

This end-user licence agreement (**EULA**) is a legal agreement between you (**End-user or you**) and Dynamic Methods Pty Ltd ABN 37 149 256 655 of 122 Sturt Street, Adelaide South Australia (**Licensor, us or we**) for:

- Forms Live platform and form creation software available at [www.formslive.com.au](http://www.formslive.com.au) and the associated media (**Platform**); and
- online forms created through the Platform (**Forms**).

We licence use of the Platform and Forms to you on the basis of this EULA as amended from time to time. We do not sell the Platform or Forms to you. We remain the owners of the Platform and Forms at all times.

**Operating system requirements** means a system which complies with one of the following specifications:

1. Supported operating systems:
  - 1.1 Microsoft Windows 10+
  - 1.2 Mac OSX 10.14+
  - 1.3 Linux (e.g. Ubuntu)
  - 1.4 Android 8+
  - 1.5 iOS 12+ (iPad)
2. Supported browsers:
  - 2.1 Google Chrome 76+
  - 2.2 Mozilla Firefox 69+
  - 2.3 Safari 12+
  - 2.4 Internet Explorer 11+

Important notice:

- By clicking on the "Accept" button below you agree to the terms of the licence which will bind you. The terms of the licence include, in particular, the limitations on liability in condition 8.
- If you do not agree to the terms of this licence, we will not license the Platform and Forms to you and you must not use the Platform.

## **AGREED TERMS**

1. **Acknowledgements**
  - 1.1 The terms of this EULA apply to the Platform or any of the services accessible through the Platform (**Services**), including any updates or supplements to the Platform or any Service, unless they come with separate terms, in which case those terms apply. If any open-source software is included in the Platform or any Service, the terms of an open-source licence may override some of the terms of this EULA.
  - 1.2 We may change these terms at any time by notifying you at the email address you have on file on the platform, or by providing the new terms for your approval when

you next log in to the Platform. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the Platform and the Services.

- 1.3 We will use any information you provide to us in accordance with the terms of this EULA . Additionally, by using the Platform or any Service, you acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information you send using the Platform or any Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- 1.4 By using the Platform or any of the Services, you consent to us collecting and using:
  - 1.4.1 technical information about the Devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Services to you; and
  - 1.4.2 any information which you input into the Platform, or information which can be determined or collated from your use of the Platform, including timelines of your use of the Platform, purchase prices of properties or other information of any kind.
- 1.5 You consent to us collating and using the data collected in accordance with condition 1.4 on an anonymised basis and you acknowledge and agree that any such data collected or collated by us, and any intellectual property rights of any kind in that data, are exclusively owned by us.
- 1.6 The Platform or any Service may contain links to other independent third-party websites (**Third-party Sites**) or content published by a person other than us, including other users of the Platform and persons promoting their goods or services through the Platform (**Third Party Content**). You consent to us making information which you input into the Platform or related data available to those Third Parties to enable them to offer you services which may be useful to you or your clients. Third-party Sites and Third Party Content are not under our control, and we are not responsible for and do not endorse their content or (in the case of Third Party Sites only) their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any:
  - 1.6.1 Third-party Sites, including the purchase and use of any products or services accessible through them; and
  - 1.6.2 action or omission you do because of, or in connection with, content that is published on or through the Platform.
- 1.7 You may post content on or through the Platform subject to the terms of this agreement and the Forms.
- 1.8 You may receive or establish a user name and one password to gain access to and use the Platform. You are solely responsible for maintaining the confidentiality and security of your password(s) and account(s) you establish to use the Platform. You understand and agree that you are responsible for all actions and postings made from your account(s). Any accounts you create are not transferrable. You agree to notify us immediately if you become aware of any unauthorised use of your account(s).

## 2. **Grant and Scope of Licence**

- 2.1 In consideration of you agreeing to abide by the terms of this EULA, we grant you a non-transferable, non-exclusive licence to use the Platform on the Devices, subject to these terms. We reserve all other rights.
- 2.2 You may use the Forms to provide services to your clients or for internal business purposes only.

## 3. **Term, fees and payments**

- 3.1 The licence granted to you pursuant to condition 2.1 is granted on the terms and conditions set out in this EULA for a period of one year from the date of this EULA, as extended pursuant to this condition and provided that you pay the fees as required in this EULA.
- 3.2 You must pay the fees notified to you on the date of this EULA and on any extension of the term of this EULA.
- 3.3 Except where we specify otherwise, payment of any fees must be paid in full and in advance. If you do not pay the fees as required in this EULA and fail to remedy that breach within a reasonable period of us requiring you to do so, we may terminate this EULA in accordance with condition 10.1.
- 3.4 Payments to Your account can only be made by credit/debit card using the online payment facility contained in the Platform

## 4. **Licence Restrictions**

Except as expressly set out in this EULA or as permitted by any local law, you agree:

- 4.1 not to copy the Platform or Forms except where such copying is incidental to normal use of the Platform, or where it is necessary for the purpose of back-up or operational security;
- 4.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Platform or Forms;
- 4.3 not to make alterations to, or modifications of, the whole or any part of the Platform, or permit the Platform or any part of it to be combined with, or become incorporated in, any other programs;
- 4.4 not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Platform or attempt to do any such thing except to the extent that such actions cannot be prohibited, and provided that the information obtained by you during such activities:
  - 4.4.1 is used only for the purpose of achieving inter-operability of the Platform with another software program, which may only be done with our express prior written consent;
  - 4.4.2 is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
  - 4.4.3 is not used to create any software that is substantially similar to the Platform;
- 4.5 to include our copyright notice on all Forms created through the Platform by you;

- 4.6 not to provide or otherwise make available the Platform in whole or in part (including object and source code), in any form to any person without prior written consent from us;
- 4.7 to comply with all technology control or export laws and regulations that apply to the technology used or supported by the Platform or any Service (**Technology**); and
- 4.8 not to post any of the following types of content on or through the Platform or a Service:
  - 4.8.1 adult content, pornography, explicit sexual images, or nude images;
  - 4.8.2 content containing explicit, vulgar, or obscene language;
  - 4.8.3 content promoting hate, abuse or destructive actions;
  - 4.8.4 content promoting illegal activities; or primarily political, religious, psychic, or metaphysical content;
  - 4.8.5 content promoting pirated software;
  - 4.8.6 content intending for phishing or spreading malware;
  - 4.8.7 content that is disparaging of any person or entity;
  - 4.8.8 content that is in violation of any law or regulation; or
  - 4.8.9 any other content that is or could be considered inappropriate, unsuitable or offensive, all as determined by us,

(together '**Licence Restrictions**').

## 5. **Acceptable Use Restrictions**

- 5.1 You must:
  - 5.1.1 not use the Platform or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Platform, any Service or any operating system;
  - 5.1.2 not infringe our intellectual property rights or those of any third party in relation to your use of the Platform or any Service, including the submission of any material (to the extent that such use is not licensed by this EULA);
  - 5.1.3 not use the Platform or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users;
  - 5.1.4 not use the Platform or any Services or any of their content to advertise or solicit, for any other commercial, political or religious purpose, or to compete, directly or indirectly with us;
  - 5.1.5 not resell or repurpose your access to the Platform or any Service or any purchases made through the Platform or any Service;

- 5.1.6 not use the Platform or any Services or any of their resources to solicit other users of the Services or other business partners of ours to become users or partners of other online or offline services directly or indirectly competitive or potentially competitive with us, including without limitation, aggregating current or previously offered coupons or deals; and
- 5.1.7 not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.
- 5.2 You authorise us to remove anything you publish on or through the Platform and to close or otherwise terminate your account at any time and without notice.

## 6. Intellectual Property Rights

- 6.1 You acknowledge that all intellectual property rights in the Platform, the Forms and the Technology anywhere in the world belong to us or our licensors, that rights in the Platform are licensed (not sold) to you, and that you have no rights in, or to, the Platform, the Forms or the Technology other than the right to use each of them in accordance with the terms of this EULA.
- 6.2 You acknowledge that you have no right to have access to the Platform in source-code form.
- 6.3 You grant us an irrevocable, non-exclusive, royalty-free, perpetual, and worldwide license to use content you publish on or through the Platform or a Service, including, without limitation:
  - 6.3.1 the rights to copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, modify, alter, translate and reformat your content, and/or to incorporate it into a collective work; and
  - 6.3.2 the right to sublicense any or all of our license rights to others.

For the avoidance of doubt, this means we have the right to use any and all ideas you submit (including ideas about our products, services, publications or advertising campaigns) in any manner we choose without notice.

- 6.4 You waive any and all moral rights in and to such any content you publish on or through the Platform or any Service.

## 7. Warranties

- 7.1 We warrant that:
  - 7.1.1 the Platform will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions which are identified on our website and in publications which describe the performance of the Platform; and
  - 7.1.2 the Forms will be compliant with legislative requirements for their intended purpose on the date on which they are created by you, however we make, and you do not rely on, any representation as to the commercial appropriateness of the Forms.
- 7.2 If you notify us in writing of any defect or fault in the Platform as a result of which it fails to perform substantially in accordance with the Forms, you will be entitled to a resupply of the services we provide you with.

- 7.3 The warranty does not apply:
- 7.3.1 if the defect or fault in the Platform or any Service results from you having amended the Platform or having used the Platform other than in accordance with any instructions provided to you in relation to the use of the Platform;
  - 7.3.2 if the defect or fault in the Platform results from you having used the Platform in contravention of the terms of this EULA; and
  - 7.3.3 if you breach any of the Licence Restrictions or the Acceptable Use Restrictions.
- 7.4 This warranty is in addition to your legal rights in relation to software that is faulty or not as described.
- 7.5 Technical and product support is available for the Platform Product on (08) 7329 4000 between 9:00am and 5:00pm (Adelaide local time ACST) Monday to Friday, excluding public holidays. Technical support is limited to technical use of the Platform Product but does not extend to issues relating to the operation of computer hardware, operating systems, software, network, firewall or anti virus software.
- 7.6 Subject to condition 7.1, we do not warrant that:
- 7.6.1 the content published on or through the Platform (whether published by us, another user of the Platform or a person publishing details about the goods and services such person has on offer) is accurate, not misleading and/or deceptive and/or not false;
  - 7.6.2 the goods and services that may be offered through the Platform or any Service will be fit for their purpose, correspond to their description or be available or be available for purchase at the price represented through the Platform or any Service; and
  - 7.6.3 coupons offered through the Platform or any Service will be honoured.
- 7.7 You warrant that by posting any content on or through the Platform, you represent and warrant that:
- 7.7.1 you have all right, title, and interest to such posted content, including but not limited to any consent, authorisation, release, clearance or licence from any third party (such as, but not limited to, any release related to rights of privacy or publicity) necessary for you to provide, post, upload, input or submit the posted content;
  - 7.7.2 such posted content is in the public domain;
  - 7.7.3 your use and publication of such posted content constitutes fair use; and
  - 7.7.4 such content does not violate or constitute the infringement of any patent, copyright, trademark, trade secret, right of privacy, right of publicity, moral rights, or other intellectual property right recognised by any applicable jurisdiction of any person or entity, or otherwise constitutes a breach of any agreement with any other person or entity.

## 8. **Limitation of Liability**

- 8.1 You acknowledge that the Platform has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Platform meet your requirements.
- 8.2 We have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 8.3 To the extent permitted by law, we are only responsible for loss or damage you suffer that is a foreseeable result of our breach of this EULA or our negligence up to the limit specified in condition 8.5, but we are not responsible for any unforeseeable loss, consequential loss, or damage. Loss or damage is foreseeable if it is an obvious consequence of our breach or if they were contemplated by you and us at the time we granted you the EULA but does not include any loss or damage associated with a person publishing content on or through the Platform that is inaccurate, misleading or false.
- 8.4 You release us and forever hold us harmless from any loss or damage you suffer:
  - 8.4.1 for any amount that exceeds the limit in condition 8.5; or
  - 8.4.2 because such loss or damage was not foreseeable within the meaning of this agreement; or
  - 8.4.3 in connection with restrictions to access to the Platform which occur pursuant to clause 13.
- 8.5 Our maximum aggregate liability under or in connection with all claims under this EULA (including your use of any Services) whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to \$800. This does not apply to the types of loss set out in condition 8.6.
- 8.6 Nothing in this EULA shall limit or exclude our liability for any other liability that cannot be excluded or limited by Australian law.

## 9. **Cookies**

- 9.1 Cookies are small pieces of data stored on the web browser on your computer. The Platform, external websites and associated websites may store cookies on your web browser.
- 9.2 The main reasons we store cookies are to:
  - 9.2.1 improve your use of the Platform. For example, to remember your search criteria so you don't have to re-enter to do multiple searches and to remember your preferences for your next visit to the Platform;
  - 9.2.2 gather statistics on Platform usage so we can monitor Platform usage and make improvements to site usability;
- 9.3 You can set up most web browsers so you are notified of when a cookie is received, so you can then either accept or reject it. You can also check the cookies stored by your web browser and remove any that you do not want.
- 9.4 If you disable the use of cookies on your web browser or remove or reject specific cookies from the Platform or linked websites, then you may not be able to gain access to all the content and facilities of the Platform.

## 10. Termination

10.1 We may terminate this EULA immediately by written notice to you:

10.1.1 if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; or

10.1.2 if you breach any of the Licence Restrictions or the Acceptable Use Restrictions.

10.2 On termination for any reason:

10.2.1 all rights granted to you under this EULA shall cease;

10.2.2 you must immediately cease all activities authorised by this EULA, including your use of any Services;

10.2.3 you must immediately delete or remove the Platform from all Devices, and immediately destroy all copies of the Platform and Forms then in your possession, custody or control and certify to us that you have done so;

10.2.4 if necessary we may remotely access the Devices and remove the Platform from all of them and cease providing you with access to the Services;

10.2.5 we may do anything we deem necessary for you to carry out your obligations under conditions 10.2.1 to 10.2.4; and

10.2.6 you will have no further rights in relation to this EULA including, without limitation, any rights to a refund for any fees paid to us.

## 11. Communication between Us

11.1 If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by e-mail [legal@formslive.com.au](mailto:legal@formslive.com.au).

11.2 If we have to contact you or give you notice in writing, we will do so by e-mail to the address you provide to us in your request for the Platform or through the Platform itself.

## 12. Events outside Our Control

12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including failure of public or private telecommunications networks (each, an **Event Outside Our Control**).

12.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:

12.2.1 our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and

12.2.2 we will use our reasonable endeavours to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

13. **Platform maintenance and downtime**

- 13.1 You acknowledge that from time to time it will be necessary for us to perform upgrades, maintenance or other work on the Platform which requires access to the Platform to be restricted and authorise us to restrict access to the Platform in such circumstances.
- 13.2 We will provide you with reasonable notice of when such restrictions will apply and seek to minimise the impact of such restrictions on your business (except in the case of emergency).

14. **Other Important Terms**

- 14.1 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 14.2 We may transfer our rights and obligations under this EULA to another person, but this will not affect your rights or our obligations under this EULA.
- 14.3 You may only transfer your rights or obligations under this EULA to another person if we agree in writing.
- 14.4 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 14.5 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 14.6 You agree that nothing in this EULA will be construed against us because we put forward the agreement.
- 14.7 Please note that this EULA, its subject matter and its formation, are governed by Australian law. You and we both agree that the Courts of South Australia and the Federal Court of Australia (Adelaide Registry) will have exclusive jurisdiction.

This agreement has been entered into on the date you have accepted it.