

END USER LICENCE AGREEMENT

**IMPORTANT USER NOTICE:
READ THIS CAREFULLY BEFORE INSTALLING OR USING THIS SOFTWARE**

By clicking on the "I ACCEPT" checkbox prior to accessing or using the Software, or (where applicable) prior to installing, downloading or running the Software, the Customer agrees to be bound by the terms and conditions of this EULA.

If the Customer does not agree to all of the terms and conditions of this EULA,
close the Software;
in such event, the Customer must not access or use, install, download or run the Software.

This End User Licence Agreement ("**EULA**") is a legal agreement between Smartz Operations Pty Ltd (ACN 651 751 503) ("**Smartz Operations**") and the persons or entities ("**Customer**") who purchase, install or use the Software.

ACCEPTANCE OF THIS EULA BY THE CUSTOMER: The Software will typically be provided to the Customer as "software as a service", but may in certain circumstances be provided by way of download and/or installation. Customer acknowledges and agrees that the access or use of the Software, or (where applicable) the installation, downloading or running of the Software by the Customer is subject to the terms and conditions of this EULA. The Customer further acknowledges and agrees that it will procure each Licensed User's compliance with the terms and conditions of this EULA. If the Software is accessed and used, or (where applicable) installed or downloaded, by an administrator, by accepting this EULA the administrator is deemed to have accepted the terms and conditions of this EULA for and on behalf of the Customer and each Licensed User in respect of whom the administrator permits access to or use of the Software, or (where applicable) installs or downloads the Software. If you do not agree to all of the terms and conditions of this EULA, you can close the Software, stopping any further access, installation or download activity of the Software. The Customer acknowledges and agrees that acceptance of any modifications to the terms of this EULA made by Smartz Operations from time to time may be a pre-condition for installation, download, running, access and/or use of any upgrades that may be supplied.

1. DEFINITIONS

In this EULA the following definitions apply, except where the context otherwise requires:

- 1.1 **Affiliates** means a party's officers, employees, consultants and agents, its associated entities and its associated entities' officers, employees, consultants and agents. Associated entity means:
- (a) any individual who, or any corporation or other form of business organisation which, in any country directly or indirectly (including through intermediaries), is controlled by, or is under common control with, or controls, a party;
 - (b) any corporation or other form of business organisation in which any of the above entities directly or indirectly (including through intermediaries) has at least a 50% ownership interest through stock ownership, voting rights or otherwise, or has the maximum ownership interest it is permitted to have in the country where it exists; and
 - (c) any individual who is an employee, director or officer of any of the entities described above, or whose actions such an entity directs or is entitled to direct.
- 1.2 **Applicable Law** means any applicable legislation, rules, regulations, codes, directives, licence conditions, guidelines, policies, explanatory material, and any standards issued by regulatory bodies, which are binding on or are expressed to apply to a party from time to time.
- 1.3 **Commencement Date** means the date on which Customer either first installs, downloads or accesses the Software (as applicable).
- 1.4 **Customer Data** means the information and data entered into, or obtained by, Customer from the use of Smartz®.
- 1.5 **Data Controller** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law
- 1.6 **Data Processor** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller

- 1.7 **Covered Entity** are defined in the HIPAA rules as (1) health plans, (2) health care clearinghouses, and (3) health care providers who electronically transmit any health information in connection with transactions for which HHS has adopted standards.
- 1.8 **Business Associate** means a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity.
- 1.9 **Documentation** means all technical, operating and user materials (if any) supplied by Smartz Operations to Customer with the Software (including user, administration and technical manuals, whether in hardcopy or electronic form), including any documentation provided with any Software upgrade that may be supplied to Customer.
- 1.10 **Equipment** means the Smartz[®] hardware supplied to Customer by Smartz Operations or its distributors or resellers, including any additional or replacement Equipment.
- 1.11 **Intellectual Property Rights** means statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, registered and unregistered trademarks, registered and unregistered designs, circuit layouts and confidential information, but does not include moral rights that are not transferable.
- 1.12 **Licensed Users** mean persons authorised to access and use the System under this EULA.
- 1.13 **Non-excludable guarantee** means guarantees, terms, conditions or warranties that cannot be excluded at law.
- 1.14 **Patient** means a client of the Customer who will be monitored using Smartz[®].
- 1.15 **Personal Data** means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person (PHI)
- 1.16 **Privacy Laws** means any applicable law, statute, regulation, code, standard or requirement of any governmental body that relates to privacy or data protection.
- 1.17 **Smartz[®]** means the system for the monitoring of incontinence comprising the Software, the Documentation, and the Equipment and other components developed by or on behalf of Smartz Operations or its licensors (and includes any modifications, improvements, enhancements or revisions to Smartz[®]), of which the Smartz[®] System, including Smartz[®] Pods are components.
- 1.18 **Smartz[®] Pods** mean the wireless data loggers purchased by Customer from Smartz Operations or its distributors or resellers for use with the System.
- 1.19 **Site** means the site, residential premise or facility where Smartz[®] will be, or is being, used by Customer (for the avoidance of doubt, Customer may have multiple sites, residential premises or facilities).
- 1.20 **Software** means the software forming part of Smartz[®] and which may be updated and upgraded from time to time, that is owned or licensed by Smartz Operations, and made available to Customer as "software as a service" or as an installation or download under this EULA and the terms and conditions of supply of Smartz[®] to Customer.
- 1.21 **System** means the all of the components of Smartz[®], including licenced sensor technology, Hardware, Software, and the Documentation.
- 1.22 **Term** means the term of this EULA, being the period from the Commencement Date until Customer ceases to use Smartz[®], unless this agreement is lawfully terminated earlier.

2. LICENCES

- 2.1 Subject to the terms of this EULA, Smartz Operations grants to Customer from the Commencement Date for the Term a limited, non-exclusive, non-transferable licence to download and/or install (only if the Software is delivered in this manner), and access, use and permit Licensed Users to access and use:
- (a) the Software solely used by the Customer as authorised by this EULA; and
 - (b) the Documentation for the sole purpose of Customer's authorised use of the System.
- 2.2 Customer may provide the Licensed Users with access to:

- (a) the Documentation via Customer's internal intranet, provided that unauthorised persons are not able to access the Documentation via the Internet or otherwise; and
 - (b) the Software and Documentation via an Internet-based application or other form of file-sharing mechanism, provided adequate security measures are used to limit access to Licensed Users.
- 2.3 Customer may print reasonable portions of the "Help" sections of the Documentation solely for use by Licensed Users for the purposes authorised by this EULA.
- 2.4 In circumstances where the Software is supplied by Customer by way of a download and/or through the installation of the Software, Customer may make one copy of the Software solely for use as a backup copy during the Term but must not otherwise copy the Software or Documentation (or permit the Software or Documentation to be copied) except as permitted by this EULA or with Smartz Operations's prior written consent (unless Customer is expressly permitted to do so under the laws of the country in which Customer is located). Notwithstanding the foregoing, nothing in this clause 2.4 is intended to limit Customer's rights under Part III, Division 4A of the *Copyright Act 1968* (Cth) with respect to the Software where the Customer and the Site(s) are located in Australia.
- 2.5 Whenever Customer is permitted to copy or reproduce all or any part of the System, all titles, trademarks, copyright notices, legends, disclaimers and other proprietary markings must be reproduced without modification.
- 2.6 Customer must not, without Smartz Operations' prior written consent (or as expressly permitted in this EULA or under the laws of the country in which Customer is located), itself or through any Affiliate, Licensed User or other third party:
 - (a) sell, lease, licence, sub-license, rent, loan, timeshare, encumber or otherwise transfer any part of Smartz® to any other person;
 - (b) use the System or any part of it to provide outsourcing or computer bureau services;
 - (c) decompile, disassemble, reverse engineer, attempt to derive the source code for, modify, adapt, translate or copy the System, in whole or in part;
 - (d) provide, disclose, divulge, make available to, distribute, sub-licence or permit use of any part of Smartz® by any third party (including by directly or indirectly providing access to the System via any Internet-based application or any other form of file sharing mechanism except as expressly permitted under this EULA);
 - (e) write or develop any software or create derivative works based upon the System or other confidential information of Smartz Operations;
 - (f) disclose Customer's personal password or product key to any person who is not a Licensed User, or allow them to be used for any purpose except for the installation and use of the Software as permitted by this EULA;
 - (g) remove, tamper with, seek to override or otherwise interfere with any security or technological protection measure forming part of Smartz®;
 - (h) remove, obliterate, or obscure from view any copyright, trade mark, confidentiality notice, disclaimer or legend appearing on or within Smartz®, or
 - (i) use the name of Smartz Operations or any developer of Smartz® or any trademarks of Smartz Operations in any advertising, promotional or other literature (in any form), unless Smartz Operations has agreed this in writing.
- 2.7 Customer must supervise and control the use of the System in accordance with this EULA and ensure that its Licensed Users comply with the terms of this EULA.
- 2.8 Customer is permitted to grant access to the Software to its Licensed Users, provided that:
 - (a) Customer will remain liable for any act of omission of its Licensed Users;
 - (b) All such Licensed users are Affiliates of the Customer;
 - (c) all such Licensed Users have been made aware of their obligations of confidentiality and privacy in relation to the Software and any personal information inputted into the Software, or accessed through the Software, including ensuring that the Licensed Users will only collect, use and disclose personal information, including personal health information, in accordance with Privacy Laws and Customer's obligations under this EULA; and

- (d) all such Licensed Users will only use Smartz® and the Software for the purposes set out in the Documentation.
- 2.9 Customer must use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Smartz Operations.
- 2.10 Customer acknowledges and agrees that unless Smartz Operations expressly agrees otherwise in writing, Customer is solely responsible for:
 - (a) obtaining, operating and maintaining all hardware, consumables and other equipment and wireless networks required for use of the System;
 - (b) providing training in the use of Smartz® to Licensed Users;
 - (c) the accuracy and completeness of all data entered by or on behalf of Licensed Users into Smartz®;
 - (d) backing up all data used by it in conjunction with Smartz®;
 - (e) ensuring that Smartz® is suitable for its needs and that Customer complies with all of its legal obligations; and
 - (f) maintaining the security and privacy of personal information gathered, stored or analysed by Smartz®.
- 2.11 Customer expressly acknowledges that Smartz® is not a substitute for standard care practices. Customer should ensure that care personnel are always applying an appropriate duty of care with respect to Patients and are regularly checking and interacting with Patients, and are able and prepared to take suitable action should any part of the Smartz® system experience a problem.
- 2.12 Smartz Operations may, in its sole discretion, offer new versions of the Software or other upgrades to Customer during the Term. Customer acknowledges that the System may cease to work properly if it does not (where applicable to the method of delivery of the Software) download and/or install any new versions or upgrades made available to it.

3. COLLECTION OF INFORMATION AND PRIVACY

- 3.1 With respect to Data Privacy regulations the System complies with General Data Protection Regulation ("GDPR"), Health Insurance Portability and Accountability Act ("HIPAA") & Personal Information Protection and Electronic Documents Act ("PIPEDA"). However, only the GDPR terminologies i.e. the CONTROLLER (Covered entity) AND the PROCESSOR (Business Associate) have been used for the purpose of this EULA.
- 3.2 Customer acknowledges and agrees that the System is configured to collect and store certain information regarding use of the System, including identified and de-identified (or anonymised) (i.e. not traceable to a particular individual) information regarding Patients. Smartz® may store personal Patient and Site information on mobile devices and computers on which the Software, and related data processing services, has been installed. Such information includes personal information in relation to the Patients, which may include, but not may not be limited to: name, age, weight, sex, observations and Smartz® sensor data. Smartz Operations may from time to time remotely access such information to extract de-identified (or anonymised) information for the purposes of:
 - (a) checking and diagnosing the condition of hardware;
 - (b) using de-identified (or anonymised) information for research purposes to enable continuous improvement for Smartz®;
 - (c) using de-identified (or anonymised) information for research, product development, product improvement and commercial purposes; and
 - (d) disclosing de-identified (or anonymised) information to third parties for research, product development, product improvement and commercial purposes.
- 3.3 Smartz Operations retains full title to the de-identified (or anonymised) information that is extracted by Smartz Operations from any information collected by the System.
- 3.4 Customer is solely responsible for obtaining all necessary consents from Patients to use Smartz® for the purpose intended, including the collection of Personal data. By default all patients using

the Smartz solutions are deemed to have accepted the Smartz Consent to use Form which can be found on www.smartzhealth.com website.

- 3.5 Customer acknowledges that they are the Data Controller for all data collected from users and Patients using Smartz®.
- 3.6 Smartz Operations acts as the Data Processor for data collected from users and Patients through the Smartz® system. Responsibilities of a Data Processor are:
 - (a) Processing by Smartz Operations is governed by this Smartz® End User License Agreement (EULA) and by any Diaper manufacturer/distributor Smartz® Licencing Agreement.
 - (b) Smartz Operations does not collect Personal Data; it only stores data (uploaded to a secure storage server compliant to the Data Privacy regulations) and securely transmits it back to the Data Controller, at the explicit request of the Data Controller.
 - (c) Smartz Operations and any person acting under the authority of Smartz Operations, who may have access to personal data, shall not process such data except on instructions from the Data Controller, unless required to do so by Union or Member State law.
 - (d) The personal information is encrypted and stored securely for a limited period of one year, by default, from the date of last use, or as amended by the controller.
 - (e) Smartz Operations ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
 - (f) Smartz Operations uses a secure cloud server located in your region or other legal jurisdictions to store any personal information uploaded by the Data Controller and has implemented appropriate measures to ensure a level of security appropriate to the level of risk, including the pseudonymisation and encryption of personal data, the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services, and the ability to restore the availability and access to personal data in a timely manner in the event of a technical incident.
 - (g) Smartz Operations commits to not engage another processor for carrying out specific processing activities on behalf of the Data Controller without prior specific or general written authorisation of the Data Controller.
 - (h) Smartz Operations commits to assisting the Data Controller by appropriate technical and organizational measures for the fulfilment of the controller's obligation to respond to requests in relation to personal data stored by Smartz Operations for exercising the data subject's rights and is able to contribute to compliance audits on request by the controller or relevant EU authority.
 - (i) On request from the Data Controller, Smartz Operations is able to delete all personal information stored on the server.
 - (j) Smartz Operations recognizes its duty to notify its Authorized Representative and any controllers without undue delay upon learning of any data breaches.
 - (k) Smartz Operations maintains a record, within reasonable practical limits, of processing activities under its responsibility via data logs which can be accessed from the storage server on request by the data controller or relevant EU authority.
- 3.7 Smartz Operations engages a Data Sub Processor for the storage of user and Patient data collected through the Smartz® system. The Data Sub Processor is Microsoft® Azure.
- 3.8 Identifiable Personal Data collected through the Smartz® system is stored by Microsoft® Azure in secure databases located in European Union for the purposes of GDPR compliance, or in the United States for HIPPA compliance, or in other jurisdictions where there is a legal requirement to do so.
- 3.9 The identifiable personal data may be transferred across jurisdictional borders, in accordance with the local data privacy regulation.
- 3.10 Smartz Operations does not access, or in any way make use of, identifiable Personal Data, except for the purpose of the automatic management of securely storing such data, or transferring such data at the request of the Data Controller.

- 3.11 Smartz Operations agrees to treat any personal information in its possession, as a result of Customer's use of Smartz[®], in accordance with applicable Privacy Laws. Smartz Operations' current privacy policy can be downloaded at www.smartzhealth.com/downloads, and any revised version of that policy will be published on Smartz Operations' website.

4. INTELLECTUAL PROPERTY

- 4.1 Customer acknowledges that all Intellectual Property Rights in and to the System remain the property of Smartz Operations or its licensors and that Customer acquires no right, title or interest in or to any of them by virtue of this EULA.
- 4.2 All Intellectual Property Rights in any improvements or developments of or additions to the System conceived, developed or reduced to practice by or on behalf of Customer or its Affiliates (whether in breach of this EULA or otherwise) will vest in Smartz Operations, and Customer agrees at its cost to do all things (including the execution of documents) as may be necessary to vest, confirm, perfect and record Smartz Operations' ownership rights in accordance with this clause 4.2.
- 4.3 Customer must not take any action, and must not assist any person to take any action that may jeopardise, limit, and challenge or interfere with Smartz Operations' ownership of or rights with respect to the System.

5. WARRANTIES AND ACKNOWLEDGEMENTS

- 5.1 Each party warrants to the other that it is a properly constituted legal entity with the power and authority to enter into this EULA.
- 5.2 In addition to the limitations set out in clause 6.1, and to the maximum extent permitted by law, Smartz Operations does not warrant that:
- (a) the System or any part of it will:
 - (i) be error free or that its use will be uninterrupted;
 - (ii) be fit for the purpose for which it is required by Customer;
 - (iii) operate in combination with other software or any particular equipment or system; or
 - (iv) provide any function other than as expressly set out in writing by Smartz Operations; or
 - (b) the information obtained by Customer through the use of the System will meet Customer's requirements.
- 5.3 To the maximum extent permitted by law, all warranties given by Smartz Operations will be void and of no effect if the breach of warranty arises out of, or in connection with:
- (a) any failure by Customer or a Licensed User to comply with the Documentation or any guidelines or instructions issued by Smartz Operation;
 - (b) any fault, defect, omission or error in any data, software, equipment, devices or wireless networks not supplied by Smartz Operations ;
 - (c) misuse, theft, vandalism, fire, water or other similar cause outside Smartz Operations' control;
 - (d) any failure by Customer to install the Software properly or the failure to install any upgrade or patch offered by Smartz Operations to rectify a fault;
 - (e) any modification, alteration, or addition made to the System by persons other than Smartz Operations or an authorised representative of Smartz Operation; or
 - (f) use of the System with any software, equipment, device or wireless network not specifically approved or recommended by Smartz Operations or in a manner or for a purpose not authorised by this EULA.
- 5.4 If the System does not perform substantially in accordance with any specifications expressly set out in writing by Smartz Operations, Smartz Operations will use its best endeavours to modify or replace the System (which may require Customer to install a software patch) to make it compliant at Smartz operations' expense. Should such modification or replacement be impractical, Smartz Operations may (at its option) terminate this EULA. Any liability from Smartz Operations to the Customer shall not exceed the price paid by the Customer for the portion of the Smartz[®] system

that is faulty. Subject to clause 6.1, Smartz Operations' obligations under this clause 5.4 constitute the sole and exclusive remedy for any claim by customer arising out of or in connection with any conduct that amounts to a breach of warranty.

- 5.5 Customer expressly acknowledges that it has not relied on any representation or statement by Smartz Operations or its authorised distributors or resellers other than the warranties expressly set out in this EULA, and that the limitations set out in clause 6 are fair and reasonable in the circumstances.
- 5.6 All computer functionality, operating system, network services, hardware maintenance, data entry, and daily data backup are the responsibility of Customer. Smartz Operations has no responsibility for data loss or business interruption arising as a result of or in connection with the use of the System. Nothing in this clause 5.6 limits the limitations of liability set out in clause 6.

6. LIMITATION OF LIABILITY

- 6.1 Nothing in this EULA excludes, restricts or modifies the application of any legislation which by law cannot be excluded, restricted or modified. Subject to this clause, the System is provided "as is" and all representations, warranties, terms and conditions which would otherwise be implied in this EULA are excluded (including any with regard to merchantability, durability, quality, fitness for any purpose (whether or not disclosed), non-infringement of third party rights or arising from the course of dealing or usage of trade). Each party represents that it has not relied on any representation made by the other party which has not been expressly stated in this EULA.
- 6.2 To the maximum extent permitted by law, Smartz Operations will not be liable to Customer for any special, indirect or consequential loss or damage, loss of profits, loss of data or loss of business opportunity, suffered in connection with or arising out of this EULA, whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise. Under no circumstances will Smartz Operations be liable to Customer or any third party for any content or information entered into the System by or on behalf of Licensed Users.
- 6.3 If the Software does not perform substantially in accordance with any Documentation (or other specifications expressly set out in writing by Smartz Operations), Smartz Operations will use its reasonable endeavours to modify or replace the Software to rectify such non-performance. If Smartz Operations forms that view (acting reasonably) such modification or replacement be impractical, Smartz Operations may (at its option) terminate this Agreement and refund the portion of the upfront fees paid for access to the Software (if any) that is faulty. Subject to clause 6.5, Smartz Operations' obligations under this clause 6.3 constitute the sole and exclusive remedy for any claim by the Customer arising out of or in connection with any such non-performance.
- 6.4 To the maximum extent permitted by law, Smartz Operations is not responsible for, and will not be liable for, any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges and agrees that the Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.5 Smartz Operations' liability to Customer for breach of a Non-excludable guarantee, other statutory provision or any express guarantee, condition or warranty or Smartz Operations' negligence is limited, at Smartz Operations' option, to supplying the goods and services in respect of which the breach or negligence occurred again, or to paying the cost of having those goods and services supplied again.
- 6.6 To the maximum extent permitted by law, Smartz Operations' aggregate liability under or in relation to this EULA for all acts, omissions and events whenever occurring will not exceed in aggregate the total amounts paid by Customer to Smartz Operations in connection with the System in the 6 months immediately preceding the relevant claim.
- 6.7 Smartz Operations is expressly not liable for failure to perform or any related loss or damage resulting from the use of third party products including Smartz® pads (diapers) containing Smartz® licenced sensor technology.

7. TERM AND TERMINATION

- 7.1 This EULA commences on the Commencement Date and will continue in force for the Term.
- 7.2 Either party may terminate this EULA with immediate effect by written notice to the other party if:

- (a) the other party breaches this EULA (other than a trivial breach causing no material harm) and, where the breach is capable of remedy, fails to remedy the breach within 10 business days after receiving written notice to do so; or
 - (b) the other party becomes insolvent, enters into liquidation or receivership or becomes subject to any form of external administration (other than for the purposes of a solvent reconstruction).
- 7.3 Smartz Operations may at any time remove, alter or disable Customer's access to the Software if:
 - (a) it considers that the Customer Data is in breach of this EULA, any Applicable Laws or infringes the rights of any third party;
 - (b) it considers that the Customer Data could threaten the security or integrity of the Software; or
 - (c) required to do so by any Applicable Laws or any regulatory body or Court order.
- 7.4 At the end of the Term:
 - (a) all licence rights terminate and, where the Software is accessed as "software as a service" Customer will no longer be able to access the Software, and in any event must not continue to access the Software;
 - (b) Customer must remove all Software from its equipment and any copy of the Documentation made available via its intranet or otherwise; and
 - (c) Customer must, at Smartz Operations' option, return to Smartz Operations or destroy and certify the destruction of all copies of the Documentation and all confidential information of Smartz Operations in the possession or under the control of Customer, provided that Customer may remove data or information entered by Licensed Users into the System prior to such return or destruction.
- 7.5 Termination of this EULA for any reason does not affect the rights and obligations of either party arising prior to termination.
- 7.6 Clauses 3.2, 3.3, 4 to 9 (inclusive), 7.3, 7.4, 9.9 and 9.10 survive expiry or termination of this EULA for any reason.

8. NOTICES

- 8.1 A notice, approval, consent or other communication in connection with this EULA must be in writing sent to the address of the recipient set out at the front of this EULA or such other address as may be notified by the recipient from time to time, and may be sent by prepaid post (air mail if international), hand delivery, facsimile transmission or electronic mail.
- 8.2 A notice is deemed to be received:
 - (a) if delivered, when it is delivered;
 - (b) if sent by post, two business days after posting (five business days if sent to a different country); or
 - (c) if sent by facsimile transmission or electronic mail, on receipt by the sender of a notification of delivery or transmission report generated by the machine from which the facsimile or electronic mail was sent, unless the recipient proves that it was not in fact transmitted or delivered.

9. GENERAL

- 9.1 Customer must not assign, transfer or otherwise dispose of any of its rights or obligations under this EULA (including any transfer of the System to any premises other than the Site) without the prior written consent of Smartz Operations. Smartz Operations may charge an administrative fee in connection with any permitted assignment. Unless otherwise agreed in writing, the restrictions on the use of the Software contained in this EULA bind any entity to which Customer assigns, transfers or otherwise disposes of (or purports to assign, transfer or otherwise dispose of) any of its rights or obligations under this EULA regardless of whether or not Customer has obtained Smartz Operations' consent as required by this clause 9.1.
- 9.2 Customer acknowledges and agrees that Smartz Operations may sub-contract all or some of its obligations under this EULA, without being required to notify or obtain the consent of Customer.

- 9.3 No party will be liable for any breach of its obligations (other than an obligation to pay money) resulting from causes beyond its reasonable control. A party must immediately give notice to the other party upon becoming aware of such causes setting out details of the circumstances and the performance of obligations which is thereby delayed or prevented.
- 9.4 No waiver of any provision of this EULA shall be effective unless in writing and signed. No delay or indulgence by a party in enforcing this EULA will prejudice or restrict the rights of that party, nor will a waiver of those rights operate as a waiver of a subsequent breach.
- 9.5 Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to this EULA including the execution of documents.
- 9.6 The relationship of the parties under this EULA is one of independent contractors and not of employment, partnership, joint venture, trustee and beneficiary, or principal and agent.
- 9.7 This EULA contains the entire agreement of the parties with respect to its subject matter and supersedes and replaces all prior agreements and understandings between them relating to that subject matter. This EULA may only be amended by agreement of the parties in writing.
- 9.8 The signatories to this EULA warrant that they have authority to enter into this EULA on behalf of the party they are stated to represent.
- 9.9 Any dispute in respect of this EULA, if unable to be resolved between the parties' respective chief executive officers (or equivalent) should be endeavoured to be resolved by mediation or other means than litigation. Neither party is prevented from seeking urgent interlocutory relief from a court.
- 9.10 This EULA is governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

10. INTERPRETATION PRINCIPLES

The following rules of interpretation apply:

- 10.1 Headings are for convenience only and do not affect interpretation.
- 10.2 The singular includes the plural and conversely.
- 10.3 A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
- 10.4 The word "including" and similar expressions are not words of limitation.
- 10.5 This EULA or any part of it is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 10.6 If a provision of this EULA offends any applicable law, or is unlawful, invalid or unenforceable, then where the provision can be read down so as to be valid and enforceable it must be read down to that extent, or otherwise will be deemed to be severed from the other provisions.