

In addition, the indemnities provided to Esanda under clause 14 of the agreement are hereby separately provided to ANZ by the Originator and for the purposes of this separate indemnity, a reference to "Esanda" in the current wording of the clause will be read as a reference to ANZ.

The Intermediary acknowledges that it may collect personal information relating to a User and provide that information to Esanda and its agents for the purpose of granting a User access to the System. The Intermediary must obtain from all Users the consent in respect of such collection, use and disclosure by and to Esanda and its agents in accordance with the requirements of the *Privacy Act 1988 (Cth)*.

5. GRANTING AND CANCELLING USER ACCESS

The Intermediary may nominate an individual to be a User. Such nomination must be given in writing to Esanda. Once this nomination is accepted by Esanda or its authorised agent, each User will be granted access to the System and will be able to access all information and services available via the System.

The Intermediary is responsible and liable for any use of the System by the User. The Intermediary must ensure that each User complies with all obligations and responsibilities imposed on the Intermediary under this agreement and will be liable for any failure by a User to comply with such obligations and responsibilities.

The Intermediary may request that Esanda cancel a User's access to the System by giving Esanda notice in writing.

If a User ceases to be employed or otherwise associated with the Intermediary, the Intermediary must immediately request that Esanda cancel a User's access to the System. If this does not occur, the Intermediary acknowledges that the relevant User will continue to have access to the System and that the Intermediary will continue to be liable for such use in accordance with this agreement.

6. SECURITY OF VAM

Each VAM must be kept secure. The Intermediary is responsible for the security of all VAM's and must ensure that each User does not tell or show a VAM to any other person.

If a VAM is not kept secure and it is used by someone other than a User to access the System, this will be a breach of this agreement and the Intermediary may be liable to Esanda for loss or damage to Esanda which results as a result of any misuse of the System.

The Intermediary must notify Esanda immediately if a record of a User's VAM is lost or stolen, or a User is aware or suspects another person knows a VAM or has used an access code without authority. Esanda will then cancel the relevant VAM and, with the approval of the Intermediary, will arrange for a replacement VAM to be issued.

Esanda or its authorised agent may cancel a VAM at any time without notice if Esanda believes it is being misused.

7. SECURITY OF INTERNET ACCESS

Esanda cannot guarantee the security of any data transmission over the internet.

8. LIABILITY FOR UNAUTHORISED ACCESS

The Intermediary is not liable for any unauthorised use of a VAM issued in relation to a User, which occurs before a User receives the VAM or which takes place after Esanda is notified that a VAM record had been lost, stolen or used by another person without authority.

9. AVAILABILITY OF THE SYSTEM

Esanda is not liable and accepts no responsibility for any System failures or disruptions (including but not limited to the loss of data) attributable to a systems or equipment failure, or

due to reliance by Esanda on third party products or interdependencies including electricity or telecommunications which results from the temporary breakdown of or interruption to the System or any other circumstances beyond Esanda's reasonable control.

The Intermediary is responsible for ensuring interoperability of the System with the Intermediary's other software and systems. Esanda is not liable for and accepts no responsibility for any System failure, or failure of the Intermediary's other software or systems, due to interoperability issues.

Esanda does not represent or guarantee that Internet access will be uninterrupted. The Intermediary acknowledges that internet access may be affected by outages, faults or delays. Such outages, faults or delays may be caused by factors including technical difficulties with or the performance of the Internet or infrastructure failures.

Esanda may withdraw or deny access to the System without prior notice to the Intermediary for reasons of security or quality of the telecommunications service. Esanda will not be liable to the Intermediary in any way in relation to this denial of access to the System.

10. SUN MICROSYSTEMS LICENSE AGREEMENT FOR JAVA

The Intermediary acknowledges that Esanda has incorporated Java 2 Platform Standard Edition Runtime Environment 5.0 (Java) in the System. The Intermediary agrees to comply with the terms of the Sun Microsystems, Inc Binary Code License Agreement for Java, a copy of which is attached and which can be located at <http://www.java.com/en/download/license.jsp>.

11. INTELLECTUAL PROPERTY RIGHTS

- a. Esanda owns all intellectual property subsisting in the System (excluding the intellectual property in software listed in paragraph (b)) and in any of the information supplied or received by the Intermediary in respect of the System. Other than for purposes authorised by Esanda, the Intermediary must not use copy or deal with any of Esanda's intellectual property.
- b. Esanda does not own the intellectual in:
 - i. Java, owned by Sun Microsystems, Inc;
 - ii. Attachmate EXTRA, owned by Attachmate Corporation; and
 - iii. Microsoft ISA and other Microsoft products incorporated into the System, owned by Microsoft Corporation.

The Intermediary agrees that it will not do anything to breach the intellectual property of any of these third parties in their software and will comply with any requirements by these third parties or Esanda in relation to the software.

12. CONFIDENTIAL INFORMATION

Information on and relating to the System is confidential and the Intermediary must not use, disclose or permit the use or disclosure of any such information unless the information is in the public domain or the Intermediary has Esanda's prior consent.

13. LIABILITY FOR THE SYSTEM

Esanda provides the System on the basis that it is not liable or otherwise responsible for any loss, damage or expense suffered or incurred by the Intermediary arising in connection with availability or operation of the System or interoperability issues.

14. INDEMNITY

The Intermediary indemnifies Esanda and its directors, officers, agents and employees and ANZ, its directors, officers, agents and employees against any loss incurred as a result of:

- a. any breach of this agreement by the Intermediary;
- b. any unlawful, negligent or reckless act or omission of the Intermediary or its directors, officers, agents or employees in relation to the System; and
- c. any incorrect or misleading information or data being entered into the System (and for the avoidance of doubt, includes any loss arising in respect of a contract entered into by Esanda or ANZ in reliance on incorrect, incomplete or insufficient information entered into the System or provided by the Intermediary), whether or not such loss arises directly or indirectly as a result of a negligent or deliberately wrongful act or omission, breach of duty, breach of statute or otherwise.

For the purposes of this clause, "loss" includes any loss, damage, cost interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person, and includes legal costs on an indemnity basis or on a solicitor and own client basis, whichever is higher.

15. TERMINATION BY THE INTERMEDIARY

The Intermediary may terminate this agreement at any time by giving Esanda written notice that it no longer requires access to the System. On receiving such notice, Esanda will terminate all VAM's issued to Users.

16. EFFECT OF THIS AGREEMENT ON ACCREDITATION AGREEMENT

Termination of this agreement or full or partial withdrawal of the System by Esanda will not terminate or otherwise effect the Intermediary's obligations under the Accreditation Agreement.

17. GOVERNING LAW

This agreement is governed by the law in force in Victoria.

SIGNED for in the presence of:

| | |
|-------------------------------|--|
| _____ Signature of witness | _____ Signature of authorised officer |
| _____ Name | _____ Name |

SIGNED for Australia and New Zealand Banking Group Limited in the presence of:

| | |
|-------------------------------|--|
| _____ Signature of witness | _____ Signature of authorised officer |
| _____ Name | _____ Name |

SUN MICROSYSTEMS, INC. BINARY CODE LICENSE AGREEMENT

Note: This license agreement is provided for your reference. It is what you will find in the Java software package that you download and governs the use of the Java software package. To complete the installation of and use the Java software package, you will be required to agree to the terms set forth below.

Sun Microsystems, Inc
Binary Code License Agreement
for the JAVA 2 PLATFORM STANDARD EDITION RUNTIME ENVIRONMENT 5.0

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7. **TERMINATION.** This Agreement is effective until terminated. You may terminate this Agreement at any time by destroying all copies of Software. This Agreement will terminate immediately without notice from Sun if you fail to comply with any provision of this Agreement. Either party may terminate this Agreement immediately should any Software become, or in either party's opinion be likely to become, the subject of a claim of infringement of any intellectual property right. Upon Termination, you must destroy all copies of Software.
8. **EXPORT REGULATIONS.** All Software and technical data delivered under this Agreement are subject to US export control laws and may be subject to export or import regulations in other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain such licenses to export, re-export, or import as may be required after delivery to you.
9. **TRADEMARKS AND LOGOS.** You acknowledge and agree as between you and Sun that Sun owns the SUN, SOLARIS, JAVA, JINI, FORTE, and iPLANET trademarks and all SUN, SOLARIS, JAVA, JINI, FORTE, and iPLANET-related trademarks, service marks, logos and other brand designations ("Sun Marks"), and you agree to comply with the Sun Trademark and Logo Usage Requirements currently located at <http://www.sun.com/policies/trademarks>. Any use you make of the Sun Marks inures to Sun's benefit.
10. **U.S. GOVERNMENT RESTRICTED RIGHTS.** If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the Government's rights in Software and accompanying documentation will be only as set forth in this Agreement; this is in accordance with 48 CFR 227.7201 through 227.7202-4 (for Department of Defense (DOD) acquisitions) and with 48 CFR 2.101 and 12.212 (for non-DOD acquisitions).
11. **GOVERNING LAW.** Any action related to this Agreement will be governed by California law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply.
12. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate.
13. **INTEGRATION.** This Agreement is the entire agreement between you and Sun relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter during the term of this Agreement. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

SUPPLEMENTAL LICENSE TERMS

These Supplemental License Terms add to or modify the terms of the Binary Code License Agreement. Capitalized terms not defined in these Supplemental Terms shall have the same meanings ascribed to them in the Binary Code License Agreement. These Supplemental Terms shall supersede any inconsistent or conflicting terms in the Binary Code License Agreement, or in any license contained within the Software.

- A. **Software Internal Use and Development License Grant.** Subject to the terms and conditions of this Agreement and restrictions and exceptions set forth in the Software "README" file, including, but not limited to the Java Technology Restrictions of these Supplemental Terms, Sun grants you a non-exclusive, non-transferable, limited license without fees to reproduce internally and use internally the Software complete and unmodified for the purpose of designing, developing, and testing your Programs.
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