

Ostendo® Software Licence and Maintenance Agreement

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This Ostendo Software Licence and Maintenance Agreement (hereinafter sometimes referred to as "Agreement") between you, an individual or a single entity company or business organization (hereinafter sometimes referred to as "you") and Development-X Limited, a New Zealand Company, (hereinafter sometimes referred to as "Development-X" "we" or "us") sets forth the terms and conditions under which you may use the Ostendo Software Product you are installing, which consists of the enclosed Software and Documentation and related materials (hereinafter sometimes referred to as the "Product"). By installing, copying or otherwise using the Product, whether this is an initial installation or an update, you accept the terms and conditions of this Agreement, which supersedes any and all prior agreements between us.

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"Number of Users" means the total number of concurrent users authorized to access or otherwise utilize the Product in a computer network, network file server or a single computer at the same time.

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5. LIMITATIONS ON USE:

You may install the Product in a single computer, computer network or network file server for use by one company, provided however, that the Product may only be accessed by the authorized number of users at the same time. So long as the Product is used by only the authorized number of users, you may transfer it from one computer or network file server to another, or copy it for backup or training purposes. You may not otherwise copy or use the Product in either whole or part. You may not translate, decompile, disassemble or convert the Software into another programming language, or produce derivatives of the Product. You may not lend, resell, lease, rent, sub-license or otherwise transfer the Product or your rights under this Agreement. Neither this Agreement nor any interest in this Agreement may be assigned by you without the prior express written approval of Development-X. However, you may assign this Agreement in its entirety to a person or entity which concurrently acquires substantially all of the assets of your business enterprise. In order for any assignment to be effective, and as a condition thereof, the assignee must agree to be bound by and comply with the terms of this Agreement.

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7. HARDWARE/NETWORK/OTHER SOFTWARE DISCLAIMER:

Development-X may provide general recommendations as to hardware, devices, networks and other software in which the Product is intended to function or function with. However, we do not provide technical or other support with respect to the installation and maintenance of any particular device, computer, network, other hardware or software. Thus, we expressly disclaim any representation, warranty or guarantee that the Product will function as intended while running in any particular device, computer, computer network or network file server or with other hardware or software.

8. SUPPORT SERVICES:

Subject to our policies and procedures set forth in this Agreement, in the Documentation, and in any other materials published by us in any media, Development-X currently provides services to support you in the use of the Product (hereinafter sometimes referred to as "Support Services"). Support Services are separate from the Maintenance described herein, and in addition, expressly exclude the installation and maintenance of particular devices, computers, networks or other hardware or software. Support Services will be available to you only if you are currently licensed to use the Product. Development-X is not obligated to provide Support Services on a no-charge basis, and retains the discretion to establish, modify, terminate or waive any fee, procedure or policy at any time and without any further notice to you.

9. ENTIRE AGREEMENT:

This Agreement sets forth the entire agreement and understanding between the parties and may be amended only in a writing signed by both parties hereto. This Agreement takes the place of any prior agreement, oral or written, and any other communications between us concerning the Product, and supersedes any prior agreement. NO VENDOR, WHOLESALER, DISTRIBUTOR, DEALER, RESELLER, RETAILER, SALES PERSON, NETWORK INTEGRATOR, CONSULTANT, OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT.

10. GOVERNING LAW; GENERAL TERMS AND CONDITIONS:

This Agreement shall be governed by, and construed in accordance with the substantive laws of New Zealand. The parties agree that any legal action or proceeding to enforce or interpret this Agreement, or which otherwise relates to or concerns the terms of this Agreement, will be brought in the courts of New Zealand, who shall have jurisdiction over all disputes which may arise in respect to this Agreement. Any term of this Agreement found to contravene a jurisdiction's law will be deleted without affecting the remaining terms. Any express or implied waiver by us of a breach of this Agreement, and any failure by us to enforce any term of this Agreement, shall not constitute a waiver of our rights in connection with any later breach or enforcement. No legal action arising out of or relating to this Agreement may be started by you more than one year after the claim or cause of action has accrued. In any legal action or proceeding to enforce or interpret this Agreement, or which otherwise relates to or concerns the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable expenses and attorney's fees.