

Identipet – EULA



March 2017 | Version 1.0

1. Introduction

This end-user licence agreement (**EULA**) is an agreement between us as the software vendor and you as the software user. We are Identipet (Pty) Ltd.

2. Definitions and interpretation

2.1. Definitions

In this agreement:

AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

agreement means the end-user licence agreement between us and you;

business day means any day other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into this agreement is organised;

calendar day means a day counted from midnight to midnight. It includes all days of the month, including weekends (Saturday and Sunday) and public holidays;

documentation means any available installation and operating instructions, user and support manuals and technical literature pertaining to the software that we supply with the software;

our technology means any technology that we have created, acquired or otherwise have rights in and may, in connection with the performance of our obligations under this agreement, employ, provide, modify, create or otherwise acquire rights in and includes any:

- concepts or ideas;
- methods or methodologies;
- procedures or processes;
- know-how or techniques;
- function, process, system, data, or object models;
- templates;
- the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs;
- general purpose consulting and software tools, utilities, routines or frameworks;
- logic, coherence and methods of operation of systems; and
- patches or enhancements to open source libraries;

personnel means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

services means any Internet-based services we or related persons provide to you related to the software;

software means the software in the form of the specific software application referred to under this agreement and includes:

- any media that you receive it on;
- all upgrades, updates, or enhancements to the software application; and
- the documentation.

terms means the terms, consisting of:

- this agreement; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific services);

territory means a specific geographic region;

third party contractor means any contractor, supplier, licensor, or software vendor of a part of the software, which is not a party to this agreement;

third party software means all third party software owned by a third party but legally licensed to us for use in providing the software or services;

we, us, or our means the software vendor that enters into this agreement and those related to it;

writing means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

you or your means the customer that enters into this agreement and those related to it;

your data means any data belonging to you or your customer (including information about an identifiable person) that:

- you or your customer (or any third party on your behalf) provide to us; or
- we generate, process, or supply to you or your customer in providing the software;

but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors;

2.2. Interpretation

All headings are inserted for reference purposes only and must not affect the interpretation of this agreement. Whenever “including” or “include”, or “excluding” or “exclude”, together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within this agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party’s successors or permitted assigns. Unless otherwise stated in this agreement, when any number of days is prescribed in this agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

3. Agreement required

You may not use the software or the services if you do not agree to this agreement. You agree to this agreement by:

- using the software in any way – such as by downloading, installing, or running it;
- using the services in any way – such as by accessing them through the software; or
- exercising any rights granted to you under this agreement.

4. Software application

This agreement applies to your use of the Identipet software application, which is a mobile application for managing and accessing information on the Identipet National Animal Database for microchipped animals. Please see our website at <http://www.identipet.com/our-services/app/> for more information on the software application.

5. Grant of licence

5.1. Grant

We grant you a perpetual, non-exclusive, and non-transferable licence to install and use the software in object code form, in the territory in which you are in when you accept this agreement, together with the documentation, on the terms of this agreement. Object code form is the ready-to-execute version of the software which a compiler has already translated from source code into a language that a computer can run. It does not include the source code, which is the programmer's original instructions in a high-level programming language that a compiler needs to convert into object code before a computer can run them.

5.2. Licensed device

You must assign the licence to one or more devices after registering for the software. You may use the software on any licensed device, each of which we will consider a licensed device in their own right.

6. Your use

You agree to use:

- the software and documentation only for your own purposes and not to exploit them for your own commercial gain;
- the documentation only in relation to your use of the software; and
- reasonable care and protection to prevent the unauthorised use, copying, publication, or dissemination of the software.

7. Services

7.1. Consent

You agree that we may provide certain services with the software. We may change or cancel these services at any time.

7.2. Acceptable use

You may not use the services in any way to:

- harm another person's use of them; or
- gain unauthorised access to any other service or system.

8. Intellectual property

8.1. Your data

You own all your data. We do not own your data or other third party content used as part of the software. All title, ownership rights and intellectual property rights in and to the content accessed through the software belong to you or the applicable content owner and may be protected by applicable copyright or other law.

8.2. Retention of rights

We have created, acquired or otherwise obtained rights in our technology and despite anything contained in this agreement, we will own all right, title, and interest in our technology.

8.3. Use of our technology

If we utilise any of our technology in connection with our performance under this agreement, our technology will remain our property and you will not acquire any right or interest in it.

8.4. Trademarks

Our logo and sub-logos, marks, and trade names are our trademarks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.

8.5. Restrictions

Except as expressly permitted under this agreement, the software may not be:

- modified, distributed, or used to make derivative works;
- rented, leased, loaned, sold or assigned;
- decompiled, decompiled, reverse engineered, or copied; or
- reproduced, transferred, or distributed.

8.6. Prosecution

All violations of proprietary rights or this agreement will be prosecuted to the fullest extent permissible under applicable law.

9. User information

9.1. User information

The software may collect information from a licensed device. You consent to a licensed device transmitting this information to us.

9.2. Statistical information

We may collect statistical information by monitoring your use of the software for the purpose of improving the software and other purposes that we communicate to you.

10. Support or maintenance

We will not maintain or support the software in any way unless otherwise agreed with you in writing.

11. Limitation of liability

11.1. Direct damages limited

To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to a you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the software related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.

11.2. Indirect damages excluded

To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from this agreement.

11.3. We are not liable for your default

We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of this agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.

11.4. Other goods or services

We are not liable for any other deliverable, including website, goods, or service provided by any third party.

11.5. Indemnity

We agree to indemnify, defend and hold you (and your personnel) harmless against any and all:

- loss of or damage to any property or injury to or death of any person; and
- loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses that you may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud by us or our personnel; or (ii) a breach by us of your proprietary or confidential information, or intellectual property.

12. Breach and termination

If a party:

- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
- breaches this agreement materially twice or more in any six month period;
- is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- takes steps to deregister itself (close down) or is deregistered;
- makes any settlement or arrangement with its creditors; or
- fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;

then the other party may, without prejudice to any of its rights:

- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

13. Suspension of software or service

We may immediately suspend your right to use the software in any of the following circumstances:

- you attempt a denial of service attack on any of the services;
- you seek to hack or break any security mechanism on any of the software or services;
- we determine in our sole discretion that your use of the software or services poses a security threat to us, or to any other user of the software or services;
- you otherwise use the software or services in a way that disrupts or threatens the software or services;
- we receive notice, or we otherwise determine, in our sole discretion, that you may be using the software or services for any illegal purpose or in any way that breaches the law or infringes the rights of any third party; or
- we determine, in our sole discretion, that our provision of any of the software or services to you is prohibited by applicable law, or has become impractical or infeasible for any legal or regulatory reason.

14. Termination

14.1. Termination for good cause

We may immediately terminate this agreement at any time by giving you notice in writing if:

- we discontinue the software or services;
- we believe providing the software or services could create an economic or technical burden or material security risk for us;
- termination is necessitated by us having to comply with any applicable law or requests of governmental entities; or
- we determine that your use of the service or the provision of any of the software or services to you has become impractical or infeasible for any legal or regulatory reason.

14.2. Termination for convenience

We may, in our discretion, terminate this agreement, on reasonable written notice to you.

14.3. Duties on termination

On termination, cancellation, or expiry of this agreement:

- you must uninstall the software from all licensed devices;
- we will stop providing the services; and
- your right to use the software or services will cease to exist.

14.4. Survival

The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

15. Effect of termination

15.1. No expectation

We acknowledge and confirm that no expectation has been created by anyone, by this agreement or any other agreement, entitling us or you to expect:

- continued service for any period whether definite or indefinite;
- the renewal or extension of the term of any agreement; or

- the conclusion of any further agreement between you and us or our personnel.

15.2. Survival

The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

16. Resolving disputes

16.1. Notifying each other

There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation (direct talks to try and agree how to end the dispute); failing which
- mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

16.2. Negotiation

Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

16.3. Mediation

If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.

16.4. Arbitration

If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Cape Town. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

16.5. Periods

The parties may agree in writing to change the periods for negotiation or mediation.

16.6. Urgent interim relief

This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

16.7. Severability

This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

17. Notices and domicile

17.1. Notices

The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the specific terms.

17.2. Service (delivery) address for legal documents

Each party chooses its street addresses and numbers as its domicilium citandi et executandi (its address for the service of any document used in legal action) for this agreement.

17.3. Change of addresses or numbers

Each party may change the addresses or numbers in the specific terms to any other addresses or numbers in South Africa by writing to the other party 14 days before the change.

17.4. Deemed delivery

Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

17.5. Notice actually received

If a party actually receives any notice or other communication, this will be good enough.

18. Beyond human control

18.1. Parties not liable

No party will be responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.

18.2. Party affected to notify other party

If there is an event beyond human control, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

18.3. Right to cancel

If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of an event beyond human control, the other party may cancel this agreement by written notice.

19. Assignment and subcontracting

19.1. No assignment

You may not delegate your duties under this agreement or assign your rights under this agreement, in whole or in part. We may assign this agreement to any successor or purchaser of our business or some of our assets.

19.2. Our cession and assignment

We may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.

19.3. Our third party contractors

We may sub-contract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.

20. General

20.1. Entire agreement

This agreement is the entire agreement between the parties related to the relationship between us as the software provider and you as the software user when it comes to the software. Other agreements may apply to other relationships between the parties when it comes to other subjects.

20.2. Changes to the terms

We may change the terms at any time and where this affects your rights and obligations, we will notify you of any changes by placing a notice in a prominent place on our website or by email. If you do not agree with the change you must stop using the software or services. If you continue to use the software or services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

20.3. Changes to any third party software license agreement

We will notify you of any changes to any third party software license terms by placing a notice in a prominent place on our website or in the software, or notifying you by email. The updated third party software license terms will be effective immediately and you will be deemed to have accepted them upon notification.

20.4. Acceptance of changes

If you do not agree with the changes, you must stop using the service. If you continue to use the service following notification of a change, the changed terms will apply to you and you will be deemed to have accepted them.

20.5. Waiver (giving up of rights)

Any favour we may allow you will not affect or substitute any of our rights against you.

20.6. Severability

If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.

20.7. Governing law

South African law governs this agreement.

20.8. Jurisdiction

You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.