

Software Licence Agreement



These are the terms on which WebSpy licenses and supplies software and provide support and maintenance services to the customer (“Customer”).

1. Definitions

Software means the WebSpy software to be supplied by WebSpy to the Customer under this agreement as described in the Documentation and includes any improvement, update, version or adaptation of the Software.

Documentation means the WebSpy documentation for the Software to be supplied to the Customer under this agreement including any installation and user manuals and guides provided with the Software.

Licence means the licence to use the Software and Documentation set out in this agreement.

Services means any support and maintenance services to be provided by WebSpy to the Customer as agreed in writing between WebSpy and the Customer.

Trial Period means the 30 day trial period during which the Customer may use the Software and Documentation on the terms of this agreement without payment for the purpose of evaluation of the use of the Software within the Customer’s business.

2. Supply of Software and Documentation

All Software and Documentation is supplied to the Customer on the terms of this agreement. These terms apply to the use of the Software and Documentation during the Trial Period.

3. Services

Any Services provided to the Customer will be provided on the terms of this agreement. WebSpy may subcontract the provision of the Services.

4. Licence

WebSpy grants to the Customer a non-transferable, non-exclusive licence to use the Software and Documentation in the Customer’s business for the purposes set out in the Documentation. The licence is either: (a) perpetual, if the Customer elects to purchase a perpetual licence; or (b) for the term of the subscription chosen and paid for by the Customer, if the Customer elects to take the Software on subscription; subject to termination of this agreement.

The Customer may install one copy of the Software only. Except with the prior written consent of WebSpy, the Customer must not (1) install more than one copy of the Software; or (2) install the Software in more than one location.

5. Payment

The Customer will pay for the Software, Documentation, Services and Licence on expiry of the Trial Period, unless the Customer decides not to purchase the Software. Payment will be on the terms specified by WebSpy and chosen by the Customer on purchasing the Software.



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If at the end of the Trial Period (or earlier if the Customer notifies WebSpy) the Customer decides not to purchase the Software (1) the Customer will immediately delete the Software and Documentation from its computer systems and notify WebSpy that this has been done (2) the Licence is immediately terminated.

6. Intellectual property

WebSpy retains ownership of all intellectual property rights in the Software and Documentation including (without limitation) the copyright in any Software and Documentation and in any improvement, update, version or adaptation of the Software or Documentation made in providing the Services or otherwise and whether made by WebSpy, the Customer or any other person. The Customer will not remove any notices regarding the ownership of intellectual property from the Software or Documentation.

7. Ownership of Software

The Customer may make two copies of the Software solely for backup purposes. The Customer will not copy, or permit any other party to copy, the Software or any part of it. The Customer must not sell or purport to sell any copies of the Software. All copies of the Software, including copies made by the Customer, are the property of WebSpy. The Customer may not copy or publish the Documentation in whole or in part, except as permitted in writing by WebSpy. The Customer will not reverse engineer, decompile or disassemble the Software, or permit any other party to do any such act. Each of the above terms is subject to the Customer's rights under Division 4A of the Copyright Act.

8. Source code

WebSpy retains ownership of the source code of the Software which will not be delivered to the Customer. The Customer is not entitled to obtain a copy of the source code or otherwise access the source code.

9. Non-disclosure

The Customer will take all reasonable steps necessary to ensure that the Software or any part of it, is not made available by the Customer, or by any of its employees, agents or sub-contractors, to any other organisations or individuals.

10. Assignment

The Licence is personal to the Customer and the Customer must not sell or sub-license or assign the Licence to any other person (or purport to do any of the said acts).

11. WARRANTY

WEBSPY WARRANTS THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF RECEIPT OF THE SOFTWARE BY THE CUSTOMER.

TO THE EXTENT PERMITTED BY LAW, WEBSPY DOES **NOT** WARRANT THAT THE SOFTWARE IS ERROR FREE OR FIT FOR THE PURPOSE OF USE BY THE CUSTOMER. THE CUSTOMER ACKNOWLEDGES THAT THE SOFTWARE MAY CONTAIN ERRORS WHICH MAY AFFECT THE OPERATION OF THE SOFTWARE AND THE RESULTS GENERATED BY THE SOFTWARE. THE CUSTOMER ACCEPTS THAT, TO THE EXTENT



PERMITTED BY LAW, WEBSPY ACCEPTS NO LIABILITY FOR ANY ERRORS ARISING OUT THE USE OR PERFORMANCE OF THE SOFTWARE OR THE DATA, RESULTS OR OTHER INFORMATION GENERATED BY THE SOFTWARE.

12. NO OTHER WARRANTIES

EXCEPT AS SET OUT IN CLAUSE 11 ABOVE OR WHERE IMPLIED BY LAW, WEBSPY GIVES NO OTHER WARRANTY AND MAKES NO REPRESENTATION OR UNDERTAKING IN RELATION TO THE SOFTWARE OR DOCUMENTATION, OR ITS PERFORMANCE OR SUITABILITY FOR ANY PURPOSE. EXCEPT TO THE EXTENT THAT ANY LAW OR STATUTE PROHIBITS THE EXCLUSION OF ANY CONDITION OR WARRANTY, ALL OTHER CONDITIONS OR WARRANTIES ARE EXCLUDED. ALL IMPLIED TERMS, CONDITIONS AND WARRANTIES IN ANY SALE OF GOODS LEGISLATION ARE EXCLUDED.

13. NON-EXCLUDABLE RIGHTS

WHERE ANY LAW OR STATUTE IMPLIES A TERM INTO THIS AGREEMENT, OR CONFERS A RIGHT OR REMEDY, WHICH CANNOT BE EXCLUDED, THE LIABILITY OF WEBSPY IS LIMITED TO THE MAXIMUM EXTENT ALLOWED UNDER THE APPLICABLE LAW OR STATUTE.

14. REMEDY FOR BREACH OF WARRANTY

WEBSPY'S LIABILITY AND THE CUSTOMER'S REMEDY FOR BREACH OF ANY EXPRESS WARRANTY, OR WARRANTY OR RIGHT IMPLIED OR CONFERRED BY LAW, IS LIMITED TO, AT WEBSPY'S OPTION, ONE OR MORE OF:

IN THE CASE OF ANY GOODS: (A) REPLACEMENT OF THE SOFTWARE OR DOCUMENTATION OR SUPPLY OF EQUIVALENT SOFTWARE OR DOCUMENTATION; (B) CORRECTION OF THE SOFTWARE OR DOCUMENTATION; (C) PAYMENT OF THE COST OF REPLACING THE SOFTWARE OR DOCUMENTATION OR ACQUIRING EQUIVALENT SOFTWARE OR DOCUMENTATION; OR (D) PAYMENT OF THE COST OF CORRECTING THE SOFTWARE OR DOCUMENTATION.

IN THE CASE OF ANY SERVICES: (A) SUPPLYING THE SERVICES AGAIN; OR (B) PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

15. USE OF DATA GENERATED BY THE SOFTWARE

WEBSPY ACCEPTS NO RESPONSIBILITY FOR, AND EXCLUDES LIABILITY FOR, ANY USE OF THE DATA, RESULTS OR OTHER INFORMATION GENERATED BY USE OF THE SOFTWARE BY THE CUSTOMER. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT SUCH DATA, RESULTS OR OTHER INFORMATION MAY CONTAIN ERRORS.

WEBSPY IS NOT RESPONSIBLE FOR, AND EXCLUDES LIABILITY FOR, ANY ACTION TAKEN BY THE CUSTOMER (OR ANY OMISSION) RELYING ON THE DATA, RESULTS OR OTHER INFORMATION GENERATED BY USE OF THE SOFTWARE BY THE CUSTOMER INCLUDING (WITHOUT LIMITATION) ANY ACTION TAKEN TO DISMISS OR DISCIPLINE EMPLOYEES OR CONTRACTORS OF THE CUSTOMER; ANY POLICIES, GUIDELINES OR WORK PRACTICES ADOPTED, USED OR ENFORCED BY THE CUSTOMER; ANY DISPUTES WITH THE CUSTOMER'S EMPLOYEES OR CONTRACTORS (OR THEIR REPRESENTATIVES); OR ANY ALLEGED BREACH OF ANY LAW, LEGISLATION, REGULATION OR CODE OF PRACTICE BY THE CUSTOMER.

THE CUSTOMER WILL INDEMNIFY WEBSPY, AND KEEP WEBSPY INDEMNIFIED AGAINST ANY CLAIM BY THE CUSTOMER OR ANY THIRD PARTY ARISING OUT ANY USE OF THE DATA, RESULTS OR OTHER

INFORMATION GENERATED BY USE OF THE SOFTWARE BY THE CUSTOMER INCLUDING (WITHOUT LIMITATION) ANY CLAIM ARISING OUT OF ANY ACTION TAKEN BY THE CUSTOMER RELYING ON THE DATA, RESULTS OR OTHER INFORMATION GENERATED BY USE OF THE SOFTWARE OR ANY CLAIM ALLEGING A BREACH OF ANY APPLICABLE LAW, LEGISLATION, REGULATION OR CODE OF PRACTICE.

16. LIABILITY

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, WEBSPY WILL BE UNDER NO LIABILITY TO THE CUSTOMER (WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE) IN RESPECT OF ANY LOSS OR DAMAGE WHICH MAY BE SUFFERED OR INCURRED BY THE CUSTOMER OR WHICH MAY ARISE DIRECTLY OR INDIRECTLY IN RESPECT OF THE SUPPLY OR USE OF THE SOFTWARE OR DOCUMENTATION OR PROVISION OF THE SERVICES UNDER THIS AGREEMENT OR IN RESPECT OF A FAILURE OR OMISSION ON THE PART OF WEBSPY TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

17. CONSEQUENTIAL LOSS

WITHOUT LIMITING THE GENERALITY OF CLAUSE 16 ABOVE, WEBSPY WILL BE UNDER NO LIABILITY TO THE CUSTOMER (WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE) FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR PROFITS, LOSS RESULTING FROM BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS RESULTING FROM ANY CLAIM BY ANY THIRD PARTY OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE SUPPLY OF THE SOFTWARE OR DOCUMENTATION OR ANY USE OF THE SOFTWARE OR DOCUMENTATION SUPPLIED OR THE PROVISION OF THE SERVICES, EVEN IF WEBSPY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. COMPLIANCE WITH LAWS

THE CUSTOMER IS RESPONSIBLE FOR COMPLYING WITH ANY LAW, LEGISLATION, REGULATION OR CODE OF PRACTICE APPLICABLE TO THE SOFTWARE AND ITS USE OR ANY ACTION TAKEN BY THE CUSTOMER RELYING ON THE DATA, RESULTS OR OTHER INFORMATION GENERATED BY USE OF THE SOFTWARE. WEBSPY IS NOT RESPONSIBLE FOR, AND EXCLUDES LIABILITY FOR, ANY BREACH OF ANY APPLICABLE LAW, LEGISLATION, REGULATION OR CODE OF PRACTICE BY THE CUSTOMER IN RELATION TO USE OF THE SOFTWARE OR ACTION TAKEN BY THE CUSTOMER RELYING ON THE DATA, RESULTS OR OTHER INFORMATION GENERATED BY USE OF THE SOFTWARE.

WITHOUT LIMITING THE GENERALITY OF THE ABOVE, IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT ANY USE OF THE SOFTWARE OR ACTION TAKEN BY THE CUSTOMER RELYING ON THE DATA, RESULTS OR OTHER INFORMATION GENERATED BY USE OF THE SOFTWARE DOES NOT BREACH ANY APPLICABLE PRIVACY OR DATA PROTECTION LAWS, ANY LAWS RELATING TO THE RIGHTS OF EMPLOYEES; ANY LAWS RELATING TO THE USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION; OR RESULT IN ANY CLAIM BEING MADE AGAINST WEBSPY OR THE CUSTOMER.

19. Termination

WebSpy may by written notice to the Customer immediately terminate this agreement, including the Licence granted to the Customer, if (a) the Customer is in breach of this agreement (including, without limitation, a failure to pay any amount due to WebSpy) and fails to remedy the breach within 30 days of receipt of written notice of the breach; or (b) the Customer is subject to any application for winding up or liquidation, or for the appointment of a receiver or manager or administrator, or is subject to any other form of insolvency event. If this agreement is terminated, the Licence is terminated and the Customer must immediately stop using the



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Software and Documentation and delete the Software from its computer systems. On termination all payments due to WebSpy must be made within 14 days.

20. Confidentiality

Each party will keep confidential any confidential information belonging to the other party disclosed pursuant to this agreement. Confidential information belonging to WebSpy includes the unpublished content and methodology of the Software, WebSpy's dealings with the Customer and any other information relating to the business, operations or products of WebSpy, other than information in the public domain or information which subsequently enters the public domain (except as a result of a breach of this agreement).

21. Severance

If any term or part of this agreement is, or becomes, for any reason invalid or unenforceable at law, that term or part of this agreement will be and is hereby deemed to be severed from this agreement without affecting the remainder of this agreement and the remainder of this agreement will continue to be valid and enforceable.

22. Amendment

This agreement may only be amended, varied or replaced by a document duly signed by or on behalf of the parties.

23. Entire agreement

This agreement and the WebSpy payment terms which the Customer selects on purchasing the Software constitute the entire agreement between the parties in respect of the supply of the Software and Documentation. This agreement supersedes all prior representations, warranties, agreements, understandings, negotiations and discussions whether oral or written, express or implied, collateral or otherwise, by or between the parties pertaining to the subject matter of this agreement.

24. Force majeure

A party will not be liable to the other for any delay or failure to perform its obligations under this agreement by reason of any circumstances beyond its reasonable control.

25. Governing law and jurisdiction

This agreement is governed by and is to be construed in accordance with the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

