

FrameSmart® Business Solutions - Picture Framing Software End User Licence Agreement

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IMPORTANT - READ CAREFULLY:

This End User Licence Agreement (EULA) is a legal agreement between you (the “Licensee”), either an individual or a single entity, and PSSL (the “Licensor”) for the software products identified in Schedule A, which includes computer software and associated media and printed materials, and may include "online" or electronic documentation ("Software").

By installing, copying, or otherwise using the Software you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, promptly return the unused Software to the place from which you obtained it for a full refund.

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- a) The interpretation and construction of the Agreement shall be subject to the following:
 - i) the headings to Clauses are for reference purposes only and shall not affect the interpretation or construction of the Clauses,
 - ii) where the context allows, the singular includes the plural and the masculine includes the feminine and the neuter and vice versa.
 - iii) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or other similar instrument as subsequently amended or re-enacted.
- b) “Acceptance” means that the Software has been fully and correctly installed and tested to show that the Software meets the requirements of the Functional Specification;
- c) “Annual Subscription” means the fee payable by the Licensee to the Licensor for renewal of the Licence for the following 12 months, and the provision of Support, Services, Maintenance and Enhancement upgrades;
- d) “Enhancement” means additional and improved software functionality.
- e) “Fault” means a fault in the Software;
- f) “Fault Fix” means an amendment to the Software which corrects a Fault;
- g) “Functional Specification” means the functionality defined in the latest published user manual for the Software;
- h) “Group” means all the companies in the same group (as defined in Section 53 of the Companies Act of New Zealand, 1989) as the “Licensee” for the time being and from time to time;
- i) “Licence” means the non-exclusive licence granted by the Licensor to the Licensee to use the Software;
- j) “Licence Details” means the details contained in the Schedule(s) setting out the scope of use and period of the Licence;
- k) “Licence Fee” means the fee payable by the Licensee to the Licensor for the Licence;

- l) “Licensee” means the Registered User specified in Schedule A;
- m) “Licensor” means Pocket Solutions Software Ltd (PSSL), registered office at 11 Rutherford Street, Lower Hutt, New Zealand
- n) “Maintenance” means the correction of Faults by means of the supply of Fault Fixes and Support Services;
- o) “Maintenance Release” is a release of the Software which contains Error Corrections or minor upgrades, and is designated by a release number;
- p) “Maintenance Start Date” means the date on which the Licensee becomes liable to pay for Maintenance;
- q) “Periodic Licence” means a licence which is valid for the renewable period(s) of time stated in the Licence Details;
- r) “Registered User” means the company or individual specified in Schedule A of this agreement as the Licensee;
- s) “Schedule” means a schedule to this Licence;
- t) “Software” means the software products listed and described in Schedule A;
- u) “Software Delivery Date” means the date on which the software is installed at the Licensee site and accepted by the Licensee as operating according to specification, and the Licence and warranty periods commence;
- v) “Support Call” means reporting a fault or a request for support and can take the form of a telephone call, email or website contact;
- w) “Support Services” means the supply of technical assistance to the Licensee in using the Software as described in Schedule B;
- x) “Third Party Products” means the software products Licenced to the Licensor by the Licensor’s suppliers which are packaged up and delivered on the medias part of the Software;
- y) “Tenant” means any outsourced end user client for whom the Licensee provides outsourced data or application software processing services;
- z) “Update” has the same meaning as a Maintenance Release;
- aa) “Version” is a major release of the Software which is denoted by a version number, and which includes significant functionality enhancements or support for significant new software modules over a previous version.

2. LICENCE

- a) The Software Licence terms are set out in Schedule A.
- b) The Licensee is permitted to use the Software for data processing only in support of its own business and its own customers, i.e. the Software may be used to provide computer services by the Licensee acting as a bureau or on a time share basis to third parties which are direct customers of the Licensee. The Software may also be used in support of the Licensee’s normal business pursuits via remote access devices by or on behalf of the Licensee’s employees, agents and contractors and those of the Registered User Group of companies for the purpose of carrying out the normal business pursuits of the Licensee.

3. LICENCE FEE

- a) The Software Licence is granted in consideration of the payment by the Licensee of the Licence Fee to the Licensor or their agent.
- b) All fees stated in this Agreement are quoted exclusive of Sales Tax which will be charged at the rate ruling at the invoice tax point.
- c) The Licence Fee shall be due and payable on the Software Delivery Date.

4. TRAINING

The extent of the initial training shall be as indicated in Schedule A.

5. MAINTENANCE AND ENHANCEMENTS

- a) Maintenance and Enhancements of the Software will be available from the Licensor for the minimum period stated in Schedule B. Maintenance and Enhancements shall be purchased at the Licensee's sole option.
- b) Maintenance includes the supply of all information, to correct errors or defects or performance failures arising in the Software via remote or on-site support as necessary;
- c) The Licensor will supply Maintenance in accordance with the Service Level Agreement and use reasonable endeavours to ensure that the Software maintains currency with the Licensee's operating system and all other relevant interfaces.
- d) The Licensor shall notify the Licensee at least 3 months prior to withdrawing Maintenance of the Version then in use by the Licensee. Maintenance shall continue to be available for a superseded Version for at least 6 months following the issue of a new Version. If the Licensee elects to continue to use a Non-Supported Version the Licensor shall advise and assist the Licensee to overcome subsequent defects, faults or problems arising in the continued use of that Non-Supported Version. Such advice and assistance shall be provided by the Licensor at the then current time charge rates agreed between the parties.
- e) If the Licensee does not apply any improved version of the Licensor's maintenance programmes for the Software within 30 days of same being made available to the Licensee, the Licensor will be entitled to charge the Licensee with such reasonable costs as may be incurred by the Licensor to overcome subsequent defects, faults or problems arising in the continued use of the Licensor's maintenance programmes for the Software used by the Licensee.
- f) The Licensor agrees to inform the Licensee of any significant defects in the Software which could reasonably affect the Licensee's use of the Software and to supply a documented example of such defect or error. The foregoing error correction service shall not include:
 - i) defects or errors resulting from modifications to the Software made by any person other than the Licensor,
 - ii) incorrect use of the Software, or operator error,
 - iii) any fault in the Equipment or software programs used in conjunction with the Software,
 - iv) defects and errors caused by use of the Software on or with equipment or software not supplied by or approved in writing by the Licensor.
- g) Maintenance shall be provided from the Maintenance Start Date.
- h) No more than once annually and at least three months before the anniversary of the Maintenance Start Date, the Licensor may give notice in writing to the Licensee of a proposed increase in the Annual Subscription.
- i) The Licensee shall ensure that the Software is used in a proper manner at all times and keep full security copies of the Software in accordance with best computing

practice. The Licensee shall give reasonable assistance to the Licensor in diagnosis of any error or defect and shall provide such facilities as are reasonably necessary for diagnostic purposes at the Licensee's expense and with due regard to health and safety procedures.

6. PERMISSION TO COPY OR MODIFY THE LICENSOR'S PRODUCTS

- a) The Licensee may make only so many copies of the Software and documentation as are reasonably necessary for operational security and for its own internal purposes, all such copies shall bear the Licensor's proprietary notices. The Licensee may make a copy of the Software available to a third party solely for contingency and disaster recovery purposes in support of the Licensee. The Licensee will secure a confidentiality undertaking from such third party as the Licensor may reasonably require and provide a copy and written advice to the Licensor
- b) The original and all copies of the Software and related materials shall remain the property of the Licensor.

7. COPYRIGHT/PATENT INDEMNITY

- a) The Licensor warrants that it has full authority to Licence the Software to the Licensee and that there are no claims liens or encumbrances which may affect the Licensee's use of the Software.
- b) The Licensor will indemnify the Licensee against and defend, without any expense to the Licensee, any action, claim or proceeding instituted against the Licensee to the extent that it is based on a claim that the Software used within the scope of this Agreement infringes a copyright or a patent, provided that the Licensee promptly notifies the Licensor of and permits the Licensor to have control of the defence of any action or claim and all negotiations for settlement.
- c) In the event of a claim being settled out of court or judged in court against the Licensee/Licensor, and subject to the provisions of clause 8.b above, the Licensor will promptly pay any damages, legal costs and expenses suffered by the Licensee including any financial awards against the Licensee in such action which are attributable to such claim.
- d) Should the Software become, or in opinion of the Licensor be likely to become the subject of a claim of infringement of a copyright or a patent or similar intellectual property right, the Licensor shall either:
 - i) procure for the Licensee the right to continue using the Software; or
 - ii) replace or modify the Software to make it non-infringing, without materially degrading its performance.

8. PROPRIETARY RIGHTS

- a) The Software, copyright and other intellectual property rights of whatever nature in the Software are and shall remain the property of the Licensor and the Licensor reserves the right to grant licences to use the Software to third parties.
- b) The Licensee shall notify the Licensor immediately if the Licensee becomes aware of any unauthorised use of the whole or part of the Software.
- c) The Licensee agrees to report on an annual basis the number of networked workstations attached to the system, and the number of registered users associated with these workstations, and will permit the Licensor to check such use of the Software by the Licensee at all reasonable times.
- d) The Licensee acknowledges and accepts that any Third Party Products Licenced through or provided by the Licensor are subject to such restrictions and rights on

the part of the Licensor's suppliers contained in the Licences between the Licensor and its suppliers.

9. WARRANTY

- a) The Licensor warrants that each Release and Version will perform in accordance with its Functional Specification. In the event of breach of this warranty the Licensor undertakes to modify the Software free of charge to enable it to perform in accordance with its Functional Specification.
- b) The Licensor undertakes to correct promptly any Fault which is shown to the reasonable satisfaction of the Licensor to have been caused by the faulty design or workmanship of the Licensor or by a failure of the Software to operate substantially in accordance with its Functional Specification.
- c) In the event of any error or failure in the Software attributable to the above dates and date changes, the Licensor shall use its reasonable endeavours to modify the Software to correct such error or failure and to assist the Licensee in restoring its computer systems to normal operations.
- d) The warranty shall be subject to the Licensee complying with its obligations hereunder and the Licensor shall have no liability or obligations under the warranty other than to remedy breaches thereof.
- e) The Licensee acknowledges that the Software has not been prepared to meet the Licensees individual requirements and that it is the responsibility of the Licensee to ensure that the functions described in the Functional Specification meet its requirements.
- f) The Licensee hereby warrants to the Licensor that the Licensee has not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing except as specifically contained in this Agreement.
- g) Warranty is limited: the Licensor offers no guarantee of error free or uninterrupted use. While the Licensor has endeavoured to make sure that the Software works substantially as per the Functional Specification, the Licensor does not guarantee that the Software will work on all computer hardware platforms or configurations and makes no warranty that the Software will be error free, that its use will be uninterrupted or be fit for your purpose.

10. INDEMNITY

- a) Each of the parties shall indemnify and keep indemnified the other against injury (including death) to any persons (including any employee, agent sub-contractor or representative) or loss of or damage to any tangible property which may arise out of any act or omission (whether caused by negligence or not) of the other party, or of any sub-contractor, employee, agent or representative of the other party or arising out of or in consequence of the other's obligations under this Licence and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- b) The Licensor's maximum liability for damages arising in connection with this Licence or the supply of the Software is limited to the amount paid by the Licensee for the Software
- c) The Licensor has no responsibility for recommendations: the Licensor, its employees, agents, contractors and the authors disclaim any and all liability and responsibility to any person, whether a user of this Software or not, in respect of anything (including, without limitation, any error in or omission from this Software) and of the consequences of any actions taken or omitted to be taken in

reliance, whether wholly or partially, upon all or any part of the content, recommendations or help contained in this Software.

11. CONFIDENTIALITY

Neither party shall disclose or pass on any information concerning the business of the other or copy or utilise other than in connection with the purposes of this Agreement any information trade or professional secrets of the other party, which shall be deemed to include the Software. Each party shall procure that its employees, agents and subcontractors shall observe these conditions. This restriction shall not apply to information, which is now or later becomes generally available in the public domain, or to information, which is independently developed by parties without use of any such confidential information.

12. PUBLICITY

The Licensor shall neither disclose the making of this Licence in any journal magazine, publication or other medium nor use the Licensee's name in any of its advertising material without the Licensee's prior consent.

13. ASSIGNMENT

Unless expressly provided herein, neither party shall without the prior written consent of the other assign this licence nor any part thereof nor delegate any of its responsibilities or obligations hereunder.

14. TERMINATION

a) Maintenance

The provision of Maintenance may be terminated by:

- i) the Licensee giving three month's prior written notice at any time;
- ii) the Licensee immediately if the Licensor is in material breach of any of the terms hereof and the Licensor has not remedied such breach (where such breach is capable of being remedied) within 30 days of written notice so to do;
- iii) by either party immediately if it becomes apparent that the other has become insolvent or has had a receiver appointed or has called a meeting of creditors or resolved to go into liquidation (except for amalgamation or reconstruction while solvent) or has had a petition for compulsory winding up.

b) Effect of Termination

- i) The parties' prior accumulated rights shall not be affected by termination.
- ii) In the event of termination or cancellation of the Licence by the Licensee the Licensee shall return or certify as destroyed all proprietary information regarding and including the Software.

15. DISPUTES

- a) Without prejudice to the rights granted in clause 16, if at any time a dispute or difference shall arise between the parties in relation to or in connection with this Agreement which appears to prejudice this Agreement to a significant extent either party may call a dispute resolution meeting.
- b) The meeting shall be held within (14) fourteen days of the date of the notice calling the dispute meeting (unless otherwise agreed) and will be attended by senior management of both parties. Senior management shall mean persons with the authority to settle the dispute.

- c) The purpose of the meeting shall be to review and agree as far as practicable the action to be taken to solve the problems which have given rise to the calling of the meeting and the parties shall negotiate with each other in good faith to that end. Pending the settlement of any dispute the parties shall nevertheless continue to perform their respective obligations hereunder.

16. ARBITRATION

In the event of failure to agree a mutually acceptable solution pursuant to Clause 15, the dispute shall be referred within 21 days to the arbitration of a person to be mutually agreed or failing mutual agreement to a person appointed by the President of the New Zealand Law Society for the time being.

17. WAIVER

- a) No relaxation forbearance delay or negligence by either party in enforcing any of the terms and conditions of this Agreement or the granting of time by either party to the other shall prejudice affect or restrict the rights and powers of that party.
- b) No waiver of any terms or conditions of this Agreement shall be effective unless made in writing and signed by the party against which enforcement of the waiver is sought. The waiver of any breach of any term of condition of this Agreement shall not be construed as a waiver of any subsequent breach or condition whether of the same or different nature.

18. VARIATION

No variation to this Agreement shall be effective unless in writing signed by a Director (or other duly authorised officer) of each of the parties hereto.

19. NOTICES

- a) All notices shall be confirmed in writing by pre-paid post to the address of the relevant party set out in this Agreement or to such other address as either party may have notified in writing to the other.
- b) Notices shall be deemed (in the absence of evidence of earlier receipt) to have been delivered 48 hours after despatch.

20. SURVIVAL

The following clauses shall survive the termination of this Agreement: 10,11,13,14,15,16.

21. LAW

This Agreement shall be subject to and interpreted in accordance with the Laws of New Zealand.

SCHEDULE A - LICENCE DETAILS

1. Period of Licence

The Software Licence granted hereunder is for a period of one year from the Software Delivery Date, with rights of renewal for subsequent years dependant on payment of an applicable Annual Subscription on each anniversary of the Software Delivery Date,

The Annual Subscription may also be paid proportionately on a monthly direct credit arrangement by the Licensee to the Licensor, in which case the Software Licence is renewed on a month by month basis as long as payments are received by due date. Annual Subscriptions paid on such monthly direct credit arrangements, and becoming overdue by more than 20 working days, may result in cancellation of the Software Licence.

2. Software:

FrameSmart Business Solutions[®] - Picture Framing software, comprising but not limited to the following optional components, each of which is subject to a separate licence agreement:

- A. FrameSmart[®] Point of Sale (POS) pricing system
- B. FLO[®] - Frame Live Order system
- C. VisualiseIt[®] – picture framing design & visualisation

3. Scope of Use

The Licence permits the Licensee to load and use the software on an agreed hardware configuration:

- FrameSmart & FLO: One master PC, server or laptop, plus a secondary copy loaded on one (1) other PC or laptop acting as a slave workstation on a network, and with a number of concurrent users registered, not exceeding five (5) in total.
- VisualiseIt & FLO: One master PC or laptop only per licence.

In accordance with clause 8 (c) of the Agreement, if additional workstations or users of a FrameSmart System are added to the network the licence becomes subject to additional fees appropriate to the new number of workstations and/or users and the then current FrameSmart price list.

4. Warranty Period

12 months

5. Training

None in this Agreement.

SCHEDULE B – MAINTENANCE, ENHANCEMENTS and SUPPORT DETAILS

1. Software:

FrameSmart[®] software modules as defined/limited in Schedule A

2. Maintenance/Enhancements

All releases are free of charge providing the Annual Subscription has been paid for the current year, or a monthly automatic payment authority is in force and paid up to date.

3. Help Desk Support Services

Support services are provided to Licenced users by the Licensor's Help Desk operators by telephone and online services, to assist with problems encountered by users in the normal operation of the software on approved hardware platforms.

4. Minimum period (Clause 5(a) refers)

One Year