

1. DEFINITIONS

For the purposes of this Licence Agreement:

Licence Agreement means the agreement between the Customer and Department of Commerce under which Department of Commerce has agreed to grant a licence to the Customer to use the TAMS Software for consideration of a licence fee and a bi-annual TAMS Club Membership Fee paid by the Customer.

Licence Fee means the access charge for the TAMS Software in accordance with the current list of Fees and Charges, or the agreed sum of the payments in any term repayment agreement entered into.

TAMS Club Membership Fee means the payment for Support Services for the TAMS software, in accordance with the current list of Fees and Charges.

TAMS Software means all the software Modules and Interfaces and additional users and/or sites identified in the Schedule.

Support Services means Software Development, Maintenance and Technical Support.

Software Development means ongoing development of the software, (within the limitations of the development budget), to enhance, improve, and add new features and functions to meet Customer expectations and new industry standards.

Maintenance means maintenance of the currently supported versions of the TAMS Software, and all reasonable efforts to correct any reported error which causes the TAMS Software to fail to operate in accordance with the warranties set out in clause 5.1.

Technical Support means telephone or email consultation with TAMS Software technical support staff during normal business hours regarding the installation and use of the TAMS Software.

Module means each individual asset register program of the TAMS software identified in the Schedule.

Interface means each individual interface program of the TAMS software identified in the Schedule.

Documentation means information included with the TAMS Software, in electronic and/or hardcopy formats, and/or other documents, which may be supplied from time-to-time by Department of Commerce to the Customer. This includes information provided via the 'Help' function within the software.

Initial Term means a period commencing on delivery of the TAMS Software and finishing on 31 December or 30 June, whichever comes first, and up to a maximum of 6 months.

Term means a 6 month period commencing on 1 January and finishing on 31 June each calendar year, and another 6 month period commencing on 1 July and finishing on 31 December each calendar year, or such other term as agreed by the parties.

Site is defined as a customer facility at one geographic location where the software is installed.

User is defined as being any computer upon which the software is installed or can be accessed. If this software is loaded on a server, then each computer to which that server distributes the software is a user.

Trained Operator is defined as someone who has undergone an appropriate training course as provided by the Department of Commerce or their authorised agents.

Warranty means a warranty set out in clause 5.1 and is limited to the purchase of new modules only.

Warranty Period means the period commencing upon the date of issue by Department of Commerce of the TAMS software and expiring 90 days later.

2. INTERPRETATION

A reference to a person includes a reference to a corporation and unless the context indicates otherwise, an obligation on a person binds the employees, servants and agents of that person.

A reference to a word in the singular form includes a reference to the word or expression in the plural form and vice versa.

This Licence Agreement includes the schedule and any attachments and appendices.

3. COPYRIGHT

3.1 The TAMS Software, the Documentation, and the copyright and other intellectual property rights of whatever nature in the TAMS Software and the Documentation are, and remain at all times, the property of Department of Commerce and this Licence Agreement does not transfer any right in the TAMS Software other than the licence granted under Clause 4.2.

3.2 The TAMS Software must only be used by the customer for management of its own assets in accordance with the licence granted in 4.2. In no circumstances whatsoever is the customer licensed to use the TAMS Software to service the asset management needs of any legal entities other than the customer.

4. LICENCE

4.1 The parties agree this license supersedes all prior licences and agreements which may have been issued to the Customer (refer Clause 17).

- 4.2 The Customer is licensed to use the TAMS Software subject to the terms and conditions set out in this Licence Agreement.
- 4.3 Each item of the TAMS Software may only be used, installed or accessed by the number of users and sites specified for that item in the Schedule.
- 4.4 The Customer shall pay the Licence Fees and TAMS Club Membership Fee to Department of Commerce within 30 days of receipt of an invoice by the Customer for the TAMS Software.
- 4.5 The Customer must not assign or transfer this Licence Agreement or any right benefit or interest under this Licence Agreement. The Customer shall not grant a sublicense in respect of the TAMS Software.
- 4.6 The TAMS Software shall not be used by any users exceeding the number of users specified in the Schedule without the prior written consent of Department of Commerce.
- 4.7 The Customer warrants to Department of Commerce that it has satisfied itself as to the suitability of the TAMS Software for the Customer's purposes.

5. WARRANTY

- 5.1 Department of Commerce warrants that during the Warranty Period:
 - (a) the TAMS Software will be compatible with the equipment, computer hardware and computer software specified in Clause 13 and identified as the minimum "System Requirements";
 - (b) the TAMS Software will provide the functions and meet the performance criteria specified in the Documentation;
 - (c) the TAMS Software will be free from substantial defects; and
 - (d) all Maintenance and Support Services will be performed with due care and skill.
- 5.2 Subject to Clause 5.3, if at any time during the Warranty Period the Customer notifies Department of Commerce of any failure of the TAMS Software to comply with any of the Warranties, Department of Commerce must, at its own cost, promptly correct that failure. Following the expiration of the Warranty Period Clause 6 shall apply.
- 5.3 Clauses 5.1 and 5.2 do not apply:
 - (a) to faults, defects or errors occurring in:
 - (i) equipment that does not form part of the TAMS Software, or
 - (ii) services supplied by any person other than Department of Commerce or its personnel;

- (b) to faults, defects or errors caused by:
 - (i) any modification to the TAMS Software made without Department of Commerce supervision or consent;
 - (ii) equipment or TAMS Software damaged as a result of the negligence of Customer's personnel or any circumstance referred to in subparagraphs (c) (d) or (e) of this clause 5.3;
- (c) If the Customer fails to use reasonable efforts to comply with all Documentation or any other instructions as to use of the TAMS Software issued by Department of Commerce;
- (d) If the Customer or its employees or agents are negligent in the use of the TAMS Software;
- (e) If the Customer fails to comply with any of its obligations under this Licence Agreement:

5.4.1 If Department of Commerce repairs or replaces any software or provides any Maintenance and Support Services with respect to or in connection with a fault defect or error referred to in clause 5.3, then Department of Commerce may charge the Customer for such services at its normal scale of charges applicable at the relevant time. The minimum charge for such services will be 0.25 hours at the applicable hourly rate.

6. TAMS CLUB MEMBERSHIP

- 6.1 Support Services ie. Software Development, Maintenance and Technical Support are covered by TAMS Club Membership.
- 6.2 In consideration of the payment of the TAMS Club membership, Department of Commerce shall, during the Term, provide the agreed Support Services to the customer.
- 6.3 The Customer is entitled to a maximum of four (4) hours Technical Support per Module during each financial year (2 terms). Any additional Technical Support requested by the Customer during any Term will be charged at the Department of Commerce normal scale of charges and a minimum charge period of 0.25 hour will apply.
- 6.4 If Department of Commerce provides Maintenance and Support Services that are not covered by a Licence Agreement, such services will be provided at Department of Commerce's normal scale of charges and subject to such terms and conditions as are agreed between Department of Commerce and the Customer.
- 6.5 Department of Commerce may subcontract any part or all of the Support Services.

7. FEES AND CHARGES

- 7.1 The TAMS Club Membership Fee for the Initial Term shall be a pro rata amount of the TAMS Club Membership Fee for the current Term, which has been calculated according to the ratio Initial Term (in days)/182.5.
- 7.2 The current list of Fees and Charges during any Term shall be determined by Department of Commerce prior to the commencement of each Term and are available from Department of Commerce upon written request.
- 7.3 The Customer must pay the Licence Fees and TAMS Club Membership Fee to Department of Commerce within 30 days of being invoiced for such fees.
- 7.4 Despite any other provision of this Licence Agreement, Department of Commerce may charge the Customer, in addition to the TAMS Club Membership Fee, for services performed in connection with:
 - a) reported errors which later are determined to be due to equipment or software not supplied by Department of Commerce; or
 - b) any event or circumstance listed in Clause 14.7.
- 7.5 New versions of TAMS will supersede existing versions.
- 7.6 The Department of Commerce reserves the right to change the current fees for the software and associated services without prior notice.

8. UPGRADES

- 8.1 During the Term, Department of Commerce shall deliver to the Customer at no charge any TAMS Software upgrades to existing versions.
- 8.2 The Customer shall be responsible for installing and using any software upgrade. If the Customer does not install and use the upgrade within three months of receipt by the Customer, Department of Commerce shall be under no further obligation to provide Maintenance and Support Services.
- 8.3 The material supplied in a TAMS Software upgrade will consist of one (1) copy of new machine-readable TAMS Software, unless provided as a download from the TAMS website.
- 8.4 This Clause 8 does not oblige Department of Commerce to provide to the Customer any new versions of the TAMS Software or any other software which is materially different from the software supplied under the Licence Agreement.

9. NEW VERSIONS

- 9.1 New versions of TAMS will be delivered at no charge to the Customer and supersede existing versions.
- 9.2 The Department of Commerce may issue new versions of TAMS Software from time-to-time in order maintain continuity with asset management best

practise and to provide new functions and capabilities in line with the Department of Commerce's mission to promote the process of continual improvement however, nothing in this clause shall oblige the Department to do so.

- 9.3 Following the release of a new version of TAMS, support for old versions of TAMS may be withdrawn at the expiry of the current TAMS Club Membership term or 6 months after the release date of the new version, whichever is the greater.

10. CUSTOMER'S RESPONSIBILITIES

During the Term, the Customer shall:

- a) ensure that the TAMS Software is used in a proper manner by (or under the direct supervision of) competent, trained operators;
- b) fully co-operate with Department of Commerce personnel in the diagnosis of any error or defect in the TAMS Software or the Documentation; and
- c) make available to Department of Commerce free of charge all information, facilities and services reasonably required by Department of Commerce to enable Department of Commerce to perform the Maintenance and Support Services.

11. TITLE, PROTECTION AND SECURITY

11.1 The Customer agrees:

- (a) not to modify, disassemble or otherwise reverse engineer the TAMS Software;
- (b) not to copy the TAMS Software except for backup copies of computer files for security purposes;
- (c) to keep records of the number of users of the TAMS Software and their location and, if requested in writing, make these records available to Department of Commerce;
- (d) to ensure that prior to disposing of any media, any software contained on that media has been erased or otherwise destroyed;
- (e) not to provide or otherwise make available the TAMS Software in any form to any persons other than the Customer's own employees and other persons engaged by the Customer for purposes related to the Customer's use of the TAMS Software;
- (f) not to use the TAMS Software to develop other software; and
- (g) not to permit the TAMS Software to be combined with or incorporated in other software without the express written consent of Department of Commerce and such further conditions that may be imposed by Department of Commerce.

12. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 12.1 Department of Commerce indemnifies the Customer against all expenses, losses, damages and costs that the Customer may incur as a result of a claim or action alleging that the TAMS Software or any part of the TAMS Software, infringes any copyright or other intellectual property right of a third party and the Customer must promptly notify Department of Commerce in writing of any such claim.
- 12.2 Upon receiving written notice from the Customer of a claim, Department of Commerce, must
- (a) defend the claim at its expense; and
 - (b) pay all costs and damages awarded against the Customer in respect of the claim.
- 12.3 Department of Commerce will have the sole control and carriage of the defence of such claims and all negotiations for their settlement or compromise.

13. SOFTWARE OPERATION

The Customer shall operate the following guidelines in the operation of the TAMS Software:

- (a) maintain the minimum System Requirements as set out below during use of the TAMS Software:

Microsoft Windows 95B, 98SE, NT with SP6 or higher, 2000 or XP
Personal computer using a Pentium II microprocessor
128 MB memory minimum (higher recommended)
500 MB available hard disk space minimum including Paradox Runtime (excluding data)
One CD ROM drive
VGA or higher resolution monitor set to at least 1024 x 768 pixels compatible with Microsoft Windows 95B, 98SE, NT with SP6 or higher, 2000 or XP
If networked, the network must be compatible with Microsoft Windows 95B, 98SE, NT with SP6 or higher, 2000 or XP

No minimum specification for server installation & LAN, other than compatible disk space (500 MB). The efficiency of any LAN is a function of the number of workstations, disk capacity and processor type.

- (b) use the TAMS Software in accordance with the Documentation;
- (c) ensure that the TAMS Software is used in a proper manner by or under the supervision of competent, trained operators;
- (d) make regular backup copies of data and maintain these in a secure manner.

14. LIMITATION OF LIABILITY

14.1 Apart from the express warranties provided in Clause 5, this Licence Agreement is without warranty of any kind either express or implied.

14.2 Department of Commerce's liability for breach of this Licence Agreement shall be limited to any one of the following as determined by Department of Commerce in its absolute discretion.

14.2.1 In the case of goods:

- (i) the replacement of the goods or the supply of equivalent goods or;
- (ii) the repair of the goods; or
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired; or

14.2.2 in the case of services:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

14.3 In no event will Department of Commerce be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business, or anticipated savings or for any indirect, special or consequential loss whatever.

14.4 The Customer will indemnify Department of Commerce against any actions, proceedings, claims or demands in any way connected with this Licence Agreement brought or threatened against Department of Commerce by a third party which are caused by or arise from any act of the Customer, other than a claim referred to in Clause 12.

14.5 Department of Commerce may make substitutions and modifications in the TAMS Software specifications without notice to the Customer, provided that such substitutions or modifications do not adversely affect the performance or function of the TAMS Software.

14.6 Documentation is provided by Department of Commerce in good faith on an 'as is' basis and is not guaranteed to be free from error.

14.7 Despite any other provision of this Licence Agreement, Department of Commerce is not obliged to perform Maintenance and Support Services in respect of:

- a) defects, faults or errors caused by operator error or omission or by the Customer using the TAMS Software contrary to the Documentation;

- b) any fault in the Customer's computer equipment or in any program used in conjunction with the TAMS Software;
- c) defects, faults or errors caused by the use of the TAMS Software on or with equipment below the specification recommended in the Documentation; or
- d) rectification of lost or corrupted data.

15. TERMINATION

15.1 Department of Commerce can terminate this Licence Agreement and claim for any resulting losses and expenses if the Customer:

15.1.1 fails to pay any amount due to Department of Commerce within 14 days of a written notice to do so; or

15.1.2 commits a breach of this Licence Agreement that is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or

15.1.3 commits any other breach of this Licence Agreement; or

15.1.4 is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation), or compulsory, or has a receiver or administrator appointed over its assets.

15.1.5 The Customer will be liable for payment of outstanding licence fee payments to the end of the current agreed term and will not be eligible for any TAMS Club Membership fee rebate.

15.2 The Customer may terminate this Licence Agreement if Department of Commerce commits a breach of this Licence Agreement that is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so.

15.3 After a period of five (5) years either party may terminate this Licence Agreement upon providing 30 days written notice to the other party and there will be no entitlement to damages as a result of such termination.

15.4 Upon termination pursuant to clause 15.3 and within 30 days of a subsequent request by Department of Commerce to do so, the Customer shall return to Department of Commerce all software and all other intellectual property, goods, support goods and Documentation supplied to the Customer pursuant to this Licence Agreement.

15.5 Notwithstanding any other provision of this clause 15, the Department may, on 3 months' notice, terminate this Licence Agreement and neither party shall have any claim for loss or damage against the other arising out of such

termination. Further, the Department shall not be obliged to state any reason for such termination.

16. APPLICABLE LAW

This Licence Agreement is governed by the laws of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

17. ENTIRE AGREEMENT

This Licence Agreement supersedes all prior agreements and understandings and constitutes the entire agreement between the parties with respect to its subject matter.

18. AMENDMENT

This Licence Agreement may only be amended by further agreement in writing.

19. NOTICES

19.1 Notices given under this Licence Agreement (including invoices sent by Department of Commerce to the Customer) must be in writing and may be delivered by hand or sent by email or facsimile or prepaid post to the addressee at the following addresses:

19.1.1 To Department of Commerce: The Manager , TAMS Asset Services, Department of Commerce, Level 13, McKell Building, 2-24 Rawson Place, Sydney, Fax: 9372 7844 or any alternative addressee or address which Department of Commerce may notify to the Customer;

19.1.2 To the Customer: The address shown for the Customer in this Licence Agreement or such other address as the Customer may notify to Department of Commerce from time to time for the purpose of this clause.

Any notice given under this Licence Agreement shall be deemed to be given to the other party: in the case of mail, seven (7) days after the date of posting; in the case of personal delivery, on the date of such delivery; in the case of facsimile, upon the sender receiving acknowledgment of receipt from the addressee's facsimile machine.