

SOFTWARE LICENSE AGREEMENT

IMPORTANT – THIS AGREEMENT IS A BINDING LEGAL AGREEMENT BETWEEN YOU (AND THE ORGANIZATION (AS DEFINED IN THIS AGREEMENT) WHICH YOU REPRESENT, IF YOU ARE USING THE SOFTWARE (OR ACQUIRING RIGHTS TO USE SOFTWARE) FOR OR ON BEHALF OF THAT ORGANIZATION) (COLLECTIVELY, **YOU, YOUR**) AND: (A) IN RELATION TO LICENSES ACQUIRED FROM OUR US OFFICE, NUMBERS INTERNATIONAL LLC; (B) IN RELATION TO LICENSES ACQUIRED FROM OUR UNITED KINGDOM OFFICE, Q RESEARCH SOFTWARE LIMITED (COMPANY NUMBER 09297555); OR (C) IN RELATION TO OTHER LICENSES (INCLUDING THOSE ACQUIRED THROUGH ANY WEBSITE), DISPLAYR AUSTRALIA PTY LIMITED ABN 12 104 572 812, (**WE, US, OUR**). BY CLICKING ON THE ‘ACCEPT’ BUTTON OR BY INSTALLING OR USING THE *Q* SOFTWARE PROGRAM, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT AND AGREE, ON BEHALF OF YOURSELF AND YOUR ORGANIZATION, IF APPLICABLE, TO BE BOUND BY THEM. IF YOU (OR YOUR ORGANIZATION, IF APPLICABLE) DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE CLICK ‘CANCEL’ AND/OR DO NOT INSTALL THE *Q* PROGRAM SOFTWARE. IF YOU (OR YOUR ORGANIZATION, IF APPLICABLE) DO NOT AGREE TO THE TERMS OF THIS AGREEMENT BUT HAVE ALREADY PAID US FOR THE *Q* PROGRAM SOFTWARE, PLEASE CONTACT US TO ORGANIZE A REFUND.

1. Term

1.1 Commencement

This agreement commences on the earlier of the following:

- (a) the date on which you first click on the 'ACCEPT' button in relation to this agreement;
 - (b) the date on which you download the Software; and
 - (c) the date on which you first install or use the Software,
- (the **Commencement Date**).

1.2 Term – free trial and *Q* reader licenses

- (a) Free trial licenses commence on the Commencement Date and expire 30 days after the Commencement Date, unless terminated earlier or extended by written agreement between the parties.
- (b) Licenses for the *Q* Reader software program commence on the Commencement Date and expire when we terminate the license by giving you notice (whether on our website, by email or otherwise).
- (c) Unless we agree in writing a free trial is not available to any person or organization that directly or indirectly utilized another free trial in the preceding 24 months.

1.3 Term – other licenses

- (a) Subject to you paying us the License Fees, all licenses for the Software (other than free trial licenses and licenses for the Q Reader software program) commence on the date you specify when ordering the software (**License Commencement Date**) and run for the period of the licence you have ordered (**License Period**), unless terminated earlier.
- (b) At the expiry of a Licence Period, you must either:
 - (i) cease using the relevant licence; or
 - (ii) renew the licence for a further Licence Period (of the same or a different duration, depending on the types of licences available from us at the relevant time).
- (c) Any renewal of a licence is subject to the terms of the Software License Agreement applying to the Software at the time of the renewal, and to you paying the applicable License Fees for the renewal.
- (d) This agreement expires when all licenses granted to you under the agreement expire.

1.4 Updates to Software

- (a) Subject to you paying us the License Fees, we may make available to you for download, during the course of your initial License Period or any renewal, updates or new versions of the Software.
- (b) You may download, and use for the remainder of your initial License Period or any renewal, such updated or new version of the Software, provided that you agree to the terms of the Software License Agreement at the relevant time, which will be brought to your attention at the time of the update or new version being made available for download. If you do not agree to the updated terms of the Software License Agreement shown to you at the time of the update or new version being made available for download, you may not download the update or new version.

2. Software license

2.1 License

We grant to you a limited, non-exclusive, non-transferable license during the Term to, subject to clause 4:

- (a) access and use the Software on the number of computers for which you purchased a license, for the number of Named Users or simultaneous users (as applicable) for which you have purchased a license, for the business purposes of your Organization only (which may include preparing reports, presentations or databases for your clients);
- (b) where the Software is provided to you in a form that must be installed on a computer to operate, install the Software on the number of computers for which you purchased a license; and
- (c) use the Documentation strictly in conjunction with your use of the Software.

2.2 Open source software

You acknowledge and agree that:

- (a) the Software may make use of, or assist you to use, certain open source software (including, where applicable, the open source software known as *R*);
- (b) any such open source software:
 - (i) does not form part of the Software;
 - (ii) is separately licensed by the relevant licensors under the terms of the open source software licence (**OSS License**) which applies to that software (which, in the case of the open source software known as *R*, is the GNU General Public Licence 2.0);
 - (iii) is not licensed to you by us, whether under this agreement or otherwise;
- (c) you must review the terms of each OSS License and confirm whether you can comply with it before using the relevant open source software; and
- (d) to the extent permitted by law, the use of any such open source software is at your own risk, and we have no liability for Losses arising in connection with your use of that open source software, or the use of that open source software by your Personnel.

3. License Fees

3.1 License Fees

- (a) Unless otherwise agreed with you, we may, at our option, invoice you the License Fees prior to, on or after supplying the Software to you (or after the expiration of the free trial period for the Software, if applicable), and after that, prior to, on or after each renewal of a licence.
- (b) No License Fees are payable for the *Q* Reader software program and during the free trial period for the Software.
- (c) We reserve the right to vary the License Fees for each licence renewal and will provide you with notice of any such variation at least one (1) month before the commencement of the relevant renewal.

3.2 Payment

You must pay any undisputed invoice within the time specified in the invoice.

3.3 Invoice dispute

- (a) If you dispute the validity of an invoice:
- (b) you must:
 - (i) promptly give us notice of the details and the nature of the dispute; and
 - (ii) pay any undisputed amount when it is due under clause 3.2; and
- (c) each party must continue to perform their other obligations under the agreement.

3.4 Resolution of invoice dispute

Each party may invoke the dispute resolution procedure set out in clause 12 to attempt to resolve the dispute.

4. Conditions of use

4.1 License restrictions

In consideration of us granting you the License and unless we agree otherwise in writing, you must not:

- (a) permit any person other than your Personnel to use the Software;
- (b) copy or reproduce all or part of the Software;
- (c) alter, modify, tamper with, decompile, disassemble, adapt, create derivative works of, reverse engineer or attempt to reverse engineer the Software or otherwise attempt to derive the Software source code from the object code or to determine any other aspect of the Software, except to the extent permitted by applicable law or treaty;
- (d) sell, rent, lease, sub-license, assign or otherwise transfer all or part of the Software or any of your rights under this agreement;
- (e) use the Software to provide commercial software hosting or time sharing services;
- (f) use the Software for any unlawful purpose;
- (g) use the Software or the Sites to create, access, transmit, publish or communicate material which:
 - (i) is false, inaccurate, defamatory, offensive, inflammatory, obscene, unsuitable for minors, abusive, indecent, threatening, or otherwise unlawful;
 - (ii) is xenophobic, racist, abusive, harassing or hateful;
 - (iii) is invasive of a person's privacy or constitutes personal abuse directed at other users;
 - (iv) constitutes commercial advertising, the promotion of gambling or the promotion of your own site;
 - (v) contains a virus or other harmful code;
 - (vi) infringes a person's copyright or other rights; or
 - (vii) contains links to other sites that contain or promote the material identified in clause 4.1(g)(i) to 4.1(g)(vi);
- (h) use the Software or the Sites to:
 - (i) transmit, publish or communicate bulk and/or unsolicited messages;
 - (ii) in any way bring negative exposure or harm to us, our suppliers or other users of the Sites;
 - (iii) in any way cause us, our suppliers or other users of the Sites to incur liability to a third party;

- (i) remove or tamper with any copyright or similar proprietary notice, rights management information, acknowledgement, attribution, trade mark, warning or disclaimer attached to, incorporated in or otherwise applied in connection with the Software;
- (j) use any type of spider, virus, worm, Trojan horse, time bomb or other malicious codes or instructions that are designed to disable, damage or disassemble all or part of the Software or the Sites;
- (k) breach the terms of the License or this agreement;
- (l) publish, transmit, communicate or distribute the Software to any other person, other than distributing *Q Reader* to your clients in accordance with this Agreement;
- (m) interfere with or disrupt the Sites, any of our software, services, servers or networks; and
- (n) allow anyone else (except us) to do any of the things referred to in paragraphs (a) to (m) above.

4.2 Compliance with Privacy Laws

If you upload, transmit or publish any data or information about individuals using the Software, you must ensure that:

- (a) you only do so in accordance with applicable law (including Privacy Laws); and
- (b) you do not do, or omit to do, anything that would cause us to breach any law (including Privacy Laws).

4.3 End user content

You acknowledge and agree that you are solely responsible for all material you create, access, transmit, publish or communicate using the Software.

4.4 Restrictions based on license type

In accessing and using the Software, you must comply with:

- (a) the terms and restrictions which apply to the type of licence you have purchased, including as set out in the Licensing Guide; and
- (b) any requirements, procedures, policies, or regulations displayed on the Sites or which we notify to you from time to time.

4.5 Compliance with license restrictions

If we consider that you are not complying with the restrictions identified in this clause 4, we may request that you cease such conduct and you must immediately comply with any such request.

4.6 Access to the Software and Sites

We may immediately terminate or block your access to the Software or the Sites for any reason in our sole discretion.

5. Support services

- (a) Except for the *Q Reader* software and during the free trial period, we will provide you with:

- (i) technical support in relation to the Software by telephone, email or other means; and
 - (ii) subject to clause 1.4, programming fixes, updates or upgrades of the Software (which you must promptly install and use in accordance with our instructions or directions, if any).
 - (iii) Generally, the technical support service does not include providing you with information that is already available in Documentation or basic information in relation to installing, operating, and maintaining computers, software and information technology systems. We will only provide technical support to your Personnel who are duly qualified and have the requisite experience in connection with operating software and information technology systems for the manipulation and analysis of survey data and they should review the Documentation before seeking technical support services.
- (b) We provide training and consulting services for our Software for a fee. Please contact us if you would like to find out more about our training services.

6. Intellectual Property Rights

6.1 No transfer

- (a) All right, title and interest (including all copyright and other Intellectual Property Rights) in the Software is licensed or owned by us.
- (b) This agreement does not transfer to you any title to the Intellectual Property Rights in the Software and you must not represent that you own those rights.

6.2 Modifications and feedback

If you modify, or authorize the modification of, the Software (whether in breach of clause 4.1(c) or not) or if you provide us with any feedback, suggestions, recommendations or information in relation to the Software (collectively **Modifications**):

- (a) you must promptly notify us of the Modifications (and provide us with any other information and details that we may reasonably request for in relation to the Modifications);
- (b) we own any Intellectual Property Rights in the Modifications;
- (c) you now assign to us (or will procure the assignment to us of) all Intellectual Property Rights in the Modifications and you must do (or procure the doing of) all things necessary to effect this assignment;
- (d) you must not do or omit to do anything that may prejudice our rights and interests over the Intellectual Property Rights in the Modifications (including the right to apply to register such Intellectual Property Rights in any jurisdiction);
- (e) the Modifications are included in the License once they are created;

- (f) unless otherwise notified by you to us in writing at the time of providing us with the Modifications, you represent and warrant that the Modifications do not breach any third party rights (including any Intellectual Property Rights);
- (g) you acknowledge and agree that you do not have any claim to any profits arising in any way from the Modifications; and
- (h) to the extent that there are any Moral Rights in the Modifications, you presently waive (or will procure the waiver from the relevant individual author of) such Moral Rights and voluntarily and unconditionally consent to (or will procure the relevant individual author to voluntarily and unconditionally consent to) all or any acts or omissions by us, or any person authorized by us, which will otherwise infringe such Moral Rights.

6.3 Unauthorized use of the Software

You must promptly:

- (a) report to us any suspected or actual unauthorized use of the Software of which you become aware; and
- (b) provide us with all assistance reasonably requested by us to protect the relevant rights in the Software.

7. Confidential Information

7.1 Confidentiality

A party must keep the other party's Confidential Information confidential.

7.2 Use and disclosure of Confidential Information

A party may only:

- (a) use the other party's Confidential Information for the purposes of this agreement; and
- (b) disclose that information to its Personnel, if:
 - (i) they must know for the purposes of this agreement (but only to that extent);
 - (ii) it first directs them that the information is confidential and must be kept confidential; and
 - (iii) it ensures its direction is complied with and that all steps are taken to prevent or stop any actual or suspected breach of the direction.

7.3 Exceptions

Clause 7 does not apply to information that (whether before or after the date of this agreement):

- (a) is public knowledge (except because of a breach of confidentiality by a party or any of its disclosees); or
- (b) is required to be disclosed by law (but only to that extent).

7.4 Disclosure required by law

If a party must disclose the other party's Confidential Information by law under clause 7.3(b), the party must first:

- (a) give the other party:

- (i) notice of the details of the proposed disclosure;
 - (ii) reasonable opportunity to do what it thinks necessary to protect the confidentiality of the information; and
 - (iii) any help reasonably required by the other party to protect the confidentiality of the information; and
- (b) give the proposed disclosee notice that the information is Confidential Information of the other party.

7.5 Exercise of degree of care

A party must exercise at least the same degree of care and diligence in protecting the confidentiality of the other party's Confidential Information as it exercises in relation to its own Confidential Information.

8. Limitation and exclusion of liability

8.1 Implied conditions and warranties

To the extent permitted by law:

- (a) we provide the Software 'as is'; and
- (b) apart from the express terms of this agreement and (where applicable) the Consumer Guarantees, we give no other representations, guarantees, warranties or conditions, express or implied, in relation to any goods or services supplied under this agreement, or any other rights provided by us under this agreement. We exclude from this agreement all representations, guarantees, conditions, warranties, rights, remedies, liabilities and other terms that may be conferred or implied by statute, general law or custom, except any guarantee or right conferred under any legislation (including the Australian Consumer Law), the exclusion of which would contravene legislation or cause part or all of the clause purporting to exclude that guarantee or term to be void.

8.2 Acknowledgement

You acknowledge and agree that you are responsible for determining whether the Software meets your particular needs and for the results obtained from the Software.

8.3 Consequential loss

Except as provided under clause 15.1, we exclude liability to you (whether arising in contract or tort (including negligence) or under any statute) for any loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss, increased operating costs and any special, consequential or indirect loss suffered or incurred by you or your Personnel.

8.4 Limitation of liability

To the extent permitted by law, and except as provided under clause 15.1:

- (a) our total liability to you for Losses under or in connection with this agreement resulting from a breach of any warranty or condition by us is limited, at our option, to any one of replacing, repairing, or paying the cost of replacing or repairing, the goods, or supplying again, or paying the cost of supplying again, the services, in respect of which the relevant breach(es) occurred; and

- (b) for any other liability, our maximum liability for Losses under or in connection with this agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total License Fees paid by you to us in the 12 month period prior to the occurrence of the cause of action that gave rise to such liability.

8.5 Sharing of liability

A party's liability is reduced proportionally to the extent that any act or omission of the other party or its Personnel caused or contributed to the other party's loss.

8.6 Third party providers

- (a) We may use third party providers from time to time to provide the Software and the Sites.
- (b) Where we use a third party provider to provide the Software to you, and we receive a service credit from that third party provider as a result of availability issues with their services, we will pass on to you a portion of that service credit which we allocate to you in accordance with clause 8.6(c), provided that the portion of the service credit we allocate to you is more than 100 US dollars.
- (c) If we receive a service credit from a third party service provider under clause 8.6(b), we will allocate an amount of that service credit to you, in our sole discretion, based on the license fees paid by you in the past twelve months relative to our other customers,

9. Indemnity

You will indemnify us and hold us harmless against all Losses (including legal costs, whether incurred by or awarded against a person) that are or may be incurred or suffered by us or any of our Related Companies or Personnel arising from or in connection with:

- (a) any breach of this agreement by you;
- (b) any unauthorized use or dissemination of the Software by you or your Related Companies or Personnel; and
- (c) any Claim arising from:
 - (i) your use of the Software, any Site or any other website or servers operated by us or any of our Related Companies or Personnel to host, transmit, publish or communicate any material; or
 - (ii) any other conduct, act or omission by you, your Related Companies or Personnel.

10. Termination

10.1 Termination by us

We may terminate all or part of this agreement immediately by giving you notice if you breach clauses 2 or 4.

10.2 Termination for breach

A party may terminate all or part of this agreement immediately by giving the other party notice if:

- (a) the other party breaches a term of this agreement and fails to rectify the breach within 30 days after receiving notice requiring it to do so; or
- (b) the other party breaches a material term of this agreement which is not capable of remedy.

10.3 Action on termination

On expiration or termination of this agreement, the License will immediately expire or terminate and you must:

- (a) stop using the Software;
- (b) return to us, or destroy, all copies of the Software;
- (c) ensure that all Software in your possession has been deleted or permanently removed from any computer equipment on which it is stored; and
- (d) confirm in writing to us that the Software has been deleted from any computer equipment on which it was stored.

11. Tax

Unless the context dictates otherwise, the License Fees and any other fees or charges quoted by us to you are exclusive of all applicable Taxes. You shall pay all Taxes assessed in connection with this agreement or any licenses or services provided under this agreement, in addition to the License Fees and any other fees or charges quoted by us.

- a) In relation to licenses acquired where U.S. sales tax is applicable, we maintain responsibility for collecting and remitting sales tax; which is a tax imposed by individual states, not the U.S. federal government, only when the sale takes place within states where we maintain a nexus for sales tax purposes.
- b) In complying with U.S. sales tax law we collect sales tax only on taxable sales made within states where we currently maintain nexus. Nexus in this document is defined by the relevant sales tax laws by state. The states in which we maintain nexus is subject to change dependent on state sales tax laws and business location changes.
- c) The Company complies with a variety of other U.S. and state reporting and payment obligations for business tax, use tax, payroll tax, excise tax and personal and corporate income tax.
- d) For sales made outside of states where a nexus is maintained we hereby inform you that sales tax will not be collected on your License Fee and any and all responsibility for the collection and payment of use tax will be maintained by you unless otherwise agreed upon in writing.
- e) In the case that you are under U.S. tax jurisdiction and your purchase order includes general language making us as sellers responsible for "all taxes" or "all taxes other than income tax", we reserve the right to reject your terms and conditions.

12. Dispute resolution

12.1 No court proceedings unless procedure followed

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with clause 12.

12.2 Notice of Dispute

A party claiming that a dispute, difference or question arising out of this agreement, including a question as to whether certain services are in scope or not, has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).

12.3 Negotiated resolution

When a Dispute Notice is given, each party's chief executive officers (or their nominee) must meet and first attempt to resolve the Dispute.

12.4 Arbitration

If the chief executive officers (or their nominee) cannot resolve the Dispute under clause 12.3 within 30 days (or longer period agreed between the parties), the Dispute must be settled by arbitration in accordance with the then-current UNCITRAL Arbitration Rules. The appointing authority shall be the Australian Centre for International Commercial Arbitration. The number of arbitrators shall be one. The place of arbitration shall be Sydney, Australia. The language(s) to be used in the arbitral proceedings shall be English.

12.5 Release if other party breaches

If a party breaches clause 12 in relation to a Dispute, the other party need not comply with clause 12 in relation to that Dispute.

12.6 Obligations continue

The parties must continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

12.7 Costs

Each party must pay its own costs of complying with this clause 12.

13. Notices and other communications

13.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorized by the sender; and
- (b) sent by email to, for us, support@q-researchsoftware.com and, for you, the last known email address for you that we have on our records.

13.2 Effective on receipt

A Notice given in accordance with clause 13.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received when it is sent, unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice or the sender receives a delivery failure notification, but if it is sent on a day that is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

14. Miscellaneous

14.1 Authority

You warrant that:

- (a) you have all rights required to enter into this agreement, including, where applicable, for and on behalf of the relevant Organization; and
- (b) this agreement is binding on you (and, where applicable, the relevant Organization) as an agreement.

14.2 Export

You acknowledge that the Software may be subject to national and international laws that govern the export of software and you agree to comply with all such laws (where applicable to you).

14.3 Alterations

This agreement may be altered only in writing signed by each party, except that:

- (a) each time the agreement is renewed in accordance with clause 1.3, the terms of the Software License Agreement at the relevant time will apply (unless otherwise agreed in writing between the parties); and
- (b) each time an update or new version of the Software is downloaded in accordance with clause 1.4, the terms of the Software License Agreement at the relevant time will apply (unless otherwise agreed in writing between the parties).

14.4 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of the other party.

14.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

14.6 Survival

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement, including clauses 4, 5, 7, 8 and 9.

14.7 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

14.8 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

14.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

14.10 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this agreement continue in force.

14.11 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

14.12 Relationship

Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

14.13 Governing law and jurisdiction

- (a) If you or your Organisation are purchasing Software from Numbers International LLC under this agreement, this agreement is governed by the laws of the State of Delaware and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Delaware.
- (b) If you or your Organisation are purchasing Software from Q Research Software Limited under this agreement, this agreement is governed by the laws of England and Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of England and Wales.
- (c) Otherwise, this agreement is governed by the laws of New South Wales, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

15. Jurisdiction specific provisions

15.1 Australia – Australian Consumer Law

- (a) Under the Australian Consumer Law (and other similar legislation of Australian states and territories), certain statutory guarantees are conferred in relation to the supply of goods or services to a Consumer (**Consumer Guarantees**).
- (b) The limitations and of exclusions of liability in this agreement do not apply to exclude or limit our liability under the Consumer Guarantees:
 - (i) in relation to the supply of PDH Goods or Services; or
 - (ii) where to do so would otherwise be void or would cause any of the exclusions or limitations of liability under this agreement to be void.

16. Defined terms & interpretation

16.1 Defined terms

In this document:

Australian Consumer Law has the meaning given to that term in section 4 of the Competition and Consumer Act 2010 (Cth).

Business Day means:

- (a) for receiving a notice under clause 12, a day that is not a Saturday, Sunday or public holiday in the place where the notice is received; and

- (b) for all other purposes, a day that is not a Saturday, Sunday or public holiday in the place where a party who is entitled to exercise a right or required perform an obligation, as the case may be, is located.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Claim means any claim, demand or proceeding arising out of any cause of action (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action).

Confidential Information means information that:

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

and includes information about each party's business operations, finances and customers. In our case, our Confidential Information also includes all information in relation to the Software, Modifications and how they operate save to the extent that such information is publicly available on the Internet or otherwise (except because of a breach of confidentiality by a party or any of its disclosees).

Consumer has the meaning given to that term in section 3 of the Australian Consumer Law.

Documentation means any documentation supplied by us to you, or otherwise available to you, relating to the Software or this agreement, including emails, online help, documentation that can be downloaded from our website or that are available from within the Software and help files that are distributed within the Software.

Intellectual Property Rights means all intellectual property rights at any time recognized anywhere in the world, including:

- (a) patents, copyright, rights in circuit layouts, registered and unregistered designs, trade marks, domain names, business 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).

License means the license granted by us in clause 2.

License Fees mean the fees payable by you for the License, as agreed between you and us in writing or as notified by us to you in accordance with clause 3.1.

License Period has the meaning given in clause 1.3.

Licensing Guide means the licensing terms set out at http://wiki.q-researchsoftware.com/wiki/Licensing_Guide.

Losses means any loss, cost, damage, expense or liability, whether arising in contract, tort (including negligence) or otherwise.

Moral Rights means the following rights in respect of any Intellectual Property Rights:

- (a) the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment);
- (b) the right of attribution of authorship of a work; and
- (c) the right not to have authorship of a work falsely attributed,

(which are rights created by the *Copyright Act 1968* (Cth)), and any other similar rights capable of protection under the laws of any applicable jurisdiction.

Named User means an individual whom you have identified to us as the user of the relevant license, in the manner we require from time to time.

Organization means:

- (a) where you represent an organization which has procured rights to use the Software for another organization, the organization for which those rights have been procured; or

- (b) otherwise, any organisation which you represent,

and an 'organization' includes any body corporate, partnership, association, governmental or local authority or agency or other organization.

PDH Goods or Services means goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

Personnel means, in relation to a party, the officers, employees, agents, contractors and representatives of the party (but does not include the other party).

Privacy Law means applicable data protection and information privacy laws including any laws giving rise to an actionable right of privacy.

Related Company means in relation to a person, a related company or affiliate of that person.

Sites means any websites from which the Software may be accessed, or which are used in conjunction with the Software, including www.q-researchsoftware.com, app.displayr.com, and any associated sites, sub-domains and pages therein.

Software means:

- (a) the *Q* software program, namely *Q* Basic, *Q* Professional and *Q* Reader;
- (b) any training programs and materials for the *Q* software program;
- (c) any improvements, enhancements, modifications, developments, programming fixes, updates or upgrades of the *Q* software program supplied by us to you under this agreement; and
- (d) the Documentation.

Tax means all duties, taxes, imposts, deductions, charges and withholdings imposed with respect to any transaction contemplated under this agreement, including:

- (a) value-added, goods and services, sales or use taxes;
- (b) excise, custom duties and other like taxes, fees or surcharges (including regulatory fees or surcharges); and

- (c) any interest, penalties, charges, fees or other amounts payable on or in relation to the taxes referred to in paragraphs (a) and (b),
but excluding taxes on income, revenue or capital gains.

Term means the term of the free trial license, or all licenses other than the free trial license, as the case may be, and as defined in clause 1.

16.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (c) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (g) any agreement, representation, warranty or indemnity in favor of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it.

16.3 Headings

Headings are for ease of reference only and do not affect interpretation.

TO PROTECT YOUR INTERESTS, PLEASE READ THESE TERMS CAREFULLY BEFORE YOU CLICK THE 'ACCEPT' BUTTON. BY CLICKING THE 'ACCEPT' BUTTON AND/OR CONTINUING TO ACCESS OR USE THE SOFTWARE, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND THE RIGHTS AND OBLIGATIONS SET OUT IN THEM, AND THAT YOU (AND YOUR ORGANIZATION, IF APPLICABLE) EXPRESSLY CONSENT TO BE BOUND BY AND ABIDE BY THEM.