



SAPIEN SOFTWARE ANNUAL LICENCE AND MAINTENANCE AGREEMENT

If you do not wish to accept these terms and conditions, you must **not** click “I Accept” and you may **not** use the Software and System (defined below). Permission to use this Software and System is conditional upon you (“**User**”), agreeing to the terms and conditions set out below.

By clicking on the “I Accept” button below, User and Sapien Technology Pty Ltd ACN 101 950 903 (“**Licensor**”), agree to the following terms and conditions:

1. **SOFTWARE.** In this agreement “**Software**” refers to a computer program being one of the following: “koolcollect”, “koolscales”, “koolcompact”, “bornkool” or “koolperform” (as selected by User) and except where the context required otherwise, includes the superkool software. Further, unless the context requires otherwise, “Software” includes all modifications, enhancements or updates thereto, or other related software code that may be provided by Licensor under separate maintenance and support agreements or otherwise, and includes all associated printed, online or electronic documentation relating to the computer program (“**User Documentation**”). The term “**System**” refers to Licensor’s computer facilities for provision to users generally (including User) of the services associated with the superkool software to be accessed online by User in conjunction with the Software, pursuant to this Agreement.

2. **LICENCE.** Licensor grants to User, and User accepts, a non-exclusive, non-transferable limited licence to use the Software strictly in accordance with this agreement. User’s use of the Software (other than the superkool software) will be limited to use on the number and types of devices and at the sites set out in the table below. For the purposes of the table below, a “**Property**” refers to a property or parcel of properties assigned to a single Property Identification Code (PIC), and a “PDA” means a personal digital assistant.

Software	Extent of license
koolcollect	Up to 2 computers on a single Property
Koolscales	Single vehicle or single fixed scale/saleyard location
koolcompact	Single PDA
bornkool	Single PDA
koolperform	Up to 2 computers on a single property

The licence to use the superkool Software and the System is limited to a period of one year commencing on the date of this agreement and any extension thereto agreed in writing by Licensor (“**SuperKool Term**”) subject to User paying the applicable renewal fee.

3. **INSTALLATION.** Subject to clause 2, the Software may be installed on any computer, subject to the compatibility limits set out in the table in item 6 below and the restrictions in the table above. Without limiting the foregoing, Licensor does not represent that the Software is “Mac”-compatible. Upon installation of the Software, User shall be responsible for ensuring that the Software is used in accordance with the User Documentation. Licensor is not liable to install the Software or to provide any services or support in respect of the installation of the Software, except as expressly stated in this agreement or as otherwise agreed between the parties in writing.

4. **COPIES.** The Software and User Documentation may be copied by User in written or machine readable form in whole or in part for backup or archive purposes only, providing that all use limitations set out in this agreement are complied with, including in respect of those copies.



User may use the Software as intended in the User Documentation to generate files and integrate other software programs that will run with the Software.

5. USE AND OTHER LIMITATIONS. (a) User acknowledges that the Software (including all User Documentation) and the System (to the extent protectable at law) are the subject of copyright and that all intellectual property rights (including but not limited to copyright) in and to the Software whether in its original form or as modified from time to time are owned by Licensor. The User will not during or at any time after the expiry of termination of this agreement permit any act which infringes that copyright. (b) Without limiting 5(a), User must not copy, reproduce, translate, adapt, vary, modify, reverse engineer, decompile, or disassemble the Software, without the express consent of Licensor, except as expressly authorised by this agreement or as permitted under Pt III Div 4A of the *Copyright Act 1968* (Cth). (c) User must supervise and control the use of the Software and System in accordance with the terms of this agreement and must ensure that its employees, sub-contractors and other agents who have authorised access to the Software and System are made aware of the terms and conditions of this agreement. (d) The Software may not be re-sold, sub-licensed, rented, leased or transferred by User. (e) User may not remove any copyright, trade mark, or other proprietary notices from the Software or its packaging or media. (f) User agrees and acknowledges that maintenance (whether scheduled or unscheduled) may be performed in relation to the System whether by Licensor or its hosting service provider. Licensor expressly excludes any warranty that the System will be available at all times or that the use of the System will be uninterrupted or error free. Licensor reserves the right to suspend the operation of the System, including if required or requested to do so by its hosting service provider. Licensor shall not be liable in respect of any action or claim in relation to such unavailability or any claim for loss or damage arising therefrom.

6. WARRANTIES. User acknowledges that the Software is not guaranteed to be error free and further acknowledges that the existence of such error will not constitute a breach of this agreement. Notwithstanding the foregoing, Licensor offers a "**Warranty Period**" which commences upon installation of the Software and expires ninety (90) days after the Software is installed.

(a) Licensor warrants to User that during the Warranty Period the Software will conform substantially with the User Documentation and that the Software is compatible with and will operate on the following computer system configuration:-

koolcollect v4
Windows 2000 SP2, Windows XP SP 2 or higher
Windows Vista
512MB RAM (1024MB preferred)

koolscales v1.6
Windows 98 or greater with min 256 MB RAM
Windows Vista not currently supported

koolcompact v1.0
Windows Mobile 5 or Windows Mobile 6
64MB RAM or greater

bornkool v2.2
Windows Mobile 5 or Windows Mobile 6
64 MB RAM or greater

koolperform v1
Windows XP SP 2 or higher
512MB RAM (1024MB preferred)
Internet connection – 256kbps or greater (512kbps recommended)



(b) During the Warranty Period and upon User's request, Licensor will at no additional charge to User use best efforts to (i) correct promptly each non-conformance of the Software from the specifications in the User Documentation, or (ii) replace the non-conforming Software with conforming Software, or (iii) to the extent the above may not be reasonably obtained, Licensor may at its option, terminate this agreement and refund the amount paid by User for the Software. This warranty is void if the failure is due to abuse or other use of the Software not in conformance with the User Documentation or by unauthorised modification of the Software by or on behalf of User. (c) The remedy set out above will be User's sole and exclusive remedy, and Licensor's exclusive liability, for breach of the above warranty.

(d) Licensor's warranties under this agreement are limited to those set out above, except if and to the extent only that any statute implies terms into this agreement which cannot lawfully be excluded, such terms will apply to this agreement, save that the liability of Licensor for breach of any such implied term will be limited, at the option of Licensor to one or more of the following:

- (i) if the breach relates to goods:
 - A. the replacement of the goods or the supply of equivalent goods;
 - B. the repair of such goods;
 - C. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - D. the payment of the cost of having the goods repaired; and
- (ii) if the breach relates to services:
 - A. the supplying of the services again; or
 - B. the payment of the cost of having the services supplied again.

Without limiting the foregoing, Licensor does not warrant the Software or System will meet User's commercial requirements.

8. SUPPORT SERVICES. (a) Subject to 8(d) the support services set out in this agreement ("**Support Services**") shall be provided by Licensor to User for a period of 12 months from User's installation of the Software ("**Initial Support Term**"). (b) Subject to clause 8(c) and (d), following the expiry of the Initial Support Term, the Support Services may be renewed for further terms of 12 months subject to User paying Licensor the applicable annual renewal fee notified to User by Licensor not less than 30 days prior to the expiry of any relevant term ("**Annual Fee**"). (c) Initial or any subsequent renewal of the Support Services pursuant to clause 8(b) is subject to the consent of Licensor, which may be withheld in Licensor's discretion. Without limiting the foregoing, Licensor may require an adjustment of the Annual Fee as a condition of providing its consent to any renewal of the Support Services for any further term. (d) Without limiting the foregoing clauses, the parties agree that the Licensor may for pragmatic or commercial considerations, elect to cease providing some or all of the Support Services for the Software for all or a category of users of the Software (which may include the User) at any time during the Initial Support Term or any renewed term, upon the provision of six weeks' prior notice in writing.

9. SERVICES (a) Licensor shall perform such services in the nature of the Support Services as it considers reasonable to ensure the adequate performance of the Software. Such support shall, at the sole option of Licensor, and subject to clause 11, take the form of one or several of:

- (i) telephone advice;
- (ii) error correction by means of remote desk top, subject to User's facilities allowing same;
- (iii) on-site attendance followed by such advice, programming or re-configuration as Licensor considers necessary; and
- (iv) such services as Licensor considers are more effectively provided off-site.



(b) Licensor shall provide the Support Services in response to a report by User of a suspected defect or error in the Software, which defect or error allegedly causes the Software to deviate from the Software's specifications.

(c) Licensor may facilitate diagnostic support through use of third party software called "TeamViewer". Once installed and operating on the User's system TeamViewer will allow Licensor's support team to gain remote desktop access to the User's system.

(d) The User agrees and acknowledges that:

- (i) the proposed use of TeamViewer will allow Licensor's support team to have access to the User's information technology system in order for Licensor to provide the support referred to above;
- (ii) while Licensor has no reason to believe that there are any defects inherent in TeamViewer or likely to arise from its use, as TeamViewer is third party software, it cannot guarantee the same;
- (iii) TeamViewer is supplied on an "as is" basis. Licensor will be under no liability to the User in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the use of TeamViewer. The User indemnifies Licensor and its officers, employees and agents from and against any loss or liability arising directly or indirectly out of the use of TeamViewer in accordance with this agreement; and
- (iv) subject to anything to the contrary in this or any other agreement between Licensor and the User, Licensor reserves the right to cease provision of remote diagnostic support, to the User or generally in its absolute discretion and whether by use of TeamViewer or otherwise.

10. SUPPORT AVAILABILITY (a) Licensor shall provide the telephone advice Support Services between 0900 hours and 1700 (EST) hours on any day except Saturday, Sunday or a public holiday in Melbourne, Victoria ("**Licensor's Normal Business Hours**"). (b) If User requests Licensor to provide on-site support at User's premises, Licensor shall do so as soon as reasonably practicable, at such times as are mutually convenient, subject to clause 11. (c) Licensor does not warrant to User that it will be capable of promptly receiving, processing or otherwise acting upon a request for Support Services which is made outside Licensor's Normal Business Hours or that it can provide on-site Support Services outside Licensor's Normal Business Hours. (d) Immediately after making a request for Support Services which may involve error correction or program modification, User shall, if requested by Licensor, give Licensor a documented example of the defect or error which it alleges prevents conformity of the Software with its specifications. (e) User shall, if so requested by Licensor, give Licensor a listing of output and any other data which Licensor requires in order to reproduce operating conditions similar to those present when any alleged defect or error in the Software is discovered.

11. LIMITATIONS AND EXCLUSIONS (a) User acknowledges that where the Support Services comprise telephone advice for koolscales software, such support shall be limited to a total, during the Initial Support Term, of 6 calls each of no more than 15 minutes duration per call. Should additional support be required, Licensor may make an additional charge in accordance with Licensor's then current support rates as notified from time to time by Licensor ("**Additional Charge**") to User for these services. (b) Unless agreed by Licensor in accordance with clause 11(c), Support Services to be provided by Licensor under this agreement do not include:

- (i) correction of errors or defects caused by operation of the Software in a manner other than that currently specified by Licensor;



- (ii) correction of errors or defects caused by modifications, revision, variation, translation or alteration of the Software not authorised by Licensor;
- (iii) correction of errors or defects caused by the use of the Software by a person not authorised by Licensor;
- (iv) correction of errors caused in whole or in part by the use of computer programs other than the Software;
- (v) correction of errors caused by the failure of User to provide suitably qualified and adequately trained operating and programming staff for the operation of the Software;
- (vi) training of operating or programming staff;
- (vii) rectification of operator errors;
- (viii) rectification of errors caused by incorrect use of the Software;
- (ix) rectification of errors caused by an equipment fault;
- (x) equipment maintenance;
- (xi) diagnosis or rectification of faults not associated with the Software;
- (xii) providing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Licensor;
- (xiii) correction of errors arising directly or indirectly out of User's failure to comply with this Agreement or any other agreement with Licensor; or
- (xiv) correction of errors or defects which are the subject of a warranty under another Agreement.

(c) If User so requests in writing, Licensor may at its option provide any of the services referred to in clause 11(b) in consideration for an Additional Charge for providing such services.

12. ACCESS (a) User shall, where relevant, ensure Licensor's support personnel have full and safe on-site access to the Software and the relevant equipment at all reasonable times for the purposes of providing the Support Services. User shall also ensure that Licensor's support personnel are provided with all information, facilities, assistance and accessories reasonably required by Licensor to enable Licensor to comply with its obligations under this agreement. (b) If reasonably requested by Licensor, User shall provide a suitably qualified or informed representative to accompany Licensor's personnel and to provide such advice or assistance to those personnel as may be necessary in order to enable Licensor to access the Software and relevant equipment and to otherwise effectively perform the Support Services.

13. UPDATES AND NEW RELEASES (a) The Support Services shall include the provision to User of any updates and new releases of the Software that may be created by Licensor during the Initial Support Term and any renewal thereof. (b) Updates and new releases of the Software shall be provided by Licensor to User as they become available. (c) If reasonably requested to do so by User, Licensor shall demonstrate the functions and features of any update or new release. Licensor may make an Additional Charge in respect of any such demonstration. (d) If User refuses to accept any update or new release of the Software, Licensor may decline to continue to provide any Support Services. (e) Where a User accepts an update or new release, this agreement applies in all respects to that update or new release to the extent that it is incorporated or replaces the Software.

14. SUPPORT CHARGES (a) Where the Support Services involve a visit to User's site, Licensor shall charge for support at a rate of \$145 per hour or part thereof on a pro rata basis plus GST. (b) Licensor may make a further travel charge on the basis of a fee of \$1.55 per kilometre travelled plus GST or such other fee as is calculated in accordance with changes in market conditions for time and travelling expenses of its support personnel in respect of travel to and from User's site. (c) If User disputes the whole or any portion of the allowed claim in an invoice submitted by Licensor, User shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify Licensor in writing within seven days of receipt of any invoice of the reasons for disputing the remainder of the invoice. If resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then



User shall pay the amount finally resolved in accordance with the terms of payment set out in this Agreement.

(d) If:

- (i) the Support Services are delayed;
- (ii) Licensor is required to perform services in circumstances other than those expressly or reasonably anticipated in an agreement of a similar nature; or
- (iii) there is a change in the timing or complexity of the Support Services:

and such circumstances are not a result of a breach of this agreement by Licensor, then Licensor shall be entitled to make an Additional Charge. (e) The Support Charges are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply of the Support Services. Without limiting the foregoing, User shall be liable for any new taxes, duties or charges imposed subsequent to the commencement of this agreement in respect of the provision of the Support Services.

15. SYSTEM SPECIFICATIONS. (a) Licensor may substitute the System or any component of the System or vary the configuration of the System at its discretion and without prior notification to User prior to or during the Term without consultation with User if, in the opinion of Licensor, such substitution will not cause a material degradation of the goods and services to be provided under this agreement. (b) Without limiting any other provision of this agreement, Licensor shall not be responsible for any loss or damage caused by factors beyond Licensor's reasonable control including, but not limited to, telecommunications failure or fault, defective equipment utilised by User or incorrect operation by User of its own access facilities.

16. OWNERSHIP AND USE OF DATA. Subject to any lien arising because of unpaid charges under this or any other agreement between Licensor and User. User acknowledges that the data owned or supplied by User to which Licensor is granted access ("**User Data**") remains the property of User. User agrees that Licensor may access and use User Data for the purposes of conducting, preparing and disseminating to third parties, analysis of the data of its users and the market in which User operates, provided that in doing so User is not identified.

17. DATA AUDIT. (a) Licensor shall on reasonable notice make the User Data and related data, documentation or records maintained on behalf of User available for inspection by User or User's auditors. (b) User may be required to pay Licensor an Additional Charge in respect of services provided pursuant to 17(a).

18. USER'S FACILITIES. (a) User shall be responsible for providing its own facilities (including terminal, software, modern and telecommunications facilities) necessary for accessing the System.

(b) Licensor shall, upon request from User, supply such information and assistance as are reasonably required by User to enable User to prepare and install its own facilities. (c) Notwithstanding clause 18(b), Licensor accepts no responsibility for any deficiency in User access facilities.

19. PAYMENT Where any payment is required under this Agreement, Licensor shall forward to User by email and regular post an invoice setting out the charges. User must pay such invoice within 14 days of its dispatch by Licensor. Licensor may increase any fees for access to and use of the System by giving 14 days' prior notice to User.

20. WARRANTY AND INDEMNITY. (a) Licensor warrants that it has the right to grant the licence of the Software granted in this agreement to User and subject to the clauses below, shall indemnify and hold harmless User from any claim made against User by a third party alleging that the Software infringes the copyright, or other proprietary right, of that third party. (b) Licensor shall not be liable to User for breach of warranty or indemnity if: (i) User does not notify Licensor of the third party's claim or of infringement of copyright within 7 days of becoming aware of the claim or infringement; (ii) Licensor's ability to defend the claim has been prejudiced



by User's non-compliance with any of the terms and conditions of this agreement; (iii) User does not give Licensor reasonable assistance in defending the claim; (iv) the claim has arisen because of the use of the Software in combination with equipment, materials or computer programs not supplied or approved by Licensor, or because of User's non-compliance with User Documentation; or (v) User does not permit Licensor to have control of the defence of the claim and all related settlement negotiations.

21. LIMITED LIABILITY. (a) Except as expressly provided to the contrary in this agreement to the maximum extent permitted by the Applicable Law referred to in clause 22, in no event whatsoever shall Licensor or its directors, employees, agents or sub-contractors be liable for any special, incidental, indirect or consequential damages whatsoever (including without limitation, damages for loss of profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use, or inability to use, the Software, the System or the provision of or failure to provide support and maintenance services, even if Licensor has been informed of the possibility of such damages. (b) User agrees that it has not relied on any representation made by Licensor which has not been stated expressly in this agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues, internet sites or publicity material produced by Licensor. (c) User shall at all times indemnify and hold harmless Licensor and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by: (i) a breach by User of its obligations under this agreement; or (ii) any wilful, unlawful or negligent act or omission of User.

22. APPLICABLE LAW. The Applicable Law is the laws for the time being in force of the State of Victoria, Australia and the Commonwealth of Australia. This agreement is governed by the Applicable Law without any reference to any conflict of laws and Licensor and User agree to submit to the jurisdiction of the Courts of the State of Victoria and the Commonwealth of Australia and the Courts of Appeal therefrom.

23. DISPUTES. If a dispute that is communicated to the other by written notice is not remedied or is not capable of remedy, then the parties agree to submit to mediation prior to the institution of court proceedings utilising the following procedure: (a) The parties will jointly appoint a mediator. If the parties cannot agree on a mediator, the parties agree that either of them may request the President for the time being of the Law Institute of Victoria, Australia to nominate a mediator; (b) The cost of the mediator will be shared equally between the parties; (c) If a settlement is reached at the mediation, written terms of settlement shall be entered into immediately upon conclusion of the mediation and shall override this agreement; (d) Each party will be entitled to legal representation at the mediation; (e) Statements made at, or documents produced specifically for the mediation, will not be admissible in any Court and neither party will be entitled to disclose the statements or documents to any third party (other than their legal representatives).

24. TERMINATION This agreement is effective until terminated in accordance with this clause except that in respect of the superkool Software, it remains in force until the earlier of the expiry of the superkool Term or upon termination in accordance with this clause. This agreement will terminate immediately without the need for notice from Licensor if:

- (a) User breaches any term of this agreement;
- (b) without limiting (a) User breaches any term of this agreement and such breach is not rectified within 14 days from notice from the Licensor to rectify;
- (c) User, being a corporation, becomes the subject of any insolvency proceedings;
- (d) User, being a firm or partnership, is dissolved;
- (e) User, being a natural person, dies;
- (f) User ceases or threatens to cease conducting its business in the normal manner; or
- (g) User destroys, disposes of or loses custody of the Software for any reason.



Either party may terminate this agreement immediately should the Software become the subject of a claim of infringement of any intellectual property right. Upon termination for any reason, User must destroy all copies of the Software or otherwise return same to Licensor as directed by Licensor.

Those clauses of this Agreement that are capable of surviving termination shall do so, and termination pursuant to this clause will not affect any rights or remedies which Licensor may have otherwise under this Agreement or at law. If Licensor terminates this agreement Licensor may retain any fees paid by User.

25. UPON TERMINATION. If terminated in accordance with clause 24, in addition to the matters set out above, Licensor may:
(a) repossess any copies of the Software; (b) retain any moneys paid; (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged; (d) be regarded as discharged from any further obligations under this Agreement; and (e) pursue any additional or alternative remedies provided by law.

Following expiry of the superkool Term, User may continue to use any Software licensed hereunder in respect of which no limitation as to term (duration) of use applies, but User acknowledges that its functionality may be significantly restricted if not used in conjunction with superkool, and that continued use of superkool is conditional upon this agreement remaining on foot and all licence and renewal fees having been paid.

26. SUB-CONTRACTS Licensor may, without the consent of User, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of the Support Services.

27. JOINT AND SEVERAL LIABILITY. Where User comprises two or more persons, corporations or entities, these terms and conditions will be binding upon Users jointly and severally. In addition these terms and conditions will be binding upon User's legal personal representatives.

28. ASSIGNMENT. The benefit of this agreement may not be dealt with in any by User (whether by assignment, novation, sub-licence or otherwise) without Licensor's written consent. The Licensor may assign, novate, sub-licence or otherwise transfer its rights in respect of this agreement without the consent of the User.

29. ENTIRE AGREEMENT. This agreement constitute the entire agreement between User and Licensor. The terms and conditions of this agreement can only be varied by a document in writing supplied and signed by Licensor and accepted by User.

30. WAIVER. (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party. A waiver by Licensor pursuant to this clause will not prejudice its rights in respect of any subsequent breach of these terms and conditions by User.
(b) The provisions of this Agreement, shall not be varied, except by agreement in writing signed by the parties.

31. SEVERANCE. If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted

32. INTERPRETATION. In these terms and conditions, unless the contrary intention appears:
(a) words in the singular number include the plural and vice versa; (b) words importing a gender include any other gender; (c) a reference to a person includes bodies corporate and



unincorporated associations and partnerships; (d) a reference to a clause is a reference to a clause or subclause of this Agreement; and (e) monetary references are references to Australian currency.