

CONTACT HARALD SOFTWARE-AS-A-SERVICE TERMS (SAAS Terms)

1. **SAAS Terms**
 - 1.1 These SAAS Terms govern the legal use of VT42 Pty Ltd trading as Contact Harald ABN 77 373 551 818 (**Contact Harald, we, us, our**) "software-as-a-service" (also known as "**SAAS software**") containing Software proprietary to us (the "**Application**") that is specifically licensed royalty-free to the Customer (**Customer, You**), pursuant to a Contract of Sale. We may add to or change these SAAS Terms at any time. The Customer will be bound by and agrees to accept the then current SAAS Terms which apply at the date of the Contract of Sale.
2. **Licence Grant**
 - 2.1 We own all rights, title, and interest in and to the Application (and all Software in it) subject to any limitations associated with intellectual property rights of third parties. Our rights apply to the Application, all output and executables of the Software, excluding any software components developed by the Customer which do not themselves incorporate the Software or any output or executables of the Software.
 - 2.2 By the Customer making any payment to us pursuant to the Contract of Sale the Customer irrevocably acknowledges that, subject to the licences granted, the Customer has no ownership interest in the Application, the Software in it or our materials provided to Customer. We reserve all rights not specifically granted herein.
3. **SAAS Licence**
 - 3.1 Subject to all limitations and restrictions contained herein and the relevant Contract of Sale, we grant the Customer and Users a term subscription, software-as-a-service ("**SAAS**"), non-exclusive, and non-transferable right to access and operate the object code form of the Application as hosted by us in respect of the Product described in the Contract of Sale, solely for the Permitted Use and solely to perform those functions for the relevant Software described in the Software User Manual for the Software Licence Term.
 - 3.2 The Customer shall not allow any other software or application to frame, syndicate, distribute, replicate, or copy any portion of the Application.
 - 3.3 Unless otherwise expressly permitted in the Contract of Sale, the Customer shall not permit any subsidiaries, affiliated companies, or third parties to access the Application.
4. **Licence Type**
 - 4.1 The Customer shall ensure that the number of the active Users of the Application is equal to or less than the number of User accounts for which the Customer has purchased. The Customer is responsible for ensuring that access to a User account is not shared. Only one individual may authenticate its use of the Application to one User account. Hardware or software the Customer uses to pool connections, reroute information, or reduce the number of users that directly access or use the Software (sometimes referred to as "multiplexing" or "pooling"), does not reduce the number of licences or active Users.
 - 4.2 In no event will the Customer disassemble, decompile, jailbreak or reverse engineer the Application, the Software in it or any confidential information in such or permit others to do so. Disassembling, decompiling, jailbreaking and reverse engineering include, without limitation:
 - (a) converting the Application from a machine-readable form into a human-readable form;
 - (b) disassembling or decompiling the Application by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof;
 - (c) examining the machine-readable object code that controls the Application's operation and creating the original source code or any approximation thereof by, for example, studying the Application's behaviour in response to a variety of inputs; or
 - (d) performing any other activity related to the Application that could be construed to be reverse engineering, jailbreaking, disassembling, or decompiling.
 - 4.3 To the extent any such activity may be permitted pursuant to written agreement, the results thereof will be deemed confidential information subject to the requirements of these SAAS Terms and owned by us. The Customer may only use our confidential information solely in connection with the Application and pursuant to these SAAS Terms.
 - 4.4 Customer grants us a non-exclusive, royalty-free licence to access, use, reproduce, modify, perform, display and distribute Customer data as is reasonable or necessary for us to perform or provide the Application and any of our Products and Software.
 - 4.5 The Application may contain third party software that requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions may be requested by us and are made a part of and incorporated by reference into these SAAS Terms.
5. **Service Availability**
 - 5.1 We will use reasonable efforts to maintain the availability of the Application however we provide it "as is" and without any specific service level or uptime level. From time to time, we will have IT environment, infrastructure and network maintenance and issues to deal with and it may cause our Application to suffer downtime without being a defect or resulting in any refund to the Customer.
 - 5.2 We may elect to provide the Customer with support or modifications for the Application, in its sole discretion, and may terminate such support at any time without providing notice to the Customer.
6. **Suggestions/Improvements to Software**
 - 6.1 Unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by the Customer regarding the Application, any of our Software or any of our other materials provided to Customer will be owned by us, and Customer hereby agrees to assign any such rights to us. Nothing in these SAAS Terms will preclude us from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by us in the performance of services or delivery of software.
7. **Data**
 - 7.1 Customer data (including the individual and personal user data) are owned by the Customer and/or the relevant individual user, not by us. The Customer shall:
 - (a) comply with any requirements or restrictions imposed on usage of client data by their respective owners and by law. In all cases, the Customer is solely responsible for making use of its client data in compliance with the applicable client's requirements and/or restrictions;
 - (b) remove from the Software any client data or other information that the applicable client asks the Customer to remove within 24 hours;
 - (c) disclose through a privacy policy how it collects, uses, stores and discloses data collected from visitors and clients;
 - (d) provide accurate contact details for the Customer to us upon request; and
 - (e) provide an accurate statement of intended use of the Application upon request, and once provided restrict the Customer's activities to stay within this statement.
8. **Warranties and Disclaimers**
 - 8.1 To the best of our knowledge, the Application does not contain any malicious code, program, or other similar internal component (eg: computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, or alter the Application, or which could reveal, damage, destroy, or alter any data or other information accessed through or processed by the Application in any manner other than code we may use to suspend or terminate access to the Application and/or any part of it at any time under these SAAS Terms or any part of the Agreement. This warranty will be considered part of and covered under the provisions of these SAAS Terms. The Customer must:
 - (a) notify us promptly in writing of any non-conformance under this warranty;
 - (b) provide us with reasonable opportunity to remedy any non-conformance under the provisions of these SAAS Terms; and
 - (c) provide reasonable assistance in identifying and remedying any non-conformance.
 - 8.2 Any and all of the Application, the Software in it and any other technology or materials provided by us to the Customer are provided "as is" and without warranty of any kind. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THESE SAAS TERMS, WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NEITHER WE (NOR ANY OF ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS OR LICENSORS) WARRANTS OR REPRESENTS THAT THE APPLICATION, SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, DATA, CONFIDENTIAL INFORMATION, AND PROPERTY.

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- 8.3 Notwithstanding anything to the contrary in these SAAS Terms, any and all warranties under these SAAS Terms are VOID if Customer makes any change to the Application or the Software or has permitted any changes to be made other than by or with our express written approval (executed by a director of VT42 Pty Ltd trading as Contact Harald).
- 8.4 Bluetooth Low Energy is a very low power radio system used in consumer electronics. While it typically does not interfere with pacemakers, common electrical equipment or facility communication infrastructure, the use of our Products containing Bluetooth radio emissions should be checked against limitations within your facilities, your IT environment, your User group and at your risk.
- 8.5 Our Product uses Software and Bluetooth Low Energy technology designed to work with other third party IT systems – such technology will access the operating system of the IT environment and devices of the Customers and Users. As such, these technologies require access to your systems and may interfere with your IT environment and other software, products, devices and applications that you, or your Users may use (whether or not they use Bluetooth) (together the “**Customer IT Environment**”) including that it may require fewer connected devices in order for our Software to connect. It is your own obligation and responsibility to continually test, monitor and review the Customer IT Environment to ensure that the Software and your other devices, electrical goods, software and applications operate as intended.
- 9. Intellectual Property**
- 9.1 We will have no liability for any claim of intellectual property infringement based on: (i) software in the Application which has been modified by parties other than us where the infringement claim would not have occurred in the absence of such modification; (ii) Customer’s use of the Application or any of our Software in conjunction with data where use with such data gave rise to the infringement claim; or (iii) Customer’s use of the Software outside the permitted Use or outside the permitted scope of these SAAS Terms.
- 9.2 Should the Application or any Software become, or in our opinion is likely to become, the subject of a claim of infringement, we may, at our option, (i) obtain the right for the Customer to continue using the Application, (ii) replace or modify the Application so it is no longer infringing or reduces the likelihood that it will be determined to be infringing, or (iii) if neither of the foregoing options is commercially reasonable, terminate the access and Use of the Application. Upon such termination, Customer shall cease accessing the Application and as Customer’s sole remedy for such licence termination we will refund to Customer AU \$1 per Card purchased by the Customer under the Contract of Sale associated with these SAAS Terms. THIS CLAUSE 9 STATES OUR ENTIRE LIABILITY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT REGARDING THE APPLICATION AND THE SOFTWARE IN IT.
- 10. Indemnity and Liability**
- 10.1 The Customer agrees to defend, indemnify, and hold us and its officers, directors, employees, consultants, and agents harmless from and against any and all damages, costs, liabilities, expenses (including, without limitation, reasonable attorneys’ fees), and settlement amounts incurred in connection with any claim arising from or relating to Customer’s:
- wilful misuse or misconduct;
 - actual or alleged use of the Application in violation of these SAAS Terms or applicable law by the Customer or any Users;
 - any actual or alleged infringement or misappropriation of third party intellectual property rights arising from data provided to us by the Customer or otherwise inputted into the Application, whether by the Customer, a User or other person.
- 11. Limitation of Liability**
- 11.1 To the maximum extent permitted at law:
- our liability in respect of these SAAS Terms, whether to the Customer and/or any User is capped at AU \$1 per Card purchased by the Customer under the Contract of Sale associated with these SAAS Terms.
 - IN ANY EVENT, OUR TOTAL LIABILITY UNDER THE AGREEMENT (MADE UP OF ITS PARTS) UNDER ANY THEORY OF LIABILITY, WHETHER BY STATUTE, IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION, WHETHER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), FOR LEGAL FEES AND/OR COSTS, OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THE AGREEMENT FOR THE GOODS AND SERVICES WHICH GAVE RISE TO SUCH DAMAGES;
- IN NO EVENT WILL WE BE LIABLE TO THE CUSTOMER IN RESPECT OF PRODUCT THAT HAS NOT BEEN PAID FOR;
 - IN NO EVENT WILL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING DAMAGES WHICH DO NOT NATURALLY ARISE) AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OR CORRUPTION OF DATA OR INFORMATION, BUSINESS INTERRUPTION OR LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, GOODWILL OR DAMAGE TO THE HEALTH OR SAFETY OF ANY PERSON OR INDIVIDUAL; AND
 - THESE LIMITATIONS APPLY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- 12. Term and Termination**
- 12.1 Unless we terminate these SAAS Terms under a provision of the Agreement, the term of these SAAS Terms will continue until the expiry or termination of the last Software Licence Term under the last Contract of Sale.
- 13. Customer Obligations**
- 13.1 The Product and the Software in it we supply are often activated by downloading the Application (eg: Cards we supply). It is the Customer’s responsibility to ensure that it and its Users undertake this step as provided for in the User Manual or as instructed.
- 13.2 The Customer agrees to, and will procure that Users will, comply with all applicable laws, regulations, and ordinances relating to these SAAS Terms, the Application and the Software in it.
- 13.3 The Customer shall be obliged to inform its Users before the beginning of use of the Application about the rights and obligations set forth in these SAAS Terms. The Customer will be liable for any violation of obligations by its Users or by other third parties who violate obligations within the Customer’s control.
- 13.4 Before entering any data or information to the Application or the Software, the Customer shall be obliged to check the same for viruses or other harmful components and to use state of the art anti-virus programs for this purpose. In addition, the Customer itself shall be responsible for the entry and the maintenance of its data.
- 13.5 It is the Customer’s sole responsibility as to how it will implement the Product, the Software and the Application in accordance with the Permitted Use for the benefit of its Users.
- 13.6 The Customer shall not:
- use the Application for any application that replicates or attempts to replace the essential user experience of any Contact Harald software, app or website;
 - attempt to cloak or conceal the Customer’s identity or any user’s identity when accessing or using the Application;
 - cache or store any content other than for reasonable periods in order to provide the service the Customer is providing to its clients;
 - use the Application for any application that constitutes, promotes or is used in connection with spyware, adware, or any other malicious programs or code;
 - use the Application in any manner or for any purpose that violates any law or regulation within Australia, the territories where the Product and the Application are used and the location of any of its own servers, or any rights of any person, including but not limited to intellectual property rights, rights of privacy, or rights of personality;
 - use the Application or any of the Software in a manner that adversely impacts the stability of contactharald.com or the Application’s servers or adversely impacts the behaviour of other applications using the Application. Further, we reserve the right to rate limit or block applications that make a large number of calls to our Application or Software that are not primarily in response to direct user actions;
 - sell, lease, or sub-license the Application or access thereto or derive revenues from the use or provision of the Software, whether for direct commercial or monetary gain or otherwise, without our prior written agreement; or
 - serve, or allow third parties to serve, advertising materials to clients, or to collect data for the purposes of marketing or advertising.

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14. Miscellaneous

- 14.1 The parties agree to comply with all applicable laws, regulations, and ordinances relating to such party's performance under these SAAS Terms.
- 14.2 Clauses in these SAAS Terms which are intended to survive termination or expiration (eg: terms in respect of intellectual property, liability and indemnities) will survive termination or expiration of these SAAS Terms and any applicable licence hereunder.
- 14.3 Use of the Application, the Software by or for the United States Government is conditioned upon the Government agreeing that the Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for assuring that this provision is included in all agreements with the United States Government and that the Software, when accessed by the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such access.

15. Application of Standard Terms and Conditions

- 15.1 The Standard Terms & Conditions apply to these SAAS Terms which form part of the Agreement for the relevant Contract of Sale (in case of inconsistency, in respect of the Application and use of it these SAAS Terms apply).
- 15.2 Terms used in these SAAS Terms have the meanings used in the Standard Terms & Conditions.