

# Digital APF General Terms

## General Terms (Single User & 3 Multi User)

### **Important**

#### **NOTICE TO APPLICANTS FOR, AND USERS OF, DIGITAL APF**

*The following terms and conditions specify the basis on which Pharmaceutical Society of Australia Limited ABN 49 008 532 072 (of Level 1, 44 Thesiger Court, Deakin, Australian Capital Territory 2600) (PSA) will provide the means through which the Customer and its Authorised Users may access the Digital Australian Pharmaceutical Formulary and Handbook (Digital APF). PSA will not provide the means by which a Customer and its Authorised Users may access the Digital APF, unless and until the Customer signifies, in the manner prescribed in <http://www.psa.org.au/services>, its acceptance of these General Terms.*

### **Copyright**

© Pharmaceutical Society of Australia, 2018

The material in the Digital APF has been provided by PSA, the Commonwealth of Australia and third parties. Copyright in material provided by the Commonwealth of Australia or third parties belongs to them. PSA owns the copyright in the Digital APF as a whole and all material in the Digital APF that has been developed by PSA. In relation to PSA-owned material, no part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968* (Cth), or the written permission of PSA. Requests and inquiries regarding permission to use PSA material should be addressed to: The Pharmaceutical Society of Australia, PO Box 42, Deakin West, ACT, 2600. Where you would like to use material that has been provided by the Commonwealth of Australia or third parties, contact them directly.

First published in 1902

Twentieth edition, 2006. Reprinted 2007

Twenty-first edition, 2009

Twenty-second edition, 2012

Twenty-third edition, 2015

Twenty-fourth edition, 2018

**Publisher:** Pharmaceutical Society of Australia

**Project Director:** Jan Ridd, Pharmaceutical Society of Australia

**Project Manager:** Claire Antrobus, Pharmaceutical Society of Australia

**Design and Typesetting:** Vanessa Bleakley, Pharmaceutical Society of Australia

**Copy Editing and Proofing:** Biotext Pty Ltd

**Printed by:** OPUS group

**Digital version:** Oxide Interactive

PSA4055

### **National Library of Australia Cataloguing-in-Publication data**

**Title:** Australian Pharmaceutical Formulary and Handbook

**Edition:** Twenty-four

**Chair, Editorial Board:** Sansom, Lloyd

# Digital APF General Terms

**Date of Publication:** February 2018

**Publisher:** Pharmaceutical Society of Australia

**ISBN (print):** 978-0-9874550-6-2

**ISSN:** 1446-2710

## **Recommended citation**

Sansom LN, ed. Australian pharmaceutical formulary and handbook. 24th edn. Canberra: Pharmaceutical Society of Australia; 2018.

## **Feedback**

If you have any suggestions regarding the content of the Digital APF, please email [apf@psa.org.au](mailto:apf@psa.org.au)

# Digital APF General Terms

## 1. Application of this agreement

This agreement specifies the terms and conditions governing the Pharmaceutical Society of Australia Limited ABN 49 008 532 072 of Level 1, 44 Thesiger Court, Deakin, Australian Capital Territory 2600 (PSA's) grant of access to the Digital APF to the Customer and its Authorised Users.

## 2. About this agreement

- (a) This agreement consists of:
  - (i) these General Terms; and
  - (ii) each Order.
- (b) If there is any inconsistency between the provisions of these General Terms and an Order, the provisions of these General Terms prevail to the extent of the inconsistency.

## 3. Establishment of Customer Account

- (a) PSA is not obliged to provide access to the Digital APF to any person, unless that person has established a Customer Account, or is an Authorised User of a person who has established a Customer Account.
- (b) A person wishing to establish a Customer Account must register at <http://www.psa.org.au/services>.
- (c) For the purposes of this agreement a Customer Account may be an existing Customer Account of the Customer.

## 4. Orders

Once the Customer has a Customer Account, the Customer may purchase access to the Digital APF in accordance with this agreement, by completing and submitting an Order, and paying to PSA, in the manner specified in these General Terms, the Fee for the Digital APF licence specified in the Order.

## 5. Term

- (a) This agreement commences on the date on which the Customer signifies its acceptance of these General Terms, and continues until the expiry of all then current Orders, unless otherwise terminated earlier.
- (b) For the purposes of paragraph 5(a), an Order expires at the end of the Initial Term and any Additional Year/s.

## 6. Licence

- (a) Subject to the payment, in accordance with these General Terms, of the applicable Fee(s) for the Digital APF licence specified in a given Order, PSA grants to the Customer a non-exclusive, non-transferable, revocable licence to access and use, and permit Authorised Users to access and use, the Digital APF, solely in conjunction with the Platform, in accordance with laws (including, without limitation, the *Copyright Act 1968* (Cth)).

- (b) The licence to access and use the Digital APF commences on PSA's receipt of payment of the Fee for the Digital APF, or the specified Activation Date (whichever is the latter), and, subject to paragraph 6(c), will continue for one year from that date (**Initial Term**).
- (c) The licence to access and use the Digital APF may be renewed for successive one-year periods (each, an **Additional Year**), provided that the Customer pays, prior to the expiry of the Initial Term, or applicable Additional Year, as the case may be, the Fee for the Digital APF, as specified in an invoice provided to the Customer by PSA under paragraph 9(c).
- (d) The Order will specify the type of licence granted under this agreement, being a:
  - (i) Single User Licence; or
  - (ii) Multi User Licence.

## 7. Use of the Digital APF

The Customer agrees to, and agrees to ensure that Authorised Users, only use the Digital APF in accordance with this agreement and applicable laws.

## 8. Authorised Users

- (a) Subject to paragraphs 8(b) and 8(c), the Customer may permit Authorised Users to access and use the Digital APF, in conjunction with the Platform, by issuing to each individual Authorised User a non-transferrable user name and password. The Customer must ensure that each Authorised User keeps his or her username and password confidential and secure at all times.
- (b) The Customer agrees that it may permit Authorised Users to access and use the Digital APF, but only if:
  - (i) such access and use is subject to terms and conditions that are the same as, consistent with, or will facilitate the intent of, the terms of this agreement; and
  - (ii) the Customer ensures that each Authorised User:
    - (A) does not use the Digital APF, or any content forming part of the Digital APF, for purposes other than those for which they are granted access; and
    - (B) does not on-supply, or provide access to, the Digital APF, or any content forming part of such Digital APF, to any person(s).
- (c) The Customer acknowledges and agrees that:
  - (i) it is, and will be, responsible and liable for the acts and omissions of each Authorised User in connection with the Platform, the Digital APF and this

# Digital APF General Terms

agreement as if they were acts and omissions of the Customer itself; and

- (ii) it accepts all liability for any unauthorised use of any username and password issued to any Authorised User.

## 9. Fees

- (a) The amount of the Fee(s) payable for the Digital APF, is:
  - (i) specified, and payable, in Australian dollars;
  - (ii) for:
    - (A) a Single User Licence, the amount specified for a Single User Licence in <http://www.psa.org.au/services>; and
    - (B) a Multi User Licence, the amount specified for a Multi User Licence in <http://www.psa.org.au/services>; and
  - (iii) inclusive of all taxes, charges, levies, duties or other government imposts imposed under the laws of the Commonwealth of Australia and each State and Territory of Australia, save for Commonwealth of Australia goods and services tax.

Fees paid by the Customer are non-refundable, unless otherwise specified in this agreement.

- (b) The Customer agrees that Fees for the Digital APF are payable annually in advance. With the exception of the initial payment of the Fee, the Fee for the Digital APF is payable no later than the anniversary of the commencement of the licence for the Digital APF (as determined under paragraph 6(b)).
- (c) PSA will, in the form of an invoice, notify the Customer of the pending expiry of the Initial Term or Additional Year (as the case may be), and the Fee payable for the next Additional Year no later than 30 days prior to the expiry of that Initial Term or Additional Year (as the case may be).
- (d) Notwithstanding paragraph 9(a), if the Customer fails to pay the Fee for the Digital APF within 14 days of the relevant anniversary of the commencement of the licence for the Digital APF, PSA may, in its absolute discretion terminate the licence to access and use the Digital APF granted under paragraph 6, and revoke all of the Customer's rights (and those of its Authorised Users) to access and use the Digital APF. PSA will not be liable for any loss or damage incurred or sustained by the Customer (or any Authorised

User) as a result of its termination of a licence under this paragraph.

- (e) For the avoidance of doubt, to the extent that the actual number of Authorised Users for the Digital APF during a given year is less than the number of Authorised Users for which a Fee has been paid, the Customer will not be entitled to any refund of those Fees.

## 10. Payment

- (a) Payments of fees may be effected by any of the methods of payment prescribed in <http://www.psa.org.au/services>.
- (b) Notwithstanding any other provision of this agreement or statement on the Website, payment of a given amount will not be deemed to have occurred unless and until PSA receives the relevant amount, in cleared funds.
- (c) The Customer agrees to reimburse PSA for any dishonour fees or like amounts incurred by PSA as a consequence of a payment made by the Customer being refused or dishonoured by its bank, financial institution or credit provider.

## 11. Rights not transferrable

Rights to access and use the Digital APF are not transferrable. Where an Authorised User ceases to be an employee, officer, contractor or agent of the Customer, or ceases to require access to the Digital APF for any other reason, the user name and password issued to that Authorised User must be cancelled.

## 12. Access and usage restrictions

Subject to paragraph 6, the Customer must not, and must ensure that its Authorised Users do not:

- (a) reverse engineer, disassemble, or decompile any software forming part of the Platform, unless permitted to do so by law, and then only strictly in accordance with the provisions or terms under which that right is given by such law;
- (b) copy or download, in a systematic manner, any content, graphics, video, text or animation from the Platform, or communicate or otherwise distribute such systematically-obtained content, graphics, video, text or animation;
- (c) directly or indirectly introduce any virus, worm, trojan or other malicious code into the Platform, or in any other manner whatsoever corrupt, degrade or disrupt the operation of the Platform;
- (d) sell, translate, network, publish, commercialise, rent, lease, assign, transfer, loan, or otherwise distribute all or part of the Platform or the Digital APF, or any adaptation, modification or derivative of all or part of the Platform or the Digital APF;

# Digital APF General Terms

- (e) use the Platform or the Digital APF for any unlawful purpose;
- (f) do anything inconsistent with the terms of this agreement; or
- (g) remove, obscure or interfere with any copyright, acknowledgment, attribution, trade mark, warning, disclaimer statement, rights management information or serial numbers affixed to, incorporated in or otherwise applied in connection with the Platform or the Digital APF.

## 13. Records and audit

- (a) The Customer must provide PSA with information requested by it from time to time in relation to the Customer's and Authorised Users' use of the Digital APF.
- (b) If PSA suspects that the Customer or an Authorised User may have breached this agreement, the Customer must:
  - (i) provide access to its; and
  - (ii) procure that the Authorised User provide access to its,

premises, information technology systems, books and records, and permit the taking of copies or extracts of such books and records to enable PSA (and any person nominated by it) to conduct audits of the Customer's compliance with this agreement. PSA will use reasonable commercial efforts to only conduct such audits on reasonable notice, during reasonable business hours, and as expeditiously and efficiently as possible.

## 14. No guaranteed access

The Customer acknowledges and agrees, on its own behalf, and as agent for each Authorised User, that while PSA will make reasonable efforts to ensure the Platform's availability, continuity, reliability, accuracy, currency and security, PSA makes no representations, warranties or guarantees in relation to the Platform or any ISP Services. PSA will not be liable if the Platform or ISP Services are unavailable for any reason, including directly or indirectly as a result of:

- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
- (b) negligent, malicious or wilful acts or omissions of third parties (including PSA's third party service providers);
- (c) maintenance or repairs carried out by PSA or any third party service provider in respect of any of the systems used in connection with the provision of the Platform or the ISP Services;
- (d) any events beyond PSA's control; or
- (e) services provided by third parties ceasing or becoming unavailable.

## 15. Ownership of Intellectual Property Rights

The Customer agrees, on its own behalf, and as agent for each Authorised User, that all rights, title and interest (including all Intellectual Property Rights) in the Platform and the Digital APF remains vested in PSA, the Commonwealth of Australia or third parties (as applicable). The only rights granted to the Customer by PSA in respect of the Platform and the Digital APF (and the Intellectual Property Rights subsisting in it) are those granted under this agreement, and such rights are subject to the terms of this agreement.

## 16. Confidential Information

Each party must:

- (a) use its best endeavours to ensure that the Confidential Information is kept secret, and is not disclosed to any third party;
- (b) not use, reproduce or communicate any Confidential Information, other than for the purposes of this agreement, unless the other party gives its express written consent for it to do so; and
- (c) procure that its officers, employees, agents and subcontractors do such things, or refrain from doing such things (as the case may be), so as to ensure that it complies with its obligations under paragraphs 16(a) and 16(b).

A party will not be in breach of its obligations under paragraphs 16(a) to 16(c) above if it discloses the other party's Confidential Information pursuant to a statutory requirement, order of a court or legal direction or requirement of a person acting with statutory authority. However, if a party is required to disclose Confidential Information under this paragraph it must, before disclosing that information, notify the other party in writing and permit the other party the opportunity to limit the scope, or seek the withdrawal, of such required disclosure. The other party must provide reasonable co-operation in this regard.

## 17. Privacy

PSA agrees that it will collect, store, distribute and communicate 'personal information' (as that term is defined in the *Privacy Act 1988 (Cth)*), which is provided to it by the Customer, or its otherwise collected by PSA as a result of the access to, and use of, the Digital APF and/or the Platform, in accordance with the Privacy Policy.

## 18. Goods and services tax

- (a) Words or expressions used in this paragraph 18 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this paragraph 18.
- (b) Any consideration or amount to be paid or provided for a supply made under or in connection with this agreement, unless specifically described as GST inclusive, does not include GST payable on that supply.

# Digital APF General Terms

- (c) If a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specified as GST inclusive):
  - (i) the consideration payable or to be provided for that supply but for this paragraph 18 (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
  - (ii) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (d) PSA does not specifically endorse products, suppliers, manufacturers or services cited in the Digital APF;
- (e) any person or organisation proposing to use the Digital APF in a country other than Australia should check local conditions and standards to determine whether the information contained in the Digital APF complies with local conditions, standards, and the manufacturer's product information;
- (f) to the extent possible under the law, and subject to Non-excludable Obligations, PSA and all other contributors to the Digital APF expressly disclaim liability to any person whatsoever in respect of anything done by any such person in reliance, whether whole or in part, on the Digital APF, including for, but not limited to:
  - (i) use of the Digital APF for a purpose for which it was not intended;
  - (ii) any errors or omissions in the Digital APF;
  - (iii) any inaccuracy in the information or data on which the Digital APF is based or which is contained in the Digital APF;
  - (iv) any interpretations or opinions stated in, or which may be inferred from, the Digital APF; or
  - (v) any non-compliance with conditions and standards in any country;

## 19. Disclaimer

The Customer acknowledges and agrees, on its own behalf, and as agent for each Authorised User, that:

- (a) PSA has prepared the Digital APF to assist pharmacists to comply with Australian pharmaceutical conditions and standards and makes it available on the understanding that users exercise their own skill and care with respect to its use, and understand that it is subject to revision and regular updates;
- (b) the Digital APF is no substitute for professional knowledge and judgement, and use of the information it contains is strictly at the user's own risk;
- (c) while every care has been taken to ensure that the information contained in the Digital APF accords with the accepted Australian Standards and/or clinical practice at the time of production, to the extent possible under the law, and subject to Non-excludable Obligations, no representation or warranty (express or implied) is made as to the currency, completeness, accuracy, reliability and suitability of the information contained in the Digital APF, having regard to constant changes in information resulting from continuing research and clinical experience, reasonable differences in opinions among authorities, unique aspects of individual situations and the possibility of human error in preparing such an extensive text. It is the responsibility of the user to conduct their own investigations to ensure that the information provided is accurate, complete and relevant for their purpose. This may include consulting and comparing information from other sources such as the manufacturer's product information approved by the Commonwealth of Australia;
- (g) the Digital APF and all of its content is made available to the Customer and Authorised Users on an 'as is' and 'as available' basis;
- (h) PSA is not responsible for making any changes to the Digital APF to make it suitable for the Customer's, or Authorised Users', purposes;
- (i) PSA may make updates to the Digital APF from time to time. While PSA uses its best efforts to publish details of updates to the Digital APF on the Website from time to time, the Customer is responsible for ensuring that it, and Authorised Users, are using the current version of the Digital APF; and
- (j) to the extent possible under the law, and subject to Non-excludable Obligations, PSA does not represent, warrant or guarantee that the Digital APF, the Platform or the Website is free from computer viruses or any other defect or error which may affect the software or systems of the Customer or Authorised Users.

## 20. Liability and Indemnity

- (a) To the extent that the Customer acquires goods or services from PSA as a consumer within the meaning of the Australian Consumer Law, the Customer may have certain rights and remedies (including, without

# Digital APF General Terms

limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.

- (b) Nothing in this agreement operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:

- (i) contravene that statute; or
- (ii) cause any term of this agreement to be void,

**(Non-excludable Obligation).**

- (c) Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under this agreement.

- (d) Except in relation to Non-excludable Obligations, PSA's liability to the Customer arising directly or indirectly under or in connection with this agreement or the performance or non-performance of this agreement and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:

- (i) PSA excludes all liability for loss of revenue, loss of goodwill, loss of customers, loss of capital, downtime costs, loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any indirect, consequential or special loss, damage, cost or expense or other claims for consequential compensation), suffered or incurred by or awarded against any person:

- (A) in connection with or in any way relating to the Digital APF or any of its content, including:

- (I) in connection with any disruption to or unavailability or failure of the Digital APF or interference with or damage to computer systems or other electronic devices;
- (II) in connection with errors, omissions or inaccuracies contained in any information in the Digital APF;
- (III) as a result of any fraudulent use, misuse or

misappropriation of any user account; or

- (IV) as a result of any act committed by another person in connection with the use of the Digital APF or any of its content;

- (B) arising from any circumstance beyond the PSA's control; and/or

- (C) otherwise under or in any way connected with this agreement; and

- (ii) PSA's total aggregate liability under or in any way connected with this agreement is limited to the amounts paid by the Customer to PSA under this agreement in the 12 months immediately preceding the date on which the claim arose.

- (e) In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which PSA's liability is not limited under this agreement), PSA's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to:

- (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and

- (ii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

## 21. Suspension, cancellation and termination

- (a) Without limiting any of its other rights or remedies under this agreement, PSA may immediately suspend the Customer's access (and the access of all the Customer's Authorised Users) to the Platform and/or any or the Digital APF if the Customer fails to pay any amounts that are due, but unpaid. Such suspension may continue until such time as payment of such amounts is effected in accordance with these General Terms.

- (b) The Customer may, by written notice, cancel its rights to access and use the Digital APF. The Customer acknowledges and agrees that if it cancels its rights to access and use the Digital APF, it is not entitled to any refund of the Fee paid for the cancelled Digital APF.

# Digital APF General Terms

- (c) Either party may terminate this agreement immediately by notice in writing if the other party:
  - (i) breaches any term of this agreement that is not capable of remedy;
  - (ii) breaches any term of this agreement that is capable of remedy and fails to rectify that breach within 14 days of receiving a notice from the other party requiring them to do so; or
  - (iii) becomes an externally-administered body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) or is otherwise unable to pay its debts as and when they fall due for payment.
- (b) On the expiry (without renewal) or termination of rights to access and use the Digital APF:
  - (i) the Customer must cease using the Digital APF immediately, and procure that its Authorised Users also do so; and
  - (ii) to the extent that the Customer or its Authorised Users have in their possession or control copies of the Digital APF, whether in tangible or electronic form, and whether stored on a disk or installed on its own platform or system, the Customer must (at PSA's direction) either return to PSA, or destroy, each such copy of the Digital APF.

## 22. Effect of termination, cancellation

- (a) The termination of this agreement under paragraph 21(b) will automatically result in the termination of all licences to access and use the Platform and the Digital APF.
- (b) On cancellation of the Digital APF by the Customer, its right, and the rights of its Authorised Users, to access and use the Digital APF, will terminate, and it must ensure that neither it nor any of its Authorised Users access and use the Digital APF after the date of cancellation.
- (c) The termination of this agreement is not a party's sole remedy, and will not prejudice, or amount to a release of, any of that party's rights to claim compensation or other remedies in respect of the other party's acts, omissions, breach, negligence or wilful misconduct occurring prior to such termination.
- (d) The parties agree that the rights and obligations of the respective parties under paragraphs 15, 16, 19, 20, this paragraph 22 and paragraph 23 and will survive the expiry or termination of this agreement for any reason.

## 23. Rights, obligations on termination

- (a) On the expiry (without renewal) or termination of rights to access and use the Digital APF, irrespective of the circumstances in which such expiry or termination occurs, PSA may issue a Reconciliation Statement in respect of the Digital APF and, if the actual number of Authorised Users that have been permitted by the Customer to access and use the Digital APF, during the period since the Fee for the Digital APF has been paid, exceeds the number of Authorised Users for which a Fee for the Digital APF was last paid, then PSA may issue an invoice for, and the Customer agrees to pay, a Reconciliation Fee. Such Reconciliation Fee will be due and payable within 14 days of the Customer's receipt of such invoice.

- (c) On the expiry or termination of this agreement:
  - (i) the Customer must cease using the Digital APF immediately, and procure that its Authorised Users also do so;
  - (ii) to the extent that the Customer or its Authorised Users have in their possession or control copies of the Digital APF, whether in tangible or electronic form, and whether stored on a disk or installed on its own platform or system, the Customer must (at PSA's direction) either return to PSA, or destroy, each such copy of the Digital APF; and
  - (iii) the Customer must within 30 days send to PSA or otherwise dispose of in accordance with PSA's directions, all Confidential Information and all other documentation and written correspondence relating to the Platform and the Digital APF then in the Customer's possession or control (or that of its Authorised Users).

## 24. General

- (a) Neither party is liable for any failure to perform or delay in performing its obligations under this agreement if that failure or delay is due to anything beyond that party's control. If that failure or delay exceeds 60 days, either party may terminate this agreement with immediate effect by giving notice to the other party. This paragraph does not apply to any obligation to pay money.
- (b) This agreement will be governed by the laws of the Australian Capital Territory, Australia, and the parties submit irrevocably and unconditionally to the exclusive jurisdiction of the courts of the Australian Capital Territory.
- (c) Although Australian websites (including the Website) may be accessed outside of Australia, PSA makes no representation that the content of the Digital APF, the Platform or the Website complies with the laws of any

# Digital APF General Terms

other country. If the Customer or an Authorised User accesses the Digital APF, the Platform or the Website from outside Australia, the Customer is solely responsible for ensuring compliance with local laws and for any reliance on the Digital APF.

- (d) All formal notices and correspondence, including invoices and statements issued by PSA, may be given by e-mail, addressed to:
- (i) in the case of the Customer, the Customer Contact, whose e-mail address is that specified in the Customer's Customer Account (as updated from time to time by notice); or
- (ii) in the case of PSA, to the following e-mail address:

apf@psa.org.au

Provided that a notice or correspondence is addressed correctly, it will be deemed to have been received by the addressee when the e-mail containing the notice enters the e-mail system of the recipient.

- (e) The Customer may not assign its rights under this agreement, or attempt or purport to do so, without PSA's consent (which may be given or withheld at PSA's absolute discretion).
- (f) The terms of this agreement (including the Order(s)) constitute the entire agreement between the parties with respect to their subject matter, and replace all prior agreements, statements, representations or understandings between the parties.
- (g) An amendment, deletion or addition to this agreement will not be valid or binding on the parties unless it is in writing and signed by each party.

## 25. Defined terms

In this document, unless the contrary intention appears:

**Activation Date** in respect of the Digital APF, means the date specified in the applicable Order (if any).

**Additional Year** is defined in paragraph 6.

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.

**Authorised User** means any individual to whom the Customer issues a username and password to enable that individual to access and use the Digital APF. For a Single User Licence, the Authorised User will be the Customer.

**Client Materials** means any materials that the Customer provides or makes available to PSA under this agreement.

**Confidential Information** of a party (Disclosing Party) means information that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the receiving party knows, or ought to know, is confidential,

and in the case of PSA includes:

- (d) information relating to the development, layout, programming and operation of the Platform and the Digital APF; and
- (e) and any other information with respect to PSA's business, finances, trade secrets or know-how that may be communicated to the Customer (whether by PSA or anyone else) during the term of this agreement,

but excludes any information that:

- (f) is in, or subsequently enters, the public domain other than through a breach of this agreement by the Customer;
- (g) is developed independently by the Customer; or
- (h) is acquired by the Customer from a third party who is not subject to a duty of confidentiality in respect of such information.

**Customer** means a person who has applied for, and has been granted by PSA, a Customer Account.

**Customer Account** means an account with the PSA online store, in the name of the Customer, through which the Customer may order and pay for the Digital APF.

**Customer Contact** means a nominated individual, named in a Customer's Customer Account, who will be that Customer's contact point for any correspondence or notifications from PSA.

**Fees** means the fees payable by the Customer for a 12-month period for the licence type specified in an Order, which is for:

- (a) a Single User Licence, the amount specified for a Single User Licence in <http://www.psa.org.au/services>; and
- (b) a Multi User Licence, the amount specified for a Multi User Licence in <http://www.psa.org.au/services>,

(unless expressly stated otherwise).

**General Terms** means the terms and conditions of this agreement.

**Initial Term** is defined in paragraph 6.

**Intellectual Property Rights** means all intellectual property rights, including the following rights:

# Digital APF General Terms

- (a) patents, copyright, rights in circuit layouts, registered and unregistered designs, moral rights, registered and unregistered trade marks, service marks, trade names and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

**Multi User Licence** means a type of licence that only allows the multiple Authorised Users specified in the Order to access the Digital APF, being three (3) Authorised Users unless expressly stated otherwise.

**Non-excludable Obligation** is defined in paragraph 20(b).

**Order** means an order in the form set out in <http://www.psa.org.au/services>.

**Platform** means the software for PSA's Digital APF hosted by or on behalf of PSA and accessed by the Customer and Authorised Users via the internet.

**Privacy Policy** means PSA's policy with respect to the collection, communication, distribution and storage of personal information, as amended from time to time by PSA, available at <http://www.psa.org.au/site/privacy>.

**Single User Licence** means a type of licence that only allows the one Authorised User specified in the Order to access the Digital APF. For a Single User Licence, the Authorised User will be the Customer.

**Website** means <http://www.psa.org.au>.

## 26. Interpretation

In this agreement, unless otherwise expressly stated:

- (a) headings are for ease of reference only and do not affect the meaning of this agreement;
- (b) the singular includes the plural and vice versa;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to party includes that party's executors, administrators, successors and permitted assigns;
- (e) a reference to a document or agreement, including this agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to any thing includes the whole or part of that thing, and a reference to a group of things or persons includes each thing or person in that group;
- (g) where two or more persons are bound, or to be bound, by an agreement or obligation, that agreement or obligation binds those persons severally and any two or more of them jointly;

- (h) a reference to dollars or \$ is a reference to Australian dollars;
- (i) a reference to a person includes a natural person, a partnership, a body corporate, trust or joint venture;
- (j) rules of construction will not apply to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or any part of it; and
- (k) if a day on which, or by which, an obligation under this agreement must be performed or fulfilled, or an event must occur, is not a Business Day, that obligation must be performed or fulfilled, or that event must occur, on or by the next Business Day.