

ONLINE NOW PTY LTD END USER LICENCE AGREEMENT

("the EULA")

1. SMOOTIE PTY LTD A.B.N. 52074975241 (*the Customer*) provides access to or use of these online services using software and services supplied by, and subject to the terms of its agreement with, **Online Now Pty Ltd ACN 121 414 220** (*Online Now, ON, or we*). BEFORE YOU ACCESS OR USE ANY OF THESE SERVICES, IT IS IMPORTANT THAT YOU READ, UNDERSTAND, AND AGREE TO THIS EULA.

1.1 BY PROCEEDING TO ACCESS OR USE ANY OF THESE SERVICES, YOU ARE AGREEING WITH ONLINE NOW TO BE BOUND BY THE PROVISIONS IN THIS ONLINE NOW END USER LICENCE AGREEMENT (INCLUDING ANY VARIATIONS AS MENTIONED BELOW).

2. YOUR ACCEPTANCE IS REQUIRED BEFORE PROCEEDING

2.1 YOU, AN END USER AUTHORISED BY THE CUSTOMER FOR THIS PURPOSE, WILL BE SUPPLIED BY ONLINE NOW WITH ACCESS TO AND/OR USE OF SERVICES STRICTLY SUBJECT TO YOUR ACCEPTANCE OF THE PROVISIONS OF THIS ONLINE NOW END USER LICENCE AGREEMENT (the EULA). In the EULA, ON Services refers to any software, hosted or other services supplied or otherwise made available by Online Now, and in particular this includes "end user" access or use to services made available by Online Now for the Customer's "end user" as defined below in the EULA.

3. VARYING THE EULA

3.1 Online Now may change the EULA from time to time without notice to you. It is important that you regularly review the most up to date version of the EULA, as it will be the terms upon which you access or use our software and services at any time.

3.2 The most recent version of the EULA can be seen at <http://powderfinger.com/eula/eula.pdf>. Bookmark this page to conveniently review the EULA.

3.3 When we vary the EULA, if you have an Online Now Account which enables you to login to an ON Service, we will include text to inform you of the change when you next login to your account after we vary the EULA.

4. VIOLATIONS OF THE EULA AND OTHER RIGHTS

4.1 Please help Online Now to enforce the EULA and keep our servers clean. If you see anything hosted by Online Now that seems to violate the EULA or any other person's rights, please send details to abuse@onlinenow.com.au.

5. THE SITE AND END USER ACCOUNTS

*5.1 In the EULA, **customer** means a natural person, company, partnership or other legal entity who (or whose representative) who we believe has agreed to pay Online Now's fees and other charges for any applicable ON Services; and **end user** means a natural person who accesses or otherwise uses any ON Services and includes (without limitation) you.*

*5.2 The **Site** (available currently from <http://powderfinger.com/>) may enable a person to obtain access to ON Services, without registering and/or after registering and obtaining an **end user account** – which is an account for an end user to access certain ON Services that are made available to the end user by the Customer.*

5.3 To obtain an end user account, the applicable forms accessible from the Site must be completed, including all required personal information (this may include your name, email address and other contact details, payment information and other information specified by the Customer at the Site).

5.4 Online Now may provide ON Services to people who login to an end user account, and require personal

information about those end users in order to provide ON Services to those people. We treat all personal information submitted to us in accordance with our Privacy Policy, which is available online for you to read or print out. To see our Privacy Policy go to www.onlinenow.com.au/privacy.

5.5 IF YOU HAVE ACCESS TO AN END USER ACCOUNT THEN YOU MUST NOT USE YOUR ACCESS TO THE ACCOUNT IN ANY WAY UNLESS YOU ARE EXPRESSLY AUTHORISED TO DO SO IN WRITING BY THE PERSON TO WHOM THE ACCOUNT RELATES.

5.6 Online Now reserves the right to require that each end user provide express agreement, from time to time, to be bound by the provisions of the EULA as varied from time to time.

5.7 Using the Site, an end user may be provided with access to the ON Services that are made available to the applicable end user account by the Customer.

6. REGISTRATION DATA: YOUR OBLIGATIONS

6.1 As a person who receives, or applies to receive from the Customer, an end user account, other hosted software or services or ON Services, or any other goods or services we may supply from time to time, **you** agree to:

- (a) submit only true, accurate, current and complete information about yourself as prompted by the Site's registration procedure or as otherwise requested by Online Now and the Customer (***the Registration Data***); and
- (b) maintain and regularly update the Registration Data to keep it true, accurate, current and complete. This includes an obligation on you to notify ON and the Customer immediately if there is a change, and to modify the Registration Data to reflect the new situation (for example, if you are no longer employed by the Customer, you may lose registered user access to the Site or ON Services).

6.2 As part of the Registration Data, you must provide ON with personal, technical, financial, and other information required by the registration process at the Site, to allow the Customer or ON to determine whether to enable your application or continue to allow access to the relevant (existing) account.

6.3 If you provide any information to ON or the Customer or through the Site, including any Registration Data, that is untrue, inaccurate, not current, not updated as it becomes outdated or incomplete or inaccurate, or we suspect that you have provided such information to us, we may suspend or terminate your end user account and/or the associated customer account and/or any other end user account associated with the customer account and/or refuse any and all current or future use of the Site, ON Services or any part.

6.4 You consent to us contacting you via the contact details you provide via the Site for any reason we consider appropriate, which includes to verify that the information we have received from you is accurate (but we are not obliged to so verify any information we receive).

6.5 Some ON Services are intended to facilitate the Customer making Content available to third parties specified by the customer (***End Users***).

6.6 You must not access any ON Service (including any Content using an ON Service) without first accepting and agreeing to be bound by this EULA.

7. CONTENT SUPPLIED BY YOU

7.1 You are responsible for ensuring the legality, accuracy, quality and standard of all content and other data provided by you to the Customer or Online Now, or uploaded using your end user account or any other ON Services (***Content***), including ensuring that the Content:

- (a) does not breach any Law, regulation or Advertising Standard;
- (b) is not defamatory or indecent;
- (c) is not false, misleading or deceptive or likely to mislead or deceive; and
- (d) complies with all applicable content guidelines of all relevant telecommunications carriers and Internet Service Providers.

7.2 Despite any other provisions, Online Now may at any time without notice (and without any liability to you or any other person), modify, suspend or terminate any ON Service which provides access to any Prohibited Content (ie, content which is unlawful) or Content to which Online Now (in its absolute discretion) determines it does wish to provide access.

7.3 You warrant that all right, title and interest in the Content is owned or lawfully licensed to you or the Customer.

7.4 You grant Online Now the right (including the right to sublicense) to use, reproduce, adapt, modify, distribute or communicate to the public the Content solely to make the Content (or any part) available through the ON Services.

7.5 You will keep Online Now indemnified against any claim, expense, cost, loss or damage received, suffered or incurred by Online Now which determines or alleges that the use by Online Now of Content constitutes an infringement of another person's Intellectual Property Rights.

8. REFUND POLICY

8.1 It is the policy of Online Now not to refund any amount, including amounts paid in advance for ON Services, except where there is a legal obligation to do so which cannot lawfully be excluded.

8.2 Where Online Now cannot exclude an obligation to refund an amount, Online Now is obliged to refund not more than the lowest amount required by law.

9. ONLINE NOW INFORMATION NOT TO BE DISCLOSED

9.1 You may receive or have already received a user ID and password to access an end user account or other information via the Site.

9.2 By using your user ID and password to login via the Site, you may be able to access information and/or content (including without limitation information about Online Now, ON Services and content we make accessible to our customers' personnel and customers) being information/or content that is not made generally accessible to the public (*Online Now Information*). You agree that:

(a) you are responsible for maintaining the confidentiality of your password and account and all ON Information you receive, and you must not disclose any of that information to any person for any purpose unless permitted under the EULA;

(b) except where required by law, or where the ON Information is generally available other than by a breach of the EULA, you may disclose the ON Information you receive only to a person employed by the Customer, and only where:

(1) the person has first agreed to use and keep the ON Information confidential as required under this Schedule; and

(2) the person needs to know the information in order to determine whether or not the Customer will purchase goods or services from us;

(c) you must not allow any other person to use your end user account - and you acknowledge that: (i) we charge for access to certain ON Information by reference to authorised end user numbers; and (ii) we will suffer losses and damage where you allow any other person to access or receive any of the ON Information except as allowed under the above provisions in the EULA;

(d) you must not use the ON Information except to determine whether or not to purchase goods or services from us, or to access training information or services we provide to you and for which your employer has paid us an amount agreed with us (in that case, other legal provisions will apply, and these EULA are not intended to reduce our rights under those provisions);

(e) you are fully responsible for all activities that occur under your password or account and must immediately notify Online Now in writing of any unauthorised use of your password or

account or any other breach of security of which you become or ought to have become aware; and

(f) except as expressly authorized by Online Now, you must not create more than one user account at the Site.

10. MODIFYING ONLINE NOW SERVICES

10.1 YOU ACKNOWLEDGE AND AGREE THAT:

(a) Online Now makes no representations and gives no guarantee that an ON Service will be available, or will continue to be available, for any period of time; and

(b) Online Now reserves the right to modify any ON Service to the maximum extent permitted by law, which may include a right to:

(1) refuse to provide an ON Service at all - for example, if Online Now receives a judicial or other legally compelling order to cease providing the ON Service, ON will comply with its legal obligations, or if Online Now's cost basis or commercial priorities alter for any reason;

(2) modify an ON Service (including any Content made available using an ON Service) in any way that is otherwise lawful - for example, if Online Now supplies an ON Service to host a web site for a customer, and receives a notice that one page of the hosted web site is an unlawful infringement of copyright due to Content from the customer's user accounts, then Online Now might in some situations be in a position to decide to take down the objectionable page and leave other pages in the web site unchanged.

11. INFORMATION AT THE SITE AND LINKED SITES

11.1 Online Now make no representations as to the accuracy of the information presented at or via the Site that has not expressly originated with us. Unless the information is noted as expressly originating with Online Now, the information presented at or via the Site is deemed for the purposes of the EULA to originate with the Customer and not with Online Now.

11.2 Online Now does not prepare the content of information that is contained on sites that are linked to the Site (*the Linked Sites*). We take no responsibility for the content or any other aspect of Linked Sites. Any links at the Site are for information only, and are not an endorsement of the content at the Linked Sites.

11.3 YOU AGREE THAT YOU MUST EVALUATE, AND BEAR ALL RISKS ASSOCIATED WITH THE USE OF ALL INFORMATION AT OR ACCESSIBLE FROM THE SITE AND THE LINKED SITES, INCLUDING ANY RELIANCE ON THE ACCURACY, COMPLETENESS, OR USEFULNESS OF IT.

11.4 By using the Site you agree that to the extent permitted by law Online Now and any of its subsidiary or related or affiliated companies or any of their employees or agents are not responsible to you or any other person for:

(a) the accuracy or otherwise of the information displayed or omitted from the Site or Linked Sites;

(b) any person's reliance on information available or omitted from the Site or Linked Sites;

(c) any loss in connection with the use of the Site or any Linked Site.

12. DEALINGS WITH THIRD PARTIES

12.1 You acknowledge and agree with Online Now that:

- (a) all communications or dealings with, or participation in promotions of, third parties (including the Customer) found at or via the Site or any ON Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the relevant third parties; and
- (b) Online Now is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third parties (including the Customer) in, on or through the ON Services.

13. ONLINE NOW'S PROPRIETARY RIGHTS

13.1 Except as expressly provided in the EULA, you acknowledge and agree that: (a) you do not receive any rights to use the Intellectual Property Rights of Online Now or the Customer; (b) you may not use or permit others to use the Intellectual Property Rights of Online Now or the Customer for any purpose, including promotional purposes, without the prior written approval of that other party; (c) any Intellectual Property Rights (including a compilation under the Copyright Act 1968) created by Online Now in the provision of the ON Services or from the Software vests exclusively with Online Now.

13.2 You acknowledge and agree that.

- (a) the Site and any necessary software used in connection with the Site and to provide the ON Services (*the Software*) contain proprietary and confidential information that is protected by applicable intellectual property and other laws; and
- (b) the information presented to you via the Site is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.

13.3 Except as expressly authorised by Online Now in writing, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Site or the Software, in whole or in part.

13.4 Online Now grants you a personal, non-transferable and non-exclusive right and license to use the Software as made available to you by Online Now using the ON Services, solely for the purpose of using the functionality described in relation to each ON Service which you are authorised to use or access (for example, some ON Services provide tools allowing our customer to change the appearance of a web site we host for the customer, and some ON Services facilitate ecommerce transactions or communication via email/newsletter with users who register with a web site we host for the customer – but features offered with and by ON Services change from time to time as notified by Online Now; **PROVIDED THAT YOU DO NOT** (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. Online Now may terminate the license in this clause 13.4 at any time without cause or notice to you (for example, but without limitation, Online Now will normally do so if we cease to supply an ON Service).

13.5 You agree not to access the Site by any means other than through the home page interface that is provided for use in accessing the Site as noted above. You must have prior written permission from Online Now and the Customer to link to any information in the Site.

14. DISCLAIMER OF WARRANTIES, EXCLUSIONS AND LIMITATIONS

14.1 You expressly understand and agree that, to the maximum extent legally permitted:

- (a) ONLINE NOW EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND IN RELATION TO USE OF THE SITE AND ON SERVICES AND INFORMATION ACCESSIBLE FROM THE SITE AND ON SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; AND

- (b) your use of the Site and ON Services are at your sole risk;
- (c) the Site and ON Services are provided on an "as is" and "as available" basis; and
- (d) ONLINE NOW MAKES NO WARRANTY THAT:

- (1) THE SITE OR ANY ON SERVICES WILL MEET YOUR REQUIREMENTS;
- (2) THE SITE OR ANY ON SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE;
- (3) RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE OR ANY ON SERVICES WILL BE ACCURATE OR RELIABLE;
- (4) THE QUALITY OF ANY PRODUCTS, SERVICES, OR INFORMATION PURCHASED OR OBTAINED BY YOU THROUGH THE SITE OR ANY ON SERVICES WILL MEET YOUR EXPECTATIONS; AND
- (5) ANY ERRORS IN THE SOFTWARE, THE SITE OR ANY ON SERVICES WILL BE CORRECTED;

- (e) any material downloaded or otherwise obtained through the use of the Site is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material;
- (f) no advice or information, whether oral or written, obtained by you from Online Now or through or from the Site shall create any warranty not expressly stated in the EULA.

14.2 You understand and agree that, subject to the EULA, Online Now, its related corporations and the officers, employees and agents of each is not liable for any damages, economic or other loss or damage whether direct, indirect, incidental, special, consequential or exemplary and even if Online Now has been advised of the possibility of such damages, arising out of any breach of any implied or express term, condition or warranty or suffered as a result of the negligence of any of them (including without limitation loss of profits, goodwill, use, data or other intangible losses) or in respect of:

- (a) the use of, or the inability to use the Site or any ON Services;
- (b) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into via or from the Site or any ON Services;
- (c) unauthorised access to or alteration of your transmissions or data;
- (d) any reliance of any third party in relation to any ON Services; or
- (e) any other matter relating to the Site or any ON Services.

14.3 Some States do not allow the exclusion of certain provisions or the limitation or exclusion of liability (for example, for incidental or consequential damages), so some of the limitations in the EULA may not apply to you.

14.4 To the maximum extent legally permitted, the liability of Online Now for any breach of a provision which must be implied into the EULA (for example, by the Trade Practices Act 1974 which applies in Australia) is limited (at the option of Online Now) to the supply of the services again or the payment of the cost of having the services supplied again; or the supply of the goods again or the payment of the cost of having the goods supplied again.

14.5 To the maximum extent legally permitted, the total liability of Online Now in respect of an ON Service in any period of 12 months (starting from any date) will not exceed the total actually received by Online Now from the Customer for supplying that ON Service for that 12 month period.

15. TRADE MARK INFORMATION

15.1 The Online Now name and distinctive Online Now logo are trade marks of Online Now and the other trade marks which appear at the Site or are displayed using the ON Services are the properties of third parties (*the Trade Marks*). You agree not to display or use or link to the Online Now name and distinctive Online Now logo or the Trade Marks in any manner without prior permission from Online Now or the relevant third party owner.

15.2 Online Now is in no way affiliated with or authorised by the owners of the Trade Marks.

16. COPYRIGHT

16.1 We respect the intellectual property of others, and we ask our customers and their users and End Users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please let us know.

16.2 When using the Site you may provide us with information about yourself or other matters. Subject to our Privacy Policy in relation to personal information under the Privacy Act 1988 (Cth), you grant Online Now rights to use in any way or otherwise exploit all of this information, and all information derived or generated from it, in all existing or future media, for the purpose of supplying services to the Customer. These rights include without limitation the right to search the information, and, consistent with our privacy policy, to modify repackage or market it to anyone for any reason. As used in this paragraph, *information* includes but is not limited to data, text, photographs, drawings, sound recordings, feedback, and any other information or data displayed or presented by you on or in respect of your use of the Site.

17. TERRITORIAL RESTRICTION, GOVERNING LAW AND JURISDICTION

17.1 The Site and ON Services are provided for access only by users located within or who agree to be subject to the laws of the Commonwealth of Australia (*the Territory*) and the personal jurisdiction of the Courts of New South Wales.

17.2 Online Now expressly does not authorise any person to access the Site, any ON Services, or any part of them, from any location outside the Territory.

17.3 The EULA and the relationship between you and Online Now shall be governed by the laws of the Territory and the State of New South Wales (*NSW*) without regard to its conflict of law provisions.

17.4 You and Online Now agree to submit to the personal and non-exclusive jurisdiction of the courts located within NSW.

18. ADDITIONAL CONDITIONS

18.1 You also may be subject to additional terms and conditions (*the Additional Conditions*) that apply when you access or use the Site or related services, or third party content/data, software or hardware, including such matters supplied by the Customer through or as a result of your use of the Site.

18.2 The Additional Conditions which apply when you register as an End User will be presented to you during the registration process.

19. GENERAL/MISCELLANEOUS

19.1 The EULA constitute the entire agreement between you and Online Now, and governs your use of the Site and ON Services, superseding any prior agreements between you and Online Now. Headings in the EULA are for convenience only and do not affect interpretation.

19.2 The failure of Online Now to exercise or enforce any right or provision of the EULA must not be treated as a waiver of the right or provision.

19.3 If any provision of the EULA is found by a court of competent jurisdiction to be invalid, then the provision is deemed deleted but the court should try to give effect to the parties' intentions as reflected in the provision, and the other provisions of the EULA remain in full force and effect.

19.4 YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, EXCEPT TO THE EXTENT THAT THIS WOULD BE UNLAWFUL (AND THEN ONLY TO THE MINIMUM EXTENT TO BECOME LAWFUL), ANY CLAIM OR CAUSE OF ACTION AGAINST

ONLINE NOW OR ANY OF OUR OFFICERS, EMPLOYEES, OR AGENTS ARISING OUT OF OR RELATED TO USE OF THE SITE OR THE EULA MUST BE FILED WITHIN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION AROSE, OR BE FOREVER BARRED.

19.5 You agree that there is no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship between Online Now and any customer or user simply by virtue of the Site or creation or use of a customer or user account at or by means of the Site.

19.6 Your rights and obligations under the EULA are personal and may not be assigned or dealt with in any way without the permission of Online Now, and permission may be withheld in Online Now's absolute discretion.