INSERT] |
| 1. **Supported Platforms**
 | [INSERT] |
| 1. **Support Services**
 | As specified in the EULA and Exhibit B |
| 1. **License Term**
 | [INSERT] beginning on the Order Date and ending on the calendar day immediately prior to the [INSERT].  |
| 1. **Fees & Payment Terms**
 | In consideration of the license granted and Support Services for the Product, You shall pay S365 the following License Fees on no greater than thirty (30) day terms. |
|  | License Fees inclusive of Support:  | $[INSERT] AUD (exclusive of GST)  |
| 1. **Other Terms/Conditions**
 | Upon any termination or expiration of this Sale Document, You must comply with the obligations contained in Section 12 (Termination) of the EULA.This license is for one (1) [CONFIRM] Server only and applies for a single instance of an operating system be it on a physical machine or within a virtual machine.Payment is due in advance for the License Term. |

For the avoidance of doubt, if there is any discrepancy between a term or condition stated in this Sale Document and a term or condition contained in the EULA, the term or condition stated in this Sale Document shall control and prevail. S365 and You agree that Your terms and conditions in or referenced in a purchase order (or similar document) shall be of no force and effect, and only the terms of this Sale Document and the EULA shall govern the license of the Product and provision of Support Services.

**EXHIBIT BSUPPORT SERVICES TERMS AND CONDITIONS**

**These Support Services Terms and Conditions are referenced in and incorporated into the EULA between S365 and You. Capitalised terms have the same meaning as they do in the EULA unless defined herein.**

During the License Term designated in an applicable Sale Document and thereafter for so long as You pay the License Fees (as referenced in Section 3), S365 agrees to provide or facilitate the following Support Services to You:

1. **Definitions:**

“**Bug**” means a Product malfunction where the Product is not operating as described in the Documentation.

“**Enhancement**” means a technical or functional addition to the Product delivered with a new Minor Version Release to improve functionality and/or operations.

“**Fix**” means the repair or replacement of source, object or executable code Product versions to remedy a Bug.

“**Hot** **Fix**” means a Bug fix which is accomplished by replacing one or more existing files (typically executable files) in the Product with revised versions rather than replacing all of the Product.

“**Major** **Version** **Release**” means a Product release in which the version number component to the left of the decimal point has been increased by one. A Major Version Release reflects a significant architectural change to the Product, as well as possible incompatible changes to the API.

“**Minor** **Version** **Release**” means a Product release in which the version number component to the right of the decimal point has been increased by one. A Minor Version Release reflects the introduction of Fixes and Enhancements which do not significantly change the architecture of the Product and which maintain API compatibility.

“**Platform**” means a single compiled object or runtime package for use on a specific set of hardware, operating system and compiler version runtime environment.

“**Update**” means all published revisions to the Documentation and one (1) copy of the new Minor Version Release not designated by S365 as new products or functionality for which it charges separately.

“**Workaround**” means a change in the procedures followed or data supplied to avoid an Bug without significantly impairing the Product performance.

1. **Coverage:**

**Product support:**

S365 provides You with Support Services for the Product. Only Your designated employees may contact S365 for the provision of Support Services, and promptly after the Effective Date, You shall designate one or more employees, by name, title and location, to S365 in writing (such designated employees, “**Support** **Representatives**”). If any Support Representative changes, You shall promptly notify S365 in writing. You and S365 acknowledge that Search 365 shall not be liable for delays caused by Your failure or delay in complying with the provisions of this paragraph.

You only receive the Support Services explicitly described in this Exhibit B; the provision of any other support services (for example, communication with/troubleshooting of issues from an End User/customer of You, debugging of Your software/applications, direct access/logging into Your software/applications) shall only be provided with mutual written agreement on terms.

All communications regarding Support Services shall be in English, unless otherwise expressly agreed upon by the parties.

S365 provides the Support Services in collaboration with, and support from, it’s suppliers.

**Product maintenance:**

S365 will periodically issue and make available to You the following technical and functional improvements to Product on a “when-and-if-available” from S365:

* 1. Fixes to Bugs;
	2. Updates;
	3. Enhancements; and
	4. Minor Version Releases.

S365 may, at its sole discretion, make available Major Version Releases.

1. **Your Obligations:**

Provision by S365 of Support Services shall be contingent on You abiding by the following obligations:

1. You shall use commercially reasonable efforts to assist S365 (including by providing documentation that clearly describes the Bugs) in producing a test case in an environment provided by S365; and
2. You shall use commercially reasonable efforts to respond to and communicate with S365’s support services team.

If S365 is unable to reproduce a test case (using commercially reasonable efforts), then You shall use commercially reasonable efforts to collaborate with S365 on a diagnosis, which may include S365 sending and You using experimental versions of the Product to assist in trouble-shooting and diagnosing the Bug.

1. **Term and Termination:**

The term of Support Services for any Sale Document shall be described in such Sale Document.

If You fail to make payment or breach the Support Services provisions and such breach has not been cured within fourteen (14) days of receipt of written notice of the breach, S365 may suspend or cancel Support Services.

1. **Exclusions:**

S365 shall have no obligation to support:

a. Substantially altered, damaged or modified Product;

b. Bugs caused by Your negligence, hardware malfunction or other causes beyond S365’s control;

c. Product installed on a Platform not specified in this EULA; and

d. Third party software not licensed through S365.

1. **Product Support Communication and Delivery:**

Information regarding Support is confidential and proprietary and shall only be used in connection with Your use of the Product and informational communications.

You shall use a reliable virus detection system on any Product or information posted to Support, utilize back-up procedures, monitor access to Support, promptly notify S365, of any virus detected within Your systems associated with Support and generally exercise a reasonable degree of caution when utilizing information from Support. S365 does not warrant that Support services will operate without interruption or without errors. S365 reserves the right to modify Support services. S365 assumes no responsibility for anything posted by anyone other than S365, including but not limited to, information about the Product, modification code, or portions thereof.

S365 may, at its option, provide support over the telephone as required.

Except for gazetted public holidays for Australia, support hours shall be Monday through Friday, 9:00 am to 5:00 AEST time, but are subject to change at any time.

1. **Priority Level of Bug:**

S365 shall address Bugs in accordance with the following protocols:

**Critical Level**: Bug affects at least half of the user base, has a critical business impact, causes loss of business or service and no Workaround is available.

S365 promptly (1) designates specialist(s) to correct Bug; (2) provides expanded communication on correction status; and (3) escalates troubleshooting a Workaround, Hot Fix or Fix;

**Urgent Level**: Product, or Product with Workaround, has a Bug which affects at least a quarter of the user base and has significant business impact but does not cause loss of business or service.

S365 promptly (1) designates specialist(s) to correct Bug; (2) provides ongoing communication on correction status; and (3) initiates troubleshooting a Workaround, Hot Fix or Fix;

**Standard Level**: Bug affects less than a quarter of the user base and has minimal business impact or minor loss of service.

S365 (1) assigns specialist(s) to commence correction of Bug; and (2) exercises all commercially reasonable efforts to include the Fix for Bug in the next Update;

**Base Level**: Bug has minor business impact or You suggests a product improvement or enhancement.

S365 (1) assigns Bug to case management and tracking; and (2) may include the Fix for Bug in the next Update.

1. **Problem Resolution:**

Problem resolution will consist of either a temporary Workaround or permanent solution. Problem resolutions for Urgent and Critical Bugs achieved using temporary Workarounds will usually be resolved with permanent solutions in the next scheduled release of the Product, unless otherwise agreed upon by You.

1. **Support Services Response Timeline**

S365 shall use commercially reasonable efforts to attempt to resolve any Bugs within the response times set forth below.

|  |  |  |  |
| --- | --- | --- | --- |
| Problem Category | Category: **Critical** | Category: **Urgent** | Category: **Standard or Base** |
| **Response Objectives** | 4 hours during a Business Day respond by phone or email | 1 Business Day respond by phone or email | 3 Business Days respond by phone or email |
| **Status Reporting Objectives** | Daily | Daily | When scheduled for inclusion in Product release |
| **Resolution Objective** | 2 Business Days | 5 Business Days | Next product release |
| **Resolution Deliverable** | Hot Fix or Workaround to be delivered to You | Hot Fix or Workaround to be delivered to You | Release date for Update release in which the Bug is solved |
| **Permanent Resolution Objective** | Next product release | Next product release | Next product release |

*NOTE 1: Business Days are all calendar days except Saturdays, Sundays and gazetted public holidays for Australia.*