

# 1 DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

- "Affiliate" means in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that party from time to time;
- "Business Day" means a day (other than a Saturday or Sunday or public holiday) on which banks are generally open in London for non-automated normal business;
- "Confidential Information" means all information whether technical or commercial know-how (including all specifications, inventions, processes, initiatives, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties) given by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any Affiliate, person, firm, or organisation associated with that party where the information is:
- (a) identified as confidential at the time of disclosure;
- or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
- "Equipment" has the meaning set out in clause 2.1.4;
- "Force Majeure" means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including war, revolution, terrorism, riot or civil commotion, or precautions against any such; strikes, lock-outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions;
- "Good Industry Practice" means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading

	company within the relevant industry or business sector;
"Intellectual Property Rights"	means copyright, know-how, confidential information, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, mask works, utility models, domain names and all similar rights and, in each case: <ul style="list-style-type: none"> <li>(a) whether registered or not;</li> <li>(b) including any applications to protect or register such rights;</li> <li>(c) including all renewals and extensions of such rights or applications;</li> <li>(d) whether vested, contingent or future; and</li> <li>(e) wherever existing;</li> </ul>
"Insolvency Event"	means an event where a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction;
"Losses"	means all incurred losses, liabilities, damages, costs, claims, demands, actions, proceedings, orders and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties;
"Sendplus Documentation"	means the documents (in whatever media) that accompany the Sendplus Software, including all data, reports and the Specifications (including drafts);
"Sendplus Materials"	means the Sendplus Software and the Sendplus Documentation;
"VAT"	means: <ul style="list-style-type: none"> <li>(a) value added tax as defined in the Value Added Tax Act 1994;</li> <li>and</li> </ul>

(b) (any similar tax in any other jurisdiction)

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

1.2.2 references to sub-clauses, clauses, schedules or appendices (if any) are to sub-clauses, clauses, schedules or appendices of this Agreement;

1.2.3 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);

1.2.4 references to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation;

1.2.5 in the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail;

1.2.6 clause and schedule headings do not affect the interpretation of this Agreement;

and

1.2.7 a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it

## 2 GRANT OF LICENCE

### 2.1 Sendplus Licence Terms

In consideration of the Licensee agreeing to abide by the terms of this Agreement, and payment of the fee payable under this Agreement, Send Plus PTY Limited grants Licensee a licence to download, install and use the Sendplus Software subject to the following licence conditions:

2.1.1 Non-exclusivity: the licence is non-exclusive;

2.1.2 Transferability: the licence is non-transferable and without a right to sub-license;

2.1.3 Purpose: the Sendplus Software may only be used in connection with Licensee's own business purpose and subject to other restrictions on use in clause 3 (Use of Sendplus Materials) below; and

2.1.4 Equipment: the Sendplus Software may only be used on computer(s) which comply with the minimum settings and operating systems identified by Send Plus PTY Limited

### 2.2 Installation

Unless otherwise agreed, Licensee is responsible for installation of the Sendplus Software and any error corrections, patches, fixes, updates, upgrades, new releases or new versions subsequently received (if any) on the Equipment

### **2.3 Sendplus Documentation**

The grant of the licence pursuant to this clause 2 (Grant of Licence) shall, where applicable, include the right to use the Sendplus Documentation only to the extent necessary to enjoy the benefit of the Sendplus Software

### **2.4 New Versions/Upgrades**

The Sendplus Software licensed under this Agreement shall include any error corrections, patches, fixes, updates, upgrades, new releases or new versions subsequently received (if any) of the Sendplus Software

## **3 USE OF THE Sendplus MATERIALS**

### **3.1 Restrictions**

Licensee shall not use the Sendplus Materials contrary to any restriction stated in this Agreement, or otherwise in a way that is not expressly permitted by this Agreement

### **3.2 Limits of Use**

Except to the extent such activities are expressly agreed by the parties to this Agreement:

3.2.1 Licensee's rights to use the Sendplus Materials does not permit it to distribute, license, sell, rent, lease or otherwise deal in or encumber the Sendplus Materials;

3.2.2 Licensee's rights to use the Sendplus Materials does not permit it to modify, add to, or otherwise enhance the Sendplus Materials;

3.2.3 Licensee's rights to use the Sendplus Materials does not permit it to use the Sendplus Software to provide outsourced services to third parties or make it available to any third party or allow or permit a third party to do so;

3.2.4 Licensee's rights to use the Sendplus Software does not permit it to combine, merge or otherwise permit the Sendplus Software (or any part of it) to become incorporated in any other program, nor arrange or create derivative works based on it;

3.2.5 Licensee's rights to use the Sendplus Software do not permit it to copy the Sendplus Software (or any part of it), except for such backups as are reasonably necessary for Licensee to have for the purposes of its lawful use in accordance with section 50A of the Copyright, Designs and Patents Act 1988, provided that

Licensee keeps accurate and up-to-date records of such copying containing such information as Send Plus PTY Limited reasonable requests;

3.2.6 Licensee's rights to use the Sendplus Software does not permit it to decompile (as defined in section 50B of the Copyright, Designs and Patents Act 1988) the Sendplus Software (or any part of it), except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988; and

3.2.7 Licensee's rights to use the Sendplus Software does not permit it to observe, study or test the functioning of the Sendplus Software, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988

### **3.3 Standards**

When you access and use Sendplus Software, you agree that you will not:

3.3.1 introduce or transmit any Malware into our systems or those of any third parties;

3.3.2 access of transmit any violent, pornographic or illegal material nor do anything to promote such material or anything that is illegal;

3.3.3 use it to make inappropriate communications;

3.3.4 bring Send Plus PTY Limited or the Sendplus Software into disrepute

### **3.4 Security**

Use of the Sendplus Software involves transmission of information over the internet and is not a secure means of communication. Any information that you supply to any third parties when using the Sendplus Software may not be kept confidential; therefore you should not use the Sendplus Software in connection with any material that you regard as being confidential, commercially sensitive or valuable. Send Plus PTY Limited is not subject to any obligation of confidentiality nor is it liable for any use and/or disclosure of confidential, commercially sensitive or valuable information

## **4 WARRANTIES**

### **4.1 Authority to Enter Into Agreement**

Each of the parties warrants to the other that it has full power and authority to enter into and perform this Agreement

### **4.2 Warranty**

Send Plus PTY Limited warrants to Licensee that:

4.2.1 Send Plus PTY Limited has the right, power and authority to grant to Licensee the rights (if any) contemplated herein and supply the Sendplus Materials;

4.2.2 the Licensed Documentation will provide users with adequate instructions to enable them to effectively use the Sendplus Software;

4.2.3 the Sendplus Software will be free from defects in workmanship and materials, and free from viruses and other malicious code when supplied; and

4.2.4 the Sendplus Materials do not infringe the Intellectual Property Rights of any third party

#### **4.3 Notice of Breach of Warranty**

The warranties specified in clause 5.2 are subject to Licensee giving notice to Send Plus PTY Limited as soon as it is reasonably practicable to do so upon becoming aware of the breach of warranty. When notifying Send Plus PTY Limited of a breach Licensee shall use its reasonable endeavours to provide Send Plus PTY Limited with such documented information, details and assistance as Send Plus PTY Limited may reasonably request

#### **4.4 Remediating Faults**

Upon notification in writing Send Plus PTY Limited undertakes to use its reasonable endeavours to remedy any fault arising from a breach of clause 5.2 within 90 days after notification. If Send Plus PTY Limited rectifies such fault within such time then it will have no other liability of any kind in respect of the fault. Such remedy shall be free of charge to Licensee unless the fault is found not to arise from a breach of clause 5.2, at which point Licensee shall pay all reasonable and demonstrable costs and expenses associated with the fault incurred by Send Plus PTY Limited

#### **4.5 Licensee's Acknowledgement**

Licensee acknowledges and agrees that:

4.5.1 Send Plus PTY Limited is not and cannot be aware of the extent of any potential Losses resulting from any failure of the Sendplus Software to conform to its Specification or any failure by Send Plus PTY Limited to discharge its obligations under this Agreement;

4.5.2 the Sendplus Software has not been prepared to meet Licensee's individual requirements and that it cannot be tested in every operating environment so as to produce software which is error free or operates without interruption; and

4.5.3 it is Licensee's responsibility to ensure the facilities and functions of the Sendplus Software described in the Specification meet Licensee's requirements

## **4.6 No Warranty**

Send Plus PTY Limited does not warrant or represent that the Sendplus Software shall be:

- 4.6.1 uninterrupted or error-free; or
- 4.6.2 compatible with third party software or equipment.

## **4.7 No Representations or Warranties**

Save to the extent set out in this clause 5 (Warranties) or to the extent that any exclusion is prohibited by law, no other representations, warranties or conditions, express or implied, statutory or otherwise (including as to condition, satisfactory quality, performance or fitness for purpose), are given or assumed by Send Plus PTY Limited in respect of the Sendplus Materials and any such representations, warranties or conditions are hereby excluded

## **4.8 Limit of Liability**

Any warranties given by Send Plus PTY Limited shall be subject to Licensee using the Sendplus Software in compliance with this Agreement and the Sendplus Documentation, and Send Plus PTY Limited shall not be liable under this clause for, or required to remedy, any problem arising from:

- 4.8.1 Licensee's failure to install any error corrections, patches, fixes, updates, upgrades, new releases or new versions previously provided to it by Send Plus PTY Limited;
- 4.8.2 any modification made to any part of the Sendplus Software by anyone other than Send Plus PTY Limited without its express prior written consent; or
- 4.8.3 any defect or error wholly caused by any equipment or third party software used in connection with the Sendplus Software, other than that described in the Specification

## **4.9 Availability of Sendplus Software Services**

Whilst Send Plus PTY Limited will use reasonable efforts to ensure that the Sendplus Software services are available, uninterrupted, accessible at a reasonable speed, and operating in a safe environment for the relevant period purchased, it makes no warranty (whether expressly or by implication) that the Sendplus Software and service will fulfil the above criteria at all times or that it will at all times remain free from any bugs, errors or omissions

## **4.10 Suspension of Sendplus Software Services**

Send Plus PTY Limited may at any time suspend or terminate the operation of the Sendplus Software at any time at its reasonable discretion (for example, for maintenance)

## **5 INTELLECTUAL PROPERTY RIGHTS**

### **5.1 Intellectual Property Rights**

Except for Licensee's licence right to use the Sendplus Materials as expressly granted above, all Intellectual Property Rights in and to the Sendplus Materials shall vest and remain vested in Send Plus PTY Limited. To the extent that Licensee acquires any Intellectual Property Rights in the Sendplus Materials, Licensee shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Send Plus PTY Limited. Licensee shall execute all such documents and do such things as Send Plus PTY Limited may consider necessary to give effect to this clause

### **5.2 Proprietary Information**

Licensee acknowledges and understands that the Sendplus Materials contain confidential and proprietary information and it shall not conceal, modify, remove, destroy or alter in any way any proprietary markings of Send Plus PTY Limited on or in the Sendplus Software or any related materials and documentation.

## **6 CONFIDENTIAL INFORMATION**

### **6.1 Disclosure**

Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement

### **6.2 Permitted Disclosure**

Each party undertakes to:

- 6.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents, professional advisers and contractors (including Send Plus PTY Limited personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
- 6.2.2 to procure that such persons are made aware of and agree in writing to



observe the obligations in this clause

### **6.3 Unauthorised Use**

Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same

### **6.4 Exceptions**

The provisions of this clause shall not apply to information which:

6.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;

6.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;

6.4.3 is independently developed by the recipient, without access to or use of such information; or

6.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.

The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter

## **7 LIMITS ON LIABILITY**

### **7.1 Limit**

Subject to the following sub-clauses, in no event shall the aggregate liability of Send Plus PTY Limited including liability for breach of contract (including under any indemnity), misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising, in respect of all Losses arising under this Agreement exceed fees received from Licensee

### **7.2 Remote Loss**

Under no circumstances shall Send Plus PTY Limited be liable for any of the following types of loss or damage arising under or in relation to the Agreement (whether arising for breach of contract (including under any indemnity), misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty, warranty, strict liability or any other legal theory howsoever arising):

7.2.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or

7.2.2 any indirect or consequential loss or damage whatsoever, even if Send Plus PTY Limited was aware of the possibility that such loss or damage might be incurred by the other

### **7.3 Limits to Exclusions of Liability**

Notwithstanding the above neither party excludes or limits any liability for:

7.3.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or

7.3.2 fraud, fraudulent misrepresentation or fraudulent concealment; or

7.3.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

7.3.4 any other liability to the extent the same cannot be excluded or limited by law

### **7.4 Limitations Reasonable**

The parties agree that the limitations on liability in this Agreement are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement

## **8 FORCE MAJEURE**

### **8.1 Force Majeure Event**

Neither party (the 'claiming party') shall be liable to the other for any delay or failure to perform any of its obligations hereunder to the extent such delay or failure is due to Force Majeure provided that:

8.1.1 the claiming party could not have avoided such circumstances by taking precautions which it ought reasonably to have taken or planned for;

8.1.2 the claiming party has used and continues to use its reasonable endeavours to mitigate the consequences of such an event upon the performance of its obligations under this Agreement and to continue to perform its affected obligations;

8.1.3 the claiming party shall not be excused performance of its obligations unaffected by Force Majeure; and

8.1.4 the claiming party shall resume performance of its obligations affected by

Force Majeure as soon as reasonably practicable

## **8.2 Notice of Force Majeure Event**

The claiming party shall promptly give written notice forthwith to the other upon becoming aware of Force Majeure, which notice shall contain details of the circumstances giving rise to Force Majeure and its anticipated duration

## **8.3 Delay for 90 Days or More**

If, due to Force Majeure, a party is unable to perform a material obligation, or is delayed in or prevented from performing its obligations for a continuous period of more than 90 days, the other party may, within a further 7 days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect

## **9 TERMINATION**

### **9.1 Immediate Termination**

Either party may, without prejudice to its other rights and remedies, by notice in writing to the other party immediately terminate this Agreement if the other:

9.1.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or

9.1.2 is the subject of an Insolvency Event.

### **9.2 Effect of Termination**

In the event of termination of this Agreement for any reason:

9.2.1 all licences granted to Licensee under this Agreement shall terminate immediately;

9.2.2 Licensee shall within seven days return or destroy (at Send Plus PTY Limited's option) all Send Plus PTY Limited's Confidential Information or Sendplus Materials in its possession or under its control and all copies of such information; and

9.2.3 all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect

## **10 NOTICES**

## **10.1 Form of Notices**

Any notice or other communication given to a party under or in connection with the Agreement (a 'Notice') shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause

## **10.2 Deemed Receipt**

### **10.3 A Notice shall be deemed to have been received:**

10.3.1 if delivered personally: when left at the address referred to in clause 11.1 (Notices);

10.3.2 by first-class post: two Business Days after posting

10.3.3 by airmail: seven Business Days after posting

10.3.4 by hand: on delivery, and

10.3.5 by facsimile: on receipt of a successful transmission report from the correct number, and

10.3.6 by e-mail: on receipt of a read return mail from the correct address within 24 hours from delivery if no notice of delivery failure is received

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

## **11 ENTIRE AGREEMENT**

### **11.1 Entire Agreement**

This Agreement constitutes the entire agreement between the parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to that subject matter

### **11.2 No Representations**

Each party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings or representations which were made by or on behalf of the other party in relation to the subject matter of this Agreement at any time before its signature, other than those which are set out expressly in this Agreement

### **11.3 Waiver**

Each party hereby waives all rights and remedies which might otherwise be available

to it in relation to any statements or other representations made under clause 12.2, but for clause 12.4

#### **11.4 Fraud**

Nothing in this clause shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment

### **12 GENERAL**

#### **12.1 Indemnity**

In respect of any indemnity given by either party under this Agreement, the party which receives the benefit of the indemnity shall take all reasonable steps so as to reduce or mitigate the loss covered by the indemnity

#### **12.2 No Partnership**

Nothing in this Agreement shall (except as expressly provided) be deemed to constitute a partnership, or create a relationship of principal and agent between the parties for any purpose

#### **12.3 Contracts (Rights of Third Parties) Act**

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any rights or remedy of such a person that exists or is available apart from that Act

#### **12.4 No Assignment**

No party may assign, novate, transfer, sub-contract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent or except as expressly permitted in this Agreement

#### **12.5 No Variation**

No amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each party

#### **12.6 Invalid Provisions**

If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision

would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties

### **12.7 Waiver In Writing**

A waiver of any right under this Agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action

### **12.8 Cumulative Rights**

Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law

### **12.9 No Set-Off or Counterclaim**

All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction

## **13 GOVERNING LAW AND JURISDICTION**

### **13.1 Governing Law**

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales

### **13.2 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims)