

BETWEEN:

ZHD TECHNOLOGIES PTY LTD (ACN 645 113 551)
("the Licensor")

AND

THE SUBSCRIBER

SUBSCRIBER AGREEMENT



AULICH

Ground Floor, 1 Farrell Place
Canberra City ACT 2601
Telephone: (02) 6279 4222
Facsimile: (02) 6279 4233
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SCHEDULE

Item 1 Subscriber	[Insert client details]
Item 2 Commencement Date	Means the date on which the Subscriber is granted access to the Software per Item 8 of this Schedule
Item 3 Term	Means the period of one month commencing on the Commencement Date and, where applicable includes any Further Terms.
Item 4 Licence Type	[Insert]
Item 5 Licence Fee	If Item 4 is: <ul style="list-style-type: none">• a Freelancer Licence: \$99.00 USD;• a Team Licence: \$249.00 USD;• a Business Licence: \$999.00 USD; or• a Non-Commercial Licence: nil
Item 6 Licence Fee Payment Dates	The Commencement Date, and then the first day of each calendar month (unless in either case that day is not a business day, in which case it is the first business day before it.)
Item 7 Software	The software known as “HypoFuzz”, being a modern, automated implementation of property-based testing.
Item 8 Software Licence Entitlements	<ul style="list-style-type: none">• Copy of Documentation to assist in accessing the Software, if requested;• An authentication token allowing access to the Software.
Item 9 Permitted Use	To use the Software and the Documentation during the Term.
Item 10 Address for Notices	Unit 149, 41 Eastlake Parade, Kingston ACT 2604 Australia

THIS AGREEMENT dated the day of the Commencement Date.

BETWEEN **ZHD Technologies Pty Ltd (ACN 645 113 551)** of Unit 149, 41 Eastlake Parade, Kingston ACT 2604 Australia in the Australian Capital Territory ("**the Licensor**");

AND The party identified at Item 1 in the Schedule (**Subscriber**)

RECITALS

- A.** The Licensor has developed the Intellectual Property and the Licensor owns or has the right to use the Intellectual Property.
- B.** The Subscriber desires the Intellectual Property for the Permitted Use.
- C.** The Licensor and the Subscriber wish to record the Licence, which has been granted to the Subscriber to use the Intellectual Property in accordance with this Agreement.

OPERATIVE PART – THE PARTIES AGREE AND DECLARE AS FOLLOWS

1. Definitions

- 1.1 In this Agreement, the following words and expressions have the following meanings:
- (a) **Address for Notices** means the address of the parties listed at Item 10 in the Schedule
 - (b) **Agreement** means this Subscriber Agreement and includes the Schedule;
 - (c) **Business Day** means a day, not being a Saturday, Sunday or gazetted public holiday in the Australian Capital Territory;
 - (d) **Business Licence** means the licence permitting up to two hundred and fifty (250) Users, being of the Subscriber, to use the Intellectual Property for the duration of the Term;
 - (e) **Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost liability, action, proceeding, right of action, chose in action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;
 - (f) **Commencement Date** means the date set out at Item 2 in the Schedule;

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- (g) **Confidential Information** means all technical and other information and know how, including all information and know how in any eye or machine-readable form or other format, disclosed or given to the Subscriber from any source in respect of or incidental to
- (i) the Technology;
 - (ii) the Licensor; and
 - (iii) any other information disclosed or given to the Subscriber by the Licensor which is declared by the Licensor to be confidential information;
- (h) **Data** means the data or information, in whatever form, which is made available by the Subscriber in connection with the use of the Software by the Subscriber;
- (i) **Documentation** means any and all proprietary documentation made available to the Subscriber by the Licensor for use with the Software, including any documentation available online;
- (j) **Feature** means an additional functionality of the Software which may be developed from time to time;
- (k) **Freelancer Licence** means the permitting a single User, being the Subscriber, to use the Intellectual Property for the duration of the Term;
- (l) **GST** has the meaning given in the GST Act;
- (m) **GST Act** means the *A New Tax System (Goods & Services Act) Act 1999*;
- (n) **Improvements** means any improvement, modification, enhancement or derivative of the Intellectual Property arising during the Term;
- (o) **Intellectual Property** means:
- (i) the Confidential Information;
 - (ii) the Software and all Intellectual Property Rights existing in the Software;
 - (iii) the Source Code;
 - (iv) the Improvements; and
 - (v) the Trade Mark;
- (p) **Intellectual Property Rights** means patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, databases, know-how, logos, designs, design rights, copyright, registered and unregistered trade marks existing in intellectual property;
- (q) **Item** means an item in the Schedule;

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- (r) **Licence** means the licence to use the Intellectual Property created in accordance with clause 2;
 - (s) **Licence Fee** means the amount set out at Item 5 in the Schedule;
 - (t) **Licence Fee Payment Dates** means the dates set out at Item 6 in the Schedule;
 - (u) **Moral Rights** means rights of attribution, authorship and integrity as defined in the *Copyright Act 1968* (Cth) and includes any similar rights existing in other countries;
 - (v) **Non-Commercial Licence** means the licence permitting the Subscriber, being an individual or a Not-For-Profit Entity, to use the Intellectual Property for open-source projects;
 - (w) **Not-For-Profit Entity** means an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) or a US 501(c)(3) organisation, or at the discretion of the Licensor equivalent entities;
 - (x) **Obligation** means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;
 - (y) **Permitted Use** means the use of the Intellectual Property set out at Item 9 of the Schedule;
 - (z) **Schedule** means a schedule to this Agreement;
 - (aa) **Security Interest** has the meaning set out in clause 12 of the *Personal Property Securities Act 2009* (Cth);
 - (bb) **Software** means the software described at Item 7 in the Schedule;
 - (cc) **Software Licence Entitlements** means the entitlements listed at Item 8 in the Schedule;
 - (dd) **Source Code** means the text listing of commands compiled or assembled into the Software;
 - (ee) **Team Licence** means the licence permitting up to twenty (20) Users, being of the Subscriber, to use the Intellectual Property for the duration of the Term;
 - (ff) **Technology** means all that technical information which relates to or forms part of the Software, including, without limitation, methodology, techniques, drawings, outlines, notes, algorithms, detailed designs, flow charts, results, software: partial or intermediate versions and prototypes, data, formulae and other proprietary information and know how in the Subscriber's possession or control or which is revealed to the Subscriber which relates to the Software;
 - (gg) **Term** means the term set out at Item 3 in the Schedule;

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- (hh) **Trade Mark** means the registered trade mark, trade mark registration application and common law trade marks described at Item 10 in the Schedule;
 - (ii) **Website** means the HypoFuzz website at <https://hypofuzz.com/> or any subsidiary website created for or by the Subscriber ending in the domain: .hypofuzz.com; and
 - (jj) **Upgrades** means any upgrades or fixes made to the Software from time to time by the Licensor.
 - (kk) **User** means a person who accesses the Software or uses the Intellectual Property using the Subscriber's Login Name and Password.

1.2 In the interpretation of this Agreement:

- (a) references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting individuals or persons include bodies corporate and vice versa;
- (d) references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (e) words denoting one gender include all genders;
- (f) grammatical forms of defined words or phrases have corresponding meanings;
- (g) parties must perform their Obligations on the dates and times fixed by reference to the Australian Capital Territory;
- (h) reference to an amount of money is a reference to the amount in the lawful currency of the United States of America or (USD);
- (i) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next Business Day;
- (j) references to a party are intended to bind their executors, administrators and permitted transferees;
- (k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and

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- (m) Obligations under this Agreement affecting more than one party bind them jointly and each of them severally.

2. Licence and Term

- 2.1 In consideration for payment of the Licence Fee and the Subscriber's compliance with this Agreement, the Licensor grants to the Subscriber a non-exclusive, non-transferrable, non-assignable licence to use the Intellectual Property for the Permitted Use for the Term on the terms of this Agreement.
- 2.2 The Subscriber may permit their own employees, as end users of the Software, to use the Software through the Website subject always to and in accordance with the terms of this Agreement and the reasonable directions of the Licensor.
- 2.3 The Term will be extended for further periods of one (1) month commencing on each anniversary of the Commencement Date where the Subscriber continues to use the Software and pay the Licence Fee ("**Further Terms**").

3. Licence fee

3.1 Payment of Licence Fee

The Subscriber must pay the Licence Fee to the Licensor during the Term on the Licence Fee Payment Dates in any manner as directed by the Licensor from time to time.

3.2 Discount for annual payment

Where the Subscriber pre-pays one year's worth of Licence Fees, for the avoidance of doubt, twelve (12) month's, the Subscriber will receive a ten percent (10%) discount on the Licence Fee in consideration of the annual payment.

3.3 Variation of Licence Fee

The Licensor may vary the Licence Fee from time to time by giving fourteen (14) days' notice on the Website. In the absence of such notice, the Licence Fee will remain at the rate specified in the Schedule.

3.4 Late payment

If the Licence Fee or any other money payable by the Subscriber to the Licensor remains unpaid for seven (7) days after the due date for payment, whether or not formal demand has been made, then, in addition to any other rights available to the Licensor under this Agreement, the Subscriber must pay, in addition to any money actually owing to the Licensor, interest at the rate calculated in accordance with the Schedule 2 of the *Court Procedures Rules 2006* (ACT) for pre-judgment debts on such money from the date the payment actually fell due until such money are recovered and paid to the Licensor.

3.5 Suspension of Licence

In addition to the Licensor's rights under clause 3.4, where any money payable to the Subscriber remains unpaid for seven (7) days, the Licensor, without any

liability to the Subscriber for any loss or damage whatsoever, may suspend the Subscriber's access to the Software or Website and require the return on the Documentation until such time as the Subscriber has paid all monies owing in full.

4. Use of logos

- 4.1 Each of the parties (**Logo Licensor**) grants the other (**Logo Licensee**) a non-exclusive, royalty-free, worldwide and non-transferable licence to use the Logo Licensor's logo(s) for promotional purposes via the Logo Licensee's website and social media accounts and for any other promotional activity, provided that such logo(s) will be used only to recognise the status of the Logo Licensor as a user or supplier (as applicable) of the Software and not in such a way as to represent any specific endorsement, approval or otherwise by the Logo Licensee.
- 4.2 The Logo Licensor will provide a copy of its logo(s) upon written request from the Logo Licensee and in such format as reasonably requested by the Logo Licensee.

5. Use of Data

- 5.1 The Subscriber hereby grants the Licensor a non-exclusive, royalty-free and worldwide licence to use the Data on an anonymised and aggregated basis where no personal data is included in such use.

6. Support

- 6.1 Where the Subscriber requires software support, the Licensor reserves the right to charge additional fees at rates agreed between the parties prior to any support services being provided to the Subscriber.

7. Subscriber's warranties, indemnities and acknowledgments

- 7.1 Warranties and undertakings

The Subscriber warrants that:

- (a) it will use the Intellectual Property only for the Permitted Use and not for any other use including, without limitation, not attempting or being involved, directly or indirectly, in any attempt to commercialise or exploit the Intellectual Property for profit or other gain;
- (b) it will not use the Intellectual Property on behalf of others;
- (c) it will not reproduce, make error corrections to or otherwise modify or adapt the Software or Documentation or create any derivative works based on the Software or allow or assist any third party to do so;
- (d) it will not de-compile, disassemble or otherwise reverse engineer the Software;
- (e) it will not modify or remove any copyright or proprietary notices on the Software or Documentation;

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- (f) it will use its best endeavours to:
 - (i) preserve the value and validity of the Intellectual Property; and
 - (ii) prevent use of the Software or Documentation in any way that could damage the reputation of the Licensor or the goodwill or other rights associated with the Software or the Licensor's Intellectual Property;
 - (iii) prevent any third party from using the Intellectual Property other than as set out in this Agreement;
 - (iv) prevent any person from linking to the Website or linking to any page any part of the Software (including via hyperlink or RSS feeds) without the Licensor's written consent;
 - (g) not to allow or grant a Security Interest in this Licence to any party providing finance to the Subscriber and to undertake all actions necessary to remove any Security Interest registered or claimed over the Subscriber's interest in this Licence;
 - (h) hold the Source Code in escrow and use only for the purposes of the Licence;
 - (i) during the Term and after the termination of this Agreement not to allow or facilitate the use, nor exploit the Intellectual Property in a manner in any way detrimental to the Licensor and not contravene, deny or contest the rights subsisting in the Intellectual Property;
 - (j) take all steps as may be appropriate and available to the Subscriber to prevent the infringement of any and all the rights subsisting in the Intellectual Property;
 - (k) in connection with the Permitted Use not give any warranty:
 - (i) beyond that which the Subscriber is obliged in law to give; or
 - (ii) which has not been approved in writing by the Licensor; and
 - (l) treat as confidential the Confidential Information except that which at the time of its disclosure to the Subscriber was generally available, or subsequently became known to the public provided always that this covenant shall continue in full force and effect notwithstanding that this Agreement has terminated.

7.2 Indemnity

- (a) The Subscriber hereby agrees to fully, effectually, and promptly indemnify the Licensor against any loss, either direct or indirect, damage or expense whatsoever which the Licensor may suffer or incur in respect of:
 - (i) any breach by the Subscriber of the provisions of this Agreement;
 - or

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- (ii) any Claim by any person against the Licensor arising out of or in respect of the use of the Intellectual Property by the Subscriber; and
 - (b) The Subscriber hereby irrevocably releases the Licensor and waives all Claims which the Subscriber may have in the future against the Licensor, in respect of any action Claim or remedy whatsoever in any way attributable to the use of the Intellectual Property by the Subscriber.

7.3 Acknowledgment

The Subscriber acknowledges that nothing in this Agreement constitutes a transfer of any of the Licensor's Intellectual Property Rights existing in the Intellectual Property. The Subscriber acknowledges that the Licensor owns all Intellectual Property Rights existing in the Intellectual Property and that it will not directly or indirectly do anything that would or might invalidate or put in dispute the Licensor's right or title to the Intellectual Property.

8. Licensor's Warranties

8.1 The Licensor warrants to the Subscriber that:

- (a) The Licensor has the power and authority to enter into this Agreement; and
- (b) The rights granted under this Agreement will not, when used in accordance with this Agreement, infringe the Intellectual Property Rights of any person.

8.2 The Licensor warrants to the Subscriber that the Software will meet the Software Licence Entitlements in all material respects, however, subject to this clause and to the extent permitted by law, the Licensor excludes any warranties as to the condition of the Software.

8.3 If, during the Term, the Subscriber notifies the Licensor in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Software Licence Entitlements, and such defect or fault does not result from the Subscriber, or anyone acting with the authority of the Subscriber, having amended the Software or used it outside the terms of this Agreement for a purpose or in a context other than the Permitted Use or purpose or context for which it was designed or in combination with any other software not provided by the Licensor, the Subscriber's remedies shall, to the fullest extent permissible at law, be limited, at the Licensor's sole option, to one of the following:

- (a) repair the Software;
- (b) replace the Software;
- (c) pay the cost of having the Software repaired or replaced;
- (d) terminate this Agreement by written notice to the Subscriber and refund up to one month's Fees paid by the Subscriber as at the date of

termination. For the avoidance of doubt, the maximum refund available to a Subscriber is one month.

- 8.4 The Licensors does not warrant that the use of the Software will be uninterrupted or error free.
- 8.5 The Subscriber accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Subscriber.
- 8.6 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement whether by statute, common law or otherwise, are excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

9. Upgrades & Features

- 9.1 The Licensors may, at the Licensors sole and absolute discretion, develop Upgrades from time to time. The Licensors may, at its sole and absolute discretion provide Upgrades to the Subscriber for installation in the Software and the cost of these Upgrades will be included as part of the Licence Fee.
- 9.2 Where such Upgrades are provided otherwise than in accordance with the above clause 9.1, the parties agree to negotiate a separate agreement in respect of the provision of Upgrades.
- 9.3 The Subscriber may request additional Features for the Software which the Licensors may develop at its sole and absolute discretion. Where such Features are requested, the parties will negotiate in good faith a separate agreement in respect of the provision of the Features.
- 9.4 For the avoidance of doubt, nothing in this Agreement requires or places any obligation on the Licensors to provide any Upgrades, fixes, amendments or any other support services to the Subscriber in respect of its use of the Intellectual Property.

10. Goodwill protection

- 10.1 The Subscriber must allow the Licensors or its nominated representative to inspect the Software and the place and method of use of the Intellectual Property by the Subscriber to ensure the goodwill of the Intellectual Property is being maintained, and must comply with any reasonable direction in writing by the Licensors on the issue of protection of the goodwill of the Intellectual Property from time to time.

11. Termination

11.1 Termination on notice

Either party may terminate this Agreement by notice in writing to the other if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within 14 days of receipt of a notice specifying:

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- (a) the exact nature of the breach committed by the defaulting party; and
 - (b) what is required by the defaulting party to remedy the breach.

11.2 Immediate termination

The Licensor may by notice in writing immediately terminate this Agreement upon:

- (a) the making or filing of any application to wind up the Subscriber under any law or government regulation relating to bankruptcy or insolvency; or
- (b) the Subscriber grants or purports to grant a Security Interest in this Licence to any third party;
- (c) the appointment of a receiver or manager for all or substantially all of the property of the Subscriber; or
- (d) the making by the Subscriber of any assignment, arrangement or composition whether formal or informal for the benefit of its creditors; or
- (e) the institution by the Subscriber of any proceedings for the liquidation or winding up of its business; or
- (f) the failure to pay the Licence Fee within seven (7) Business Days of its due date for payment;
- (g) any breach of warranty by the Subscriber.

11.3 Effect of termination

Upon termination:

- (a) The Subscriber must deliver to the Licensor all Documentation and documents and other materials, including all copies in its possession, relating to the Intellectual Property and will do such further things as may be reasonably required by the Licensor to protect its right title and interest in the Intellectual Property;
- (b) any Licence Fee previously paid remains the property of the Licensor and will not be refunded;
- (c) any Licence Fee, as well as any interest or other monies, due but unpaid as at the date of the termination must be paid by the Subscriber to the Licensor; and
- (d) the Licensor will transfer or provide the Subscriber access to all data and information owned by the Subscriber held by the Licensor or held in the Software.

12. Notices

12.1 A notice or other communication to a party must be in writing and delivered to that party at its Address for Notices or that party's practitioner in one of the following ways:

- (a) delivered personally; or

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- (b) posted to their address, when it will be treated as having been received on the second Business Day after posting; or
 - (c) sent by email to their email address, when it will be treated as received when it enters the recipient's information system on a Business Day; or
 - (d) published on the Website, when it will be treated as received when it is published if it is published on a Business Day.

13. Waiver or variation

- 13.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude:
- (a) Its future exercise; or
 - (b) The exercise of any other power or right.
- 13.2 The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

14. GST

- 14.1 The Subscriber will bear all GST payable in respect of any supply under this Agreement upon receipt of a tax invoice issued by the Licensor.
- 14.2 The Subscriber indemnifies the Licensor against any loss or expense incurred by the Licensor in respect of that GST.

15. Confidential Information

- 15.1 The terms of this Agreement and all information exchanged between the parties under this Agreement during the negotiations preceding this Agreement are confidential to them. A party must not disclose any of those terms or information, or any other Confidential Information, to any other person except:
- (a) to employees, legal advisers, accountants, auditors and other consultants of the party or its related bodies corporate requiring the information for the purposes of this Agreement; or
 - (b) with the consent of the party who supplies the information; or
 - (c) if the information is, at the date of this Agreement, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information; or
 - (d) if required by law or a stock exchange; or
 - (e) if strictly and necessarily required in connection with legal proceedings relating to this Agreement; or
 - (f) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.

16. General

- 16.1 This Agreement may be executed in any number of counterparts each of which will be an original, but the counterparts together will constitute one and the same instrument, and the date of the Agreement will be the date on which it is executed by the last party.
- 16.2 The parties expressly agree that this Agreement may be executed electronically.
- 16.3 Each party will pay its own costs of and incidental to this Agreement.
- 16.4 The Subscriber will bear all duty payable on this Agreement and keep indemnified the Licensor in respect of that liability.
- 16.5 The Subscriber may not assign its rights or Obligations under this Agreement without the prior written consent of the Licensor, which consent may be given or withheld, or given on conditions, in the absolute discretion of the Licensor.
- 16.6 This Agreement is governed by the laws of Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the Courts of the Australian Capital Territory.
- 16.7 The parties agree that time shall in all respects be of the essence in regards this Agreement.
- 16.8 Any indemnity or any Obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.
- 16.9 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.
- 16.10 Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.
- 16.11 This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Execution page

SIGNED AS AN AGREEMENT

EXECUTED BY THE LICENSOR

ZHD TECHNOLOGIES PTY LTD

(ACN 645 113 551) under seal and in accordance
with section 127(2) of the Corporations Act 2001
by:

Director/ Secretary Signature

Director Signature

Director/ Secretary Name

Director Name

EXECUTED BY THE SUBSCRIBER

Where a company

EXECUTED BY [INSERT] PTY LTD

ACN under seal and in accordance
with section 127(2) of the Corporations Act 2001
by:

Director/ Secretary Signature

Director Signature

Director/ Secretary Name

Director Name

Where an incorporated association

EXECUTED BY [INSERT] by an authorised officer
in the presence of:

Witness Signature

Authorised Officer Signature

Witness Name

Authorised Officer Name

Where an individual

SIGNED by

[INSERT NAME]

in the presence of:

Witness Signature

Witness Name