

Software as a Service and Software License Agreement

Parties

1. CIBIS International Pty Limited (ABN: 58 126 017 310), a company incorporated in Australia (the "**Provider**"); and
2. You (the "**Customer**").

Agreement

1. Definitions

- 1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Account**" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"**Agreement**" means these terms and conditions including any Schedules, and any amendments to this Agreement agreed by the parties from time to time;

"**Business Day**" means any weekday other than a public holiday in New South Wales;

"**Business Hours**" means the hours of 9:00am 5:00pm AEST on a Business Day;

"**Charges**" means the following amounts:

- (a) the fee or charge amounts specified and displayed on the Formlify web site at the time the Customer created its account; or
- (b) such amounts as may be agreed in writing by the parties from time to time; or
- (c) such amounts as are notified by the Provider to the Customer in accordance with clause 8.4;

"**Customer**" means the person or entity associated with the initial account creation;

"**Customer Confidential Information**" means:

- (a) the Customer Data; and
- (b) form definitions created by the customer;

"**Customer Data**" means all data, works and materials: uploaded to or stored on the Platform by the Customer; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

"**Effective Date**" means the date of the Customer's acceptance of the terms and conditions set out in this agreement or upon the Customer's first purchase and use of any Services (including the Mobile App), whichever occurs first;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacking attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**GST**" means a Goods and Services Tax payable pursuant to the A New Tax System (Goods and Services Tax) Act 1999 or any related law to any authority by a person as a supplier of goods or services;

"**Hosted Services**" means Formlify Form Builder web application, Customer Data, and submitted form data which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Maintenance Services**" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"**Mobile App**" means the mobile application known as The Formlify App that is made available by the Provider in accordance with the terms set out in clause 6;

"**Permitted Purpose**" means the creation and publication of electronic forms within the Hosted Services or the Mobile App, and collection of data through the use of those forms, in accordance at all times with clause 3.8;

"**Personal Information**" has the meaning given to it in the Privacy Act;

"**Platform**" means the platform managed by the Provider and used by the Provider to provide the Hosted Services;

"**Provider**" means CIBIS International Pty Limited, a company incorporated in Australia;

"**Privacy Act**" means the Privacy Act 1988 (Cth), which regulates how personal information is handled. The Privacy Act defines personal information as information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable;

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"**Support Services**" means support in relation to the identification and resolution of errors in the Hosted Services, but shall not include the provision of training services;

"**Term**" means the term of this Agreement, commencing in accordance with clause 2.1 and ending in accordance with clause 2.2.

2. Term

2.1 This Agreement shall come into force upon the Effective Date.

2.2 This Agreement shall continue in force until the expiry of the Customer's account resulting from an act or request by the Customer or as a result of non-renewal of the Service subscription, subject to termination in accordance with clause 16.

3. Hosted Services

- 3.1 The Provider shall ensure that the Platform will, on the Effective Date, automatically generate an Account for the Customer and provide to the Customer login details for that Account.
- 3.2 The Provider hereby grants to the Customer a non-exclusive licence to use the Hosted Services in accordance with this Agreement during the Term.
- 3.3 The licence granted by the Provider to the Customer under clause 3.2 is subject to the following limitations:
 - (a) the Hosted Services may only be used by the named users identified by the Customer's account created within and by the Hosted Services, providing that the Customer may change, add or remove a designated named user; and
 - (b) the Hosted Services must not be used at any point in time by more than the number of concurrent users specified in the terms of your subscription or as extended through the purchase of additional user accounts, providing that the Customer may add or remove concurrent user licences.
- 3.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under clause 3.2 is subject to the following prohibitions:
 - (a) the Customer must not sub-license its right to access and use the Hosted Services;
 - (b) the Customer must not permit any unauthorised person to access or use the Hosted Services;
 - (c) the Customer must not use the Hosted Services to provide services to third parties;
 - (d) the Customer must not make any alteration to the Platform.
- 3.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator account.
- 3.6 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.
- 3.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
 - (a) a Force Majeure Event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Customer's computer systems or networks;
 - (d) any breach by the Customer of this Agreement; or
 - (e) scheduled maintenance carried out in accordance with this Agreement.
- 3.8 The Customer must comply with Schedule 3 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator account comply with Schedule 3 (Acceptable Use Policy).
- 3.9 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

- 3.10 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.11 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 3.12 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

4. Maintenance Services

- 4.1 The Provider shall provide the Maintenance Services related to the Hosted Service during the Term.
- 4.2 The Provider shall where practicable give to the Customer at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this main body of this Agreement.
- 4.3 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

5. Customer Data

- 5.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 5.2 The Customer warrants to the Provider that the Customer Data and/or the use of the Customer Data by the Provider in accordance with this Agreement will not:
- (a) breach the provisions of any law, statute or regulation;
 - (b) infringe the Intellectual Property Rights or other legal rights of any person; or
 - (c) give rise to any cause of action against the Provider,
- in each case in any jurisdiction and under any applicable law.
- 5.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 5.4 The provider will retain copies of Customer Data for a period of 30 days following termination of this agreement. It is the responsibility of the Customer to obtain any Customer Data required within 30 days of agreement termination.

5.5 A Customer may request the Provider supply additional copies of the Customer Data (in your preferred format), however, any request must be made in writing and additional charges apply for time allocated to preparing Customer Data.”

6. Mobile App

6.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to additional terms and conditions referred to in this clause 6.

6.2 The Provider hereby grants to the Customer a non-exclusive licence to use the Mobile App in accordance with this Agreement during the Term.

6.3 The Provider shall make available the programs as listed on attached Schedule 2. The programs will only operate as part of the Services provided under this Agreement.

6.4 The licence granted by the Provider to the Customer to use the Mobile App is subject to the following restrictions:

(a) The Mobile App may only be used at any point in time only by the number of persons for whom a license fee has been paid.

(b) The Customer shall use the Mobile App only in its original form, and shall not modify, reverse compile, reverse engineer, disassemble, or translate the Mobile App, nor shall the Customer create any derivative works or otherwise use the Mobile App except as specifically permitted in this Agreement.

(c) The Customer shall not rent, lease, sublicense, allow access to, or transfer the Software to any other party, by operation of law or otherwise.

6.5 The Customer will not attempt to defeat, modify, copy, work around or duplicate any security devices protecting the Mobile App.

6.6 The Mobile App is copyrighted material under the laws of Australia and international treaty provisions. Notwithstanding the copyright, the Mobile App contains trade secrets and confidential information of the Provider.

6.7 The Customer acknowledges that the Provider represents that the Mobile App and all copies of it, regardless of the form or media in which the original or copies may exist, are the sole and exclusive property of the Provider. The Customer further acknowledges that the Provider represents that the Mobile App, including the source and object codes, logic and structure, constitute valuable trade secrets of the Provider. The Customer agrees to secure and protect the Mobile App consistent with the maintenance of the Provider's rights in the Mobile App, as set forth in this Agreement. Except as expressly permitted herein, the Customer agrees not to disclose or otherwise make available any part of the Mobile App to any third party on any basis. By accepting this licence, the Customer does not become the owner of the Mobile App; the Provider retains all right, title and interest in and to the Mobile App. This section shall survive any termination of this Agreement.

7. No assignment of Intellectual Property Rights

7.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

8. Charges

8.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

8.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this clause 8.2.

8.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable GST, which will be added to those amounts and payable (where applicable) by the Customer to the Provider.

8.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of this Agreement.

9. Payments

9.1 The Provider shall issue invoices for the Charges to the Customer in advance of the period to which they relate as published on the Provider's website at time of purchase.

9.2 The Customer must pay the Charges to the Provider and an invoice/receipt will be made available to the Customer.

9.3 The Customer must pay the Charges by credit card, direct debit, bank transfer or cheque as are notified by the Provider to the Customer from time to time.

10. Provider's confidentiality obligations

10.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in this Agreement;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and
- (e) not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.

10.2 Notwithstanding clause 10.1, the Provider may disclose the Customer Confidential Information to the Provider's employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound

by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

- 10.3 This clause 10 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default of the Provider; or
 - (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
- 10.4 The restrictions in this clause 10 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 10.5 The provisions of this clause 10 shall continue in force indefinitely following the termination of this Agreement.

11. Data protection

- 11.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement, and that the processing of that Personal Data by the Provider for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the Privacy Act).
- 11.2 To the extent that the Provider processes Personal Data disclosed by the Customer, the Provider warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of that Personal Data;
 - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data; and
 - (c) it will not transfer or permit the transfer of that Personal Data or information outside the Australia without the prior written consent of the Customer.

12. Warranties

- 12.1 The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
 - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 12.2 The Provider warrants to the Customer that the Platform will conform in all material respects with good industry practice incorporating security features consistent with industry best practice.
- 12.3 The Provider warrants to the Customer that the Hosted Services and Mobile App, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 12.4 If the Provider reasonably determines, or any third party alleges, that the use of the

Hosted Services or the Mobile App by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- (a) modify the Hosted Services or the Mobile App in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- (b) procure for the Customer the right to use the Hosted Services or the Mobile App in accordance with this Agreement.

12.5 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under the Agreement.

12.6 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into the Agreement or any related contract.

13. Acknowledgements and warranty limitations

13.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

13.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

13.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible on the www.formlify.com web site; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

13.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

14. Limitations and exclusions of liability

14.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

- 14.2 The limitations and exclusions of liability set out in this clause 14 and elsewhere in this Agreement:
- (a) are subject to clause 14.1; and
 - (b) govern all liabilities arising under the Agreement or relating to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in the Agreement.
- 14.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.
- 14.4 The Provider shall not be liable to the Customer in respect of any loss of profits, anticipated savings, revenue or income.
- 14.5 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software providing that this clause 14.5 shall not protect the Provider unless the Provider has fully complied with its obligations under clause 6.3.
- 14.7 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 14.8 To the maximum extent permitted by law, the Provider, its employees, officers and directors will not be liable to Customer for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to this Agreement (whether that liability arises in contract, tort (including negligence) or statute) for an aggregate amount in excess of the Charges paid by Customer to the Provider in the twelve (12) months prior to the events giving rise to liability. The Provider limits its liability for breach of any guarantee that it cannot exclude to (at the Provider's option) resupplying the Services; or paying the cost of having those Services resupplied.
- 14.9 Nothing in this Agreement excludes any rights a Consumer as defined in schedule 2 to the Competition and Consumer Act 2010 (Cth) ("**Consumer**") may have against the Provider under the Competition and Consumer Act 2010 (Cth), if applicable. When supplied to a Consumer, the Provider's goods come with guarantees that cannot be excluded under the Australian Consumer Law. Consumers are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Consumers are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

15. Force Majeure Event

- 15.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 15.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other party; and
 - (b) inform the other party of the period for which it is estimated that such failure or delay will continue.
- 15.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

16. Termination

- 16.1 The Provider may terminate this Agreement by giving the Customer at least 30 days' written notice of termination. The Customer may terminate this agreement at any time by giving written notice of that termination to the Provider.
- 16.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 16.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);

17. Effects of termination

- 17.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): clauses 1, 3.11, 5, 6.7, 8.2, 9, 14, 17, 18 and 20.
- 17.2 The termination of this Agreement shall not affect the accrued rights of either party.
- 17.3 Within 30 days following the termination of this Agreement for any reason:
- (a) the Customer must pay to the Provider any outstanding Charges in respect of Services provided to the Customer before the termination of the Agreement; and
 - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,

without prejudice to the parties' other legal rights.

18. Notices

- 18.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in clause 18.2 and Part 1 of Schedule 1 (Customer particulars)):
- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;

- (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; or
- (c) in the case of an e-mail transmission, when the sender receives a message confirming delivery from a computer system controlled by the other party, except if the time of confirmation is not during business hours, in which case notice is deemed received at 9.00am the next business day.

18.2 The Provider's contact details for notices under this clause 18 are as follows:

CIBIS International Pty Ltd
103 Elder Street
LAMBTON NSW 2299
Australia
info@cibis.com.au

18.3 The addressee and contact details set out in clause 18.2 and Schedule 1 - Customer Particulars may be updated from time to time by a party giving written notice of the update to the other party in accordance with this clause 18.

19. Subcontracting

19.1 The Provider may subcontract any of its obligations under this Agreement and shall remain responsible to the Customer for the performance of any subcontracted obligations.

20. General

20.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

20.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

20.3 This Agreement may not be varied except by a written document agreed on behalf of each of the parties or as otherwise permitted under the terms of this Agreement.

20.4 The Customer may not without the prior written consent of the Provider assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

20.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

20.6 This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

20.7 This Agreement shall be governed by and construed in accordance with the laws in force in New South Wales, Australia.

20.8 The courts of NSW, Australia shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

21. Interpretation

- 21.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 21.2 The clause headings do not affect the interpretation of this Agreement.
- 21.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

Schedule 1: Customer Particulars

1. Customer details

The Customer is an individual or company who purchases the Formlify licence.

The Customer details will be those details provided in the course of acquiring a Formlify licence. You must provide an email address and if that email address changes, you must update your user profile to ensure that you receive notices about Subscription Period extensions and other important information about this Agreement and the Solutions

The Customer may update their contact details via the CIBIS member's www.cibis.com.au/members portal at any time.

Schedule 2: Mobile App Programs

1. Licensed Software Products

- Formlify App (for Apple mobile and iPADS) and Formlify App (for Android).
- Formlify Platform (delivered / accessed by the customer's compatible web browser).

2. Access to Mobile Apps

The Formlify Mobile App (Apple and Android operating systems) is made available online at:

Apple: www.apple.com

Android: <https://store.google.com/>

Schedule 3 (Acceptable Use Policy)

1. Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of <https://run.formlify.com> and any related services including apps, form posts, messages and services available on that website (the "**Services**"); and
 - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to CIBIS International Pty Limited (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you gain access to the Service which is before you can upload or submit any Content or otherwise use the Services].
- 1.5 You must be at least 18 years of age to purchase the Services; and by using the Services or by agreeing to this Policy, you warrant and represent to us that you are at least 18 years of age.

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
- (a) be libellous or maliciously false;
 - (b) be obscene or indecent;
 - (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
 - (d) infringe any right of confidence, right of privacy or right under the Privacy Act;
 - (e) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
 - (f) be in contempt of any court, or in breach of any court order;

- (g) constitute a breach of racial or religious hatred or discrimination legislation;
- (h) constitute a breach of any contractual obligation owed to any person.

4. Graphic material

- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question.
- 4.3 Content must not be pornographic.

5. Etiquette

- 5.1 Content must be appropriate, civil and accord with generally accepted standards of etiquette and behaviour on the internet.
- 5.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 5.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 5.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 5.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 5.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 5.7 You must ensure that Content does not duplicate other content available through the Services.
- 5.8 You must at all times be courteous and polite to other users of the Services.

8. Marketing and spam

- 8.1 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam.
- 8.3 You must not send any spam to any person using any email address made available through the Services or that you find using the Services.

9. Gambling

- 9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

10. Monitoring

- 10.1 You acknowledge that we do not actively monitor the Content or the use of the Services.

11. Hyperlinks

- 11.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

12. Harmful software

- 12.1 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

12.2 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.