

Master Agreement

Background

- A. The Customer wishes for the Supplier to provide it with the Hardware, Software and/or Services.
- B. This Agreement establishes a master framework under which the Supplier may agree to supply the Hardware, Software and/or Services to the Customer from time to time.

1. Engagement

- 1.1 The Supplier agrees to provide the Hardware, Software and/or Services to the Customer on the terms of this Agreement.
- 1.2 The Hardware, Software and/or Services to be provided will be set out in Official Orders or Statements of Work. The Supplier is not obliged to provide any Hardware, Software and/or Services unless an Official Order or Statement of Work is executed by the parties. An Official Order or Statement of Work, once executed, will form part of this Agreement.
- 1.3 If there is any conflict or inconsistency between any of the parts of this Agreement, the terms of the part first appearing below shall prevail to the extent of the conflict or inconsistency:
 - (a) any variation to the Master Agreement, an Official Order or Statement of Work or the Additional Terms agreed in writing between the parties;
 - (b) any Official Order or Statement of Work;
 - (c) the Additional Terms;
 - (d) the Master Agreement.

2. Hardware

- 2.1 The Customer acknowledges and agrees that:
 - (a) unless otherwise specified in an Official Order, the Supplier does not provide any warranties for Hardware supplied under this Agreement; and
 - (b) where Hardware is covered by an original manufacturer's warranty, the Customer may contact the manufacturer or importer directly in relation to any warranty claim in respect of Hardware.
- 2.2 The Supplier may, at its election:
 - (a) substitute equivalent goods for Hardware originally ordered if such Hardware is not available at the time of ordering and is not expected to be available at a reasonable future date; or
 - (b) put any Hardware on back order if such Hardware is not available at the time of ordering but is expected to be available at a reasonable future date.
- 2.3 The Supplier may revise Hardware Fees for substituted or back ordered Hardware under clauses 2.2(a) and 2.2(b) by reasonable notice to the Customer.

Delivery and Acceptance

- 2.4 The Customer acknowledges and agrees:
 - (a) that, unless otherwise specified in an Official Order, delivery dates provided are a guide only and the Supplier does not guarantee fixed delivery times; and
 - (b) the Supplier is not responsible for delays in delivery of Hardware caused by any delay in providing Customer Materials; acts or omissions of any third party or third party service or equipment; changes in any Official Order.
- 2.5 Delivery of Hardware is deemed to occur on the earlier of when:
 - (a) the Customer or Customer's nominated carrier takes possession of the Hardware; or

- (b) the Hardware is delivered to the Customer's nominated address.

Delivery

- 2.6 The Customer must give the Supplier Written Notice within 7 days of Delivery if the Customer reasonably considers there is any defect or damage, shortage in quantity or failure to comply with any description or quote provided by the Supplier, or in the case of any latent defect, notice must be given within 7 days of the latent defect becoming apparent.

Risk and Title

- 2.7 The Customer bears all risk of damage to or loss of the Hardware from the time of Delivery.
- 2.8 The parties agree that title of the Hardware will pass to the Customer on the later of:
 - (a) the Customer's payment of all amounts owing relevant to the Hardware; and
 - (b) Delivery of the Hardware.

Returns

- 2.9 Subject to clauses 12 and 13, returns of defective Hardware will only be accepted by the Supplier if the Hardware is:
 - (a) accompanied by proof of purchase, which is consistent with the items purchased;
 - (b) returned within a reasonable time at the Customer's cost and in as close a condition to that in which it was delivered to the Customer as is reasonable; and
 - (c) the Supplier reasonably considers that the Hardware is defective.

Use of Hardware

- 2.10 If the Hardware is lost or damaged due to any fault of the Customer or anyone for whom the Customer is responsible, through any misuse of the Hardware or any breach of this Agreement, the Customer is responsible for any such loss of damage and must make good that loss or damage to the Hardware at its expense.
- 2.11 Prior to title in the Hardware passing to the Customer under clause 2.8, the Customer must:
 - (a) inform the Supplier as soon as is reasonably practicable of any damage to the Hardware, including the extent of such damage and its cause;
 - (b) not operate any damaged Hardware without the prior written consent of the Supplier;
 - (c) keep the Supplier fully informed of all material matters relating to the Hardware;
 - (d) permit the Supplier or its duly authorised representative to inspect the Hardware at all reasonable times and for such purpose to enter upon the Customer's premises or any premises at which the Hardware may be located, and grant reasonable access and facilities for such inspection;
 - (e) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - (f) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Hardware;
 - (g) not dispose of, sell or assign any right or interest, grant any Security Interest in, or part possession with the Hardware;
 - (h) not suffer or permit the Hardware to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hardware is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best

endeavours to procure an immediate release of the Hardware and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation.

3. Security

3.1 This clause applies where the Supplier has agreed to accept payment of the Hardware Fees in instalments.

3.2 Any terms capitalised in this clause 3 and not already defined in clause 3 have the same meaning given to those terms in the PPSA.

Security Interest

3.3 The Customer acknowledges and agrees that:

- (a) the Supplier's interest in the Hardware is a Security Interest;
- (b) this Agreement constitutes a Security Agreement for the purposes and within the meaning of the PPSA; and
- (c) the Supplier's Security Interest is only extinguished upon payment of the outstanding Hardware Fees in full.

3.4 The Customer agrees:

- (a) to keep the Hardware separately identified and stored;
- (b) that it will not consent to, grant, seek to grant or deal with any Security Interest in the Hardware adverse to the Supplier's Security Interest in the Hardware;
- (c) that the Supplier may register its Security Interest and the Customer agrees to provide all information and execute all documents necessary to enable the Supplier to register and perfect its Security Interest in the Hardware under the PPSA;
- (d) to promptly inform the Supplier in writing of any change of name of the Customer or of any other details relating to this document that appear on the Personal Property Securities Register; and
- (e) to pay all of the Supplier's costs and expenses incurred in:
 - (i) preparing, lodging or registering a Financing Statement or Financing Change Statement in relation to the Security Interest granted to the Supplier under this Agreement;
 - (ii) maintaining and amending those registrations; and
 - (iii) enforcing any Security Interest granted to the Supplier under this Agreement.

Powers of the Supplier

3.5 Upon the occurrence of a Default Event (which includes the failure to make due and punctual payments of the Hardware Fees), the Supplier:

- (a) may do any other act or thing as the Supplier consider appropriate in order to protect their interests;
- (b) may delegate any of the powers and authorities conferred on the Supplier by this clause to any person;
- (c) take Possession of and sell or lease the Hardware (either in full or in part, and otherwise subject to any conditions that the Supplier considers appropriate);
- (d) has the right (without prejudice to any other rights and remedies it may have) to recover, detach, remove and/or sell the Hardware or any part of it or them (and its employees, agents or contractors may without notice enter any place the Supplier believes the Hardware to be without committing a trespass);
- (e) will have no obligation to make good any damage caused by such inspection, search, recovery, detachment or removal of the Hardware under clause 3.5(d); and
- (f) will not be liable for and the Customer will indemnify and keep the Supplier indemnified from and against any costs, claims, damages or losses expended or suffered by the Supplier, whether or not contemplated by the parties, in recovering the Hardware (including legal costs on a full indemnity basis).

Exclusion of PPSA provisions

3.6 To the extent permitted by law:

- (a) if there is any inconsistency between the Supplier's rights under this clause 3 and its rights under Chapter 4 of the PPSA, this clause 8 prevails.
- (b) if Chapter 4 of the PPSA would otherwise apply to the enforcement of the Supplier's Security Interest, the Customer agrees that the following provisions of the PPSA will not apply:
 - (i) section 95 (notice of removal of accession to the extent that it requires the Supplier to give notice to the Customer);
 - (ii) section 96 (person with an interest in the whole may retain accession);
 - (iii) section 121(4) (enforcement of liquid assets - notice to the Customer);
 - (iv) section 125 (obligation to dispose of or retain collateral);
 - (v) section 130 (notice of disposal, to the extent that it requires the Supplier to give a notice to the Customer);
 - (vi) section 132(3)(d) (contents of statement of account after disposal);
 - (vii) section 132(4) (statement of account if no disposal);
 - (viii) section 135 (notice of retention);
 - (ix) section 142 (redemption of collateral); and
 - (x) section 143 (reinstatement of security agreement).
- (c) the Customer waives its right to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.

4. Fees

4.1 Unless otherwise set out in an Official Orders or Statements of Work, the Customer must pay the Fees to the Supplier in accordance with this clause 3. All Fees which are paid on a recurring monthly, quarterly, six-monthly or annual basis, as set out in the Official Order, will be paid to the Supplier by direct debit.

Expenses

- 4.2 The Customer must reimburse the Supplier for out-of-pocket expenses (including travel and accommodation expenses) reasonably incurred by the Supplier in providing the Hardware, Software and/or Services (**Expenses**).
- 4.3 The Supplier will obtain the prior consent of the Customer prior to incurring Expenses that individually exceed \$500.

Invoices

- 4.4 The Supplier will invoice the Customer from time to time for the Fees.
- 4.5 The Customer must pay an invoice issued under clause 4.4 by the date specified on the invoice or, if not specified, within 30 days after the date the invoice is issued.
- 4.6 The Customer must pay the Fees in Australian dollars, unless otherwise specified on the Official Order.
- 4.7 Payment of all sums due to the Supplier under this Agreement must be made by the Customer in full without any set off, deduction, or withholding whatsoever.

Fee disputes

- 4.8 If the Customer reasonably believes an invoice contains an error and the Customer wishes to dispute the invoice, the Customer must:
 - (a) notify the Supplier before the due date of the invoice;
 - (b) pay the invoice in full; and
 - (c) provide detailed information about any disputed fees.
- 4.9 The Supplier will investigate the dispute and if the Supplier agrees the invoice contains an error, the Supplier will issue a replacement invoice and refund any overpaid amount to the Customer. If the Supplier

does not accept that an invoice is incorrect or that any part is not due then the disputed invoice shall be referred for resolution under clause 15.

Deferral of performance

- 4.10 If the Customer does not pay the Fees or any portion of the Fees as required by this Agreement:
- (a) the Supplier reserves its right to:
 - (iv) suspend the supply of any or all Hardware (whether or not relevant to those Fees);
 - (v) defer performance of all or any part of the Services (whether or not relevant to those Fees);
 - (vi) suspend the Customer's access to all Services;
 - (vii) recover, disable, or suspend access to Software;
 - (viii) charge Interest; and
 - (ix) charge a late payment fee,
 - (x) until the outstanding Fees are paid, without limiting any other remedies available to the Supplier; and
 - (b) the Customer is liable by way of liquidated damages for all amounts payable under this clause plus all costs and expenses of debt collection and enforcement (including but not limited to internal administration fees, legal costs on a solicitor own client basis, the Supplier's collection agency costs, and bank dishonour fees).

5. Intellectual Property

No assignment

- 5.1 The parties agree that Intellectual Property Rights (including future Intellectual Property Rights) in:
- (a) the Software;
 - (b) the Services;
 - (c) the Supplier Material;
 - (d) any Updates;
 - (e) any Upgrades;
 - (f) any Developed Material;
 - (g) the Documentation;
 - (h) anything otherwise created by the Supplier in the performance of the Service or provision of the Software;
 - (i) any modification, upgrade, update, or derivative work of anything contemplated by clauses 5.1(a) to 5.1(h),
- (together, **Property**) are the property of the Supplier and the Supplier does not assign to the Customer any Intellectual Property Rights in the Property.

5.2 The Customer must not remove, alter, or obscure any proprietary notices (including copyright notices) on the Property.

Customer assignment

- 5.3 To the extent that any Intellectual Property Rights in any Property do not automatically vest in the Supplier, the Customer assigns to the Supplier all Intellectual Property Rights in or in relation to any Property.
- 5.4 If requested by the Supplier, the Customer must bring into existence, sign, execute, or otherwise deal with any document to take any action which may be necessary to enable the vesting of the Intellectual Property Rights contemplated by clause 5.1 in the Supplier.

Licence to Property

5.5 Subject to receipt of payment for the Fees and provided the Customer is not in default of this Agreement, the Supplier grants to the Customer a non-exclusive licence to use the Property to the extent

necessary to receive and obtain the benefit of the Software and/or Services.

5.6 The licence granted under clause 5.5:

- (a) must not be sublicensed; and
- (b) is not transferrable or assignable,

without the Supplier's written consent.

Licence of Customer Material

5.7 The Customer grants to the Supplier a non-exclusive, irrevocable global licence to exercise the Intellectual Property Rights in any Customer Material in connection with the Supplier providing Hardware, Software and/or Services to the Customer, including to use and modify the Customer Material.

5.8 The licence granted under clause 5.7 includes the right to sub-licence to third parties as necessary to provide the Hardware, Software and/or Services.

Third Party Material

5.9 The Customer acknowledges and agrees that the Supplier does not grant the Customer a licence to use any Third Party Material.

No use of the Supplier's marks

5.10 The Customer must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trademarks or logos of the Supplier except with the prior written consent of the Supplier.

Customer name

5.11 The Supplier may use the Customer's name and trade mark on the Supplier's website and advertising or promotional material, and may disclose that the Customer is a Customer of the Supplier.

6. Customer warranties

Customer Material warranty

6.1 The Customer warrants that use of the Customer Material by the Supplier as set out in this Agreement will not infringe the Intellectual Property Rights or other rights of any third party.

Accuracy and reliance warranties

- 6.2 The Customer represents and warrants, and it is a condition of this Agreement, that:
- (a) all information provided by the Customer or on the Customer's behalf to the Supplier is accurate and is not, whether by omission of information or otherwise, misleading;
 - (b) the Customer has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into this Agreement; and
 - (c) the Customer is not relying on any representation made to the Customer by the Supplier or any Related Body Corporate of the Supplier (if any) before entry into this Agreement.

Repeating warranties

6.3 The representations made and warranties given in clauses 6.1 and 6.2 are regarded as repeated each day during the Term with respect to the facts and circumstances then subsisting.

7. Limitations

- 7.1 Subject to clauses 12.6 and 12.7, the Supplier makes no representation and gives no warranty:
- (a) that the Hardware, Software, Services, any hardware, software or other goods supplied in connection with this Agreement will be uninterrupted, error free, free of defects, secure, timely, meet the Customer's requirements or be fit for any particular purpose or
 - (b)

- function other than as specified in the applicable Official Order or Statement of Work;
- (c) that the Hardware, Software, and Services will not contain viruses or other malicious software, code, or scripts;
- (d) that the Hardware, Software, and Services will be available at all times;
- (e) that the Documentation is complete, accurate or sufficient to explain the Hardware, Software, and Services; or
- (f) about the suitability or performance of any third party service provider referred to the Customer by the Supplier.

8. Term and termination

Term

- 8.1 This Agreement commences on the Commencement Date and continues for the Initial Term unless terminated earlier in accordance with this clause 8.

Termination of this Agreement on expiry of Initial Term

- 8.2 Either party may terminate the Agreement at the conclusion of the Initial Term by giving at least 90 days' written notice to the other party before the expiry of the Initial Term.
- 8.3 If neither party terminates the Agreement at the conclusion of the Initial Term in accordance with clause 8.2, it will, subject to clause 8.5, be automatically be extended for consecutive periods of 12 months (each such period a **Rollover Period**).
- 8.4 Termination under clauses 8.2 or 8.3 shall not affect any licence granted under clause 5.5 to the extent necessary for the Customer to continue to enjoy the benefit of the Software and/or Services as provided up to the date of termination.

Termination for cause

- 8.5 A party may terminate this Agreement immediately by written notice to the other party if:
 - (a) a party commits a material breach of this Agreement and fails to remedy that breach within 30 days of receiving notice from the other party requiring it to do so; or
 - (b) an Insolvency Event occurs in relation to a party (subject to any provision of the Corporations Act 2001 (Cth) or any related subordinate legislation that may prevent or restrict the exercise of a right of termination or other right under this contract).

Termination of an Official Order or Statement of Work

- 8.6 Without limiting an Official Order or Statement of Work, a party may terminate an Official Order or Statement of Work by written notice to the other party if a party commits a material breach of this Agreement with respect of that Official Order or Statement of Work and fails to remedy that breach within 30 days of receiving notice from the other party requiring it to do so.

Waiver and acknowledgment

- 8.7 The Customer expressly waives any rights it may have to terminate this Agreement or any Official Order or Statement of Work other than as contemplated by clause 8.

After termination

- 8.8 On termination of this Agreement or any part of it, and in addition to any other rights the Supplier may have:
 - (a) the Supplier may issue an invoice for Hardware, Software and/or Services or any other work not previously invoiced;
 - (b) the Customer must pay all unpaid invoices whether or not due, including any invoice issued under clause 8.8(a);
 - (c) if termination was caused by the default of the Customer the Customer is not entitled to a refund of any Service Fees, Software Fees, and Licence Fees paid in advance;

- (d) the Supplier may delete or destroy the Customer Material and data of the Customer from its computer systems or otherwise in its possession or control provided it has first notified the Customer of its intention to do so and allowed the Customer a reasonable period of time (not exceeding 14 days) to extract such Customer Material and information. Where the Customer requires an additional period of time, the Supplier may charge the Customer at its then current rate of Fees for any retention or extraction of this Customer Material or data;
- (e) accrued rights or remedies of a party are not affected;
- (f) each party must deliver to the other party or destroy (as instructed by the other party) any of the party's Confidential Information or other property in its care, custody or control and must not retain any copies of, or other reproductions or extracts of, the Confidential Information, except as it may retain in accordance with prudent business practices. Any retained material remains subject to the provisions of this Agreement without any time limit;
- (g) for Hardware not ordered on the Customer's behalf, the Supplier may:
 - (i) refund any fees paid for such Hardware; or
 - (ii) cancel any invoice issued for such Hardware;
- (h) for Hardware ordered on the Customer's behalf but not delivered, the Supplier may:
 - (i) cancel any Services associated with such Hardware and issue an invoice in respect of any Hardware Fees payable for such Hardware; and
 - (ii) deliver the Hardware to the Customer's nominated delivery address.
- (i) If the Supplier has agreed to accept payment of Hardware by instalments, and the Customer has not paid the applicable Hardware Fees in full by the date of termination, the Supplier may, at its option:
 - (i) at the Customer's expense, retake possession of the Hardware and for this purpose may enter the Customer's premises or any premises at which the Hardware is located; or
 - (ii) demand payment in full of all outstanding instalments of the Hardware Fees,
 and the Customer must deliver such Hardware or pay such Hardware Fees within 7 days of being so notified by the Supplier.

Survival

- 8.9 Termination or expiry of this Agreement or any part of it will not affect clauses 2.1(a), 2.7, 2.9 5, 8 to 13 and 15 to 17 or any provision of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination.

Non-solicitation

- 8.10 During the Term of this Agreement and for a period of 3 months after the Term, the Customer must not:
 - (a) entice away or attempt to entice away any one or more of the Supplier's employees or contractors involved in the delivery of Supplies or Services under this Agreement; or
 - (b) engage or employ any person for a period of 3 months after the person ceases to be engaged or employed by the Supplier without the prior consent of the Supplier.
- 8.11 Clause 8.10(b) does not apply in relation to a person who responds to a genuine published advertisement made by the Supplier.
- 8.12 The Customer acknowledges that the restraint in clause 8.10 is reasonable in its extent and goes no further than is reasonably necessary to protect the Supplier's interested in maintaining employees and contractors.

9. Confidential Information

Obligations of confidence

9.1 Each party agrees to keep confidential, and not to use or disclose other than as permitted by this Agreement, any Confidential Information of the other party provided to or obtained by that party before or after entry into this Agreement.

Exclusions

9.2 The obligations of confidence in clause 9.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (ii) before disclosing any information, gives a reasonable amount of written notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain that Confidential Information in confidence;
- (b) that is in the public domain except as a result of a breach of this Agreement or other obligation of confidence; or
- (c) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

Restriction on disclosure

9.3 Each party may use and disclose Confidential Information of the other party only:

- (a) with the prior written consent of the other party; or
- (b) to that party's directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this Agreement.

9.4 If either party discloses Confidential Information under clause 9.3, that party must ensure that the information is kept confidential by the person to whom it is disclosed and is only used for the purposes of performing the obligations under this Agreement.

De-identified data

9.5 Despite any other clause in this Agreement, the Supplier and its suppliers and contractors may use, disclose, and exploit any data which is de-identified, and is no longer deemed Personal Information under the Privacy Laws.

10. Injunctive relief

10.1 The Customer acknowledges that:

- (a) the Supplier may suffer financial and other loss and damage if any unauthorised act occurs in relation to the Supplier's Confidential Information or the Supplier's Intellectual Property Rights, and that monetary damages would be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, the Supplier is entitled to injunctive relief to prevent a breach of, and to compel specific performance of clauses 5 and 9.

11. Privacy

Use of Personal Information

11.1 The Customer must process, use and disclose all Personal Information:

- (a) in compliance with the Privacy Laws (regardless of whether or not the Customer is otherwise obliged to comply with the Privacy Laws); and
- (b) only for the purposes of performing its obligations under this Agreement.

11.2 The Customer acknowledges that the Supplier may process, collect, use and disclose Personal Information in accordance with the Supplier's privacy policy available on its website.

Treatment of Personal Information

11.3 The Customer must obtain any necessary consents from, and make any necessary disclosures to, all relevant individuals for the purpose of disclosing their Personal Information to the Supplier under this Agreement, including consent for the Supplier transferring Personal Information overseas in connection with the Hardware, Software, and Services, and must otherwise comply in all respects with its obligations under the Privacy Act in respect of any Personal Information disclosed to the Supplier.

11.4 The Customer must give all assistance required by the Supplier from time to time in relation to compliance by the Supplier with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Privacy Commissioner regarding the Personal Information disclosed to the Supplier under this Agreement.

11.5 The Customer indemnifies the Supplier against all costs, expenses, losses, proceedings and claims of any nature suffered, brought or incurred directly or indirectly as a result of a breach by the Customer of its obligations under clause 11.

11.6 The Customer must:

- (a) comply with all reasonable directions of the Supplier, in connection with the obligations of the parties under the Privacy Laws or in connection with policies (including privacy policies) developed by the Supplier from time to time to comply with the Privacy Laws;
- (b) comply with any direction of the Supplier, or an individual to whom the Personal Information relates, about access to, or correction of, Personal Information;
- (c) comply with any request or direction of the Supplier, arising directly from or in connection with the exercise of the functions of the Privacy Commissioner under the Privacy Laws, or otherwise including the issuing of any guideline about the handling of Personal Information; and
- (d) not disclose Personal Information overseas without the prior written consent of the Supplier, and if that consent is given, the Customer must take reasonable steps to ensure the recipient complies with the Privacy Laws and is required to comply with the directions of the Supplier about Personal Information.

11.7 The Customer must immediately notify the Supplier if it becomes aware that a disclosure of Personal Information may be required by law.

The Customer's duty

11.8 The Customer must take all necessary steps to ensure that:

- (a) it uses and discloses Personal Information only as required by the Supplier's privacy policy and the Privacy Laws and solely for the purpose of performing its obligations under this Agreement;
- (b) the Personal Information it uses and discloses is protected against loss and against unauthorised access, use, interference, modification, disclosure or other misuse; and
- (c) only personnel authorised by the Supplier have access to the Personal Information.

11.9 The Customer must notify the Supplier immediately if it becomes aware of any breach of clause 11.

Data Breach

11.10 Clauses 11.11 to 11.13 apply if:

- (a) there is any unauthorised access to, or unauthorised disclosure of, any Personal Information; or
- (b) any Personal Information held by either party in connection with this Agreement is lost in circumstances where unauthorised access to, or unauthorised disclosure of, Personal Information is likely to occur (a **Data Breach**).

11.11 If the Supplier becomes aware of any actual or suspected Data Breach, the Supplier will, as soon as reasonably practicable:

- (a) notify the Customer in writing of the Data Breach;
- (b) undertake an investigation to determine the extent to which the Data Breach concerns any Personal Information and providing the results of the investigation to the Customer; and
- (c) implement any reasonable mitigation strategies to reduce the impact of the Data Breach or the likelihood or impact of any future similar incident.

11.12 The Supplier will be entitled to charge reasonable fees for its services under clause 11.11 if the Data Breach is not caused as a direct result of the Supplier's negligence.

11.13 In respect of any Data Breach concerning any Personal Information, and without limiting each party's obligations under the Privacy Legislation, including in respect of Divisions 2 and 3 of Part IIIC of the Privacy Act, the parties agree that the Customer shall have sole responsibility for:

- (a) determining whether a Data Breach amounts to an Eligible Data Breach;
- (b) carrying out any assessment of a suspected Eligible Data Breach required by the Privacy Act, and the Supplier will cooperate with the Customer's reasonable requests in relation to any such assessment;
- (c) preparing any statement of notification required by the Privacy Act, and the Supplier must cooperate with the Customer's reasonable requests in relation to any such statement; and
- (d) carrying out any notification required by the Privacy Act, and the Supplier must cooperate with the Customer's reasonable requests in relation to any such notification.

12. Limitation of Liability

Limitation

12.1 Subject to clauses 12.4 and 12.7, the total liability of the Supplier for Loss or Damage suffered by the Customer in connection with this Agreement is limited in the aggregate to the total Fees paid in the 12 month period prior to the date the claim arose.

12.2 The limitation set out in clause 12.1 is an aggregate limit for all claims, whenever made.

12.3 Any claim the Customer makes against the Supplier for Loss or Damage in connection with this Agreement must (without limiting clause 11.5) be made within 2 years of the Customer becoming entitled to make the claim and any claim not made within 2 years is absolutely barred.

Consequential Loss

12.4 Subject to clause 12.7, the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with this Agreement.

12.5 Consequential Loss in clause 12.4 means:

- (a) loss of bargain;
- (b) loss of revenues;
- (c) loss of reputation;
- (d) indirect loss;

- (e) loss of profits;
- (f) consequential loss;
- (g) loss of actual or anticipated savings;
- (h) lost opportunities, including opportunities to enter into arrangements with third parties;
- (i) loss or damage in connection with claims against the Customer by third parties; and
- (j) loss or corruption of data.

Australian consumer law

12.6 Except as contemplated by clause 12.7, nothing in this Agreement is intended to limit any rights of the Customer under the Australian Consumer Law.

12.7 If the Australian Consumer Law applies to the supply of goods or services under this Agreement, the Supplier acknowledges and agrees that its goods and services come with a guarantee that cannot be excluded under the Australian Consumer Law, and that the following mandatory notice under section 102(1) of the Australian Consumer Law that must be provided to the Customer will apply:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Force Majeure

12.8 The Supplier will not be:

- (a) in breach of this Agreement as a result of; or
- (b) liable for,

any failure or delay in the performance of the Supplier's obligations under this Agreement to the extent that the failure or delay is wholly or partially caused, directly, or indirectly, by a Force Majeure Event or any act or omission of the Customer.

13. Indemnity

Customer indemnity

13.1 The Customer is liable for, and indemnifies the Supplier from and against, all Loss or Damage incurred or suffered by the Supplier however caused in connection with:

- (a) any breach of this Agreement or any part of it, or the act, error or negligence of the Customer or anyone purporting to act on the Customer's behalf;
- (b) the Customer's misuse of the Hardware, Supplier Materials, Deliverables, or Developed Materials;
- (c) the Customer's breach of any law or infringement of any third party rights;
- (d) the Customer's instructions to the Supplier where such instructions cause the Supplier to be in breach of any law or infringement of any third party rights;
- (e) any act, omission, error, or negligence of an End User;
- (f) any third party claims against the Supplier in connection with the Hardware, Software and/or Services including any unavailability of the Hardware, Software and/or Services;

- (g) personal injury or death of any person (including without limitation any employee of the Customer) in connection with the Customer's use of the Hardware, Software and/or Services;
- (h) damage to property in connection with:
 - (i) the use of the Hardware, Software and/or Services; or
 - (ii) any Developed Materials where such materials have been adapted or modified by the Customer or anyone whom the Customer allowed to adapt or modify the Developed Materials, whether deliberately or otherwise; or
- (i) any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with the Customer Material, or the Hardware, Software and/or Services.

Continuing obligation

- 13.2 Each indemnity in this Agreement is a continuing obligation notwithstanding:
- (a) any settlement of account; or
 - (b) the occurrence of any other thing,
- and it is not necessary for the Supplier to incur expense or make payment before enforcing or making a claim under an indemnity.

14. Costs and taxes

Costs

- 14.1 Each party bears its own costs in relation to the preparation and signing of this Agreement.

Stamp duty

- 14.2 The Customer must pay all stamp duty (including penalties and interest) assessed or payable in connection with this Agreement.

Other taxes

- 14.3 Subject to clause 14.5, the Customer must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of this Agreement.

GST

- 14.4 Any words capitalised in clause 14 and not already defined in clause 13 have the meaning given to those words in the GST Act.
- 14.5 Except under clause 13, the consideration for a Supply made under or in connection with this Agreement does not include GST.
- 14.6 If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (a) the Recipient must pay the GST Act Supplier an amount equal to the total GST for the Supply (in addition to, and in the same manner as, the consideration otherwise payable under this Agreement for that Supply); and
 - (b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- 14.7 For clarity, the GST payable under clause 13.6 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
- 14.8 If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 14.9 Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a

Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

- 14.10 Where a Supply made under or in connection with this Agreement is a Progressive or Periodic Supply, clause 13.6 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

15. Dispute resolution

Dispute

- 15.1 Clause 15 applies to any dispute which arises between the Customer and the Supplier in connection with this Agreement.

Dispute Notice

- 15.2 If either the Customer or the Supplier considers that a Dispute has arisen, it may issue a notice to the other party, setting out reasonable particulars of the matter in dispute.
- 15.3 Subject to clause 15.7, the Customer and the Supplier must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with clause 15.

First Level Discussions

- 15.4 The Customer and the Supplier must promptly hold discussions between representatives of each party after the issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**).

Second Level Discussions

- 15.5 If the Dispute has not been resolved within five Business Days after commencement of First Level Discussions, the Customer and the Supplier must attempt to resolve the Dispute by holding discussions between a senior executive of the Customer and a senior executive of the Supplier (**Second Level Discussions**).
- 15.6 If the Dispute has not been resolved within ten Business Days after commencement of Second Level Discussions, either party may pursue its rights and remedies under this Agreement as it sees fit.

Court proceedings

- 15.7 Notwithstanding anything in clause 15, a party may at any time commence court proceedings in relation to a dispute or claim arising in connection with this Agreement where that party seeks urgent interlocutory relief.

16. General

- 16.1 The laws of Queensland, Australia govern this Agreement.
- 16.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- 16.3 Any notice given under this Agreement will be in writing by email and will be deemed to have been delivered on transmission.
- 16.4 The Customer must not assign, in whole or in part, or novate the Customer's rights and obligations under this Agreement without the prior written consent of the Supplier.
- 16.5 The Supplier may assign its interest under this Agreement.
- 16.6 Time is not of the essence in the performance of obligations under this Agreement except in relation to performance of payment obligations.
- 16.7 Unless expressly stated otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

- 16.8 A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.
- 16.9 This Agreement supersedes all previous agreements about its subject matter. This Agreement embodies the entire agreement between the parties.
- 16.10 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this Agreement.
- 16.11 Except as expressly set out in this Agreement, each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this Agreement.
- 16.12 The Supplier may subcontract the performance of all or any part of the Supplier's obligations under this Agreement.
- 16.13 A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 16.14 The Customer must comply with all applicable laws in connection with receipt of the Hardware, Software and/or Services.
- 16.15 This Agreement may be executed in any number of counterparts and all counterparts together make one instrument.
- 16.16 Without limiting any other remedies available to the Supplier, if the Customer fails to pay any amount payable under this Agreement, the Customer must pay Interest on that amount.

17. Definitions and interpretation

17.1 In this Agreement:

Agreement means the Master Agreement, the Official Orders and/or Statements of Work and the Additional Terms.

Additional Terms means an annexure of terms applicable to specific Hardware, Software and/or Services attached to the Master Agreement or provided to the Customer from time to time.

Assumptions means any assumptions which the Supplier is relying on in provision of the Consulting Services and Deliverables as set out in a Statement of Work.

Australian Consumer Law means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Business Day means a day that is not Saturday, Sunday, or public holiday in Queensland, Australia.

Commencement Date means the date as set out in the Official Order or Statement of Work.

Confidential Information of a party means the terms and existence of this Agreement and any information:

- (a) relating to the business and affairs of that party;
- (b) relating to the Customers, clients, employees, sub- contractors or other persons doing business with that party;
- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party; or
- (e) which the other party knows or ought to know, is confidential, and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party.

Consequential Loss has the meaning given to that term by clause 12.5.

Consulting Services means services specified in a Statement of Work.

Corporations Act means Corporations Act 2001 (Cth).

CPI means the percentage increase in the Consumer Price Index (All Groups) for the weighted average of all capital cities of Australia published by the Australian Bureau of Statistics in the preceding 12 month period.

Customer means the customer nominated in an Official Order or Statement of Work.

Customer Data means any data provided by the Customer to the Supplier or used by the Customer in connection with the Software.

Customer Material means the Customer Data and any material provided by or to which access is given by the Customer to the Supplier for the purposes of this Agreement including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trademarks, logos, schedules and data stored by any means.

Customer Responsibilities means the responsibilities identified as such in a Statement of Work.

Default Event means the occurrence of any one or more of the following events:

- (a) default by the Customer in the payment of any amount which is payable to the Supplier by the Customer under this document or in the observance or performance of any material obligation to be observed or performed by the Customer under this Agreement;
- (b) termination of this Agreement;
- (c) the Customer is presumed insolvent within the meaning of section 459C(2) of the Corporations Act, is placed into liquidation, has an administrator or a receiver and manager or receiver appointed or a mortgagee takes possession of any substantial asset(s) of the Customer or if any proceedings are issued or an event occurs intended to lead to any of those consequences or if any other action relating to insolvent debtors occurs in relation to the Customer; or
- (d) the Customer disputes the terms of any title retention or granting of a Security Interest provision applicable to any Hardware supplied to the Customer by the Supplier, or refuses to return Hardware to the Supplier the return of which the Supplier has demanded under the terms of this Agreement.

Deliverables means a deliverable that the Supplier agrees to provide that is set out in an Official Order or Statement of Work.

Delivery has the meaning set out in clause 2.5.

Delivery Schedule means a guideline for the delivery of any Deliverables as set out in a Statement of Work.

Designated Software means the Software licensed to the Customer by the Supplier under an Official Order for Designated Software.

Designated Software Services means the services specified in an Official Order for Designated Software Services and includes, but is not limited to, Support Services.

Designated System means the server, operating system, and database on which the Designated Software is licensed to be used as identified in a relevant Official Order.

Developed Materials means materials (of any nature) created by, or on behalf of, the Supplier in the course of providing the Consulting Services.

Dispute means a dispute referred to in clause 15.1.

Dispute Notice means a notice referred to in clause 15.2.

Documentation means any document provided by the Supplier to the Customer in connection with the Software.

Eligible Data Breach has the meaning given by Division 2 of Part IIIC of the Privacy Act.

End User means each end user customer of the Customer who uses the Subscription Software Services.

Fees means any Fees specified in an Official Order or Statement of Work executed by the parties, and includes Hardware Fees, Service Fees, Software Fees, and Licence Fees.

Financing Statement and **Financing Charge Statement** have the meanings given to them in the PPSA.

First Level Discussions means discussions referred to in clause 15.4.

Force Majeure Event means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement (other than a payment obligation), and includes:

- (a) a physical natural disaster including fire, flood, lightning or earthquake;
- (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (c) epidemic, pandemic or quarantine restriction;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (f) law taking effect after the date of this Agreement;
- (g) disruption or unavailability of the internet;
- (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and
- (i) failure of a third party service provider to the Supplier to provide Services, including hosting Services.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Act Supplier means the entity making the Supply.

Hardware means any physical goods and related materials that the Customer requests, orders, or purchases from the Supplier from time to time in accordance with this Agreement.

Hardware Fees means the fee for Hardware in an Official Order.

Initial Period means the initial period for a Term Licence and Subscription Software Services specified in the Official Order.

Initial Term means a period of 36 months, unless otherwise specified on the Official Order.

Insolvency Event means any of the following events:

- (a) a controller (as defined in the Corporations Act) is appointed to the party, or over any of the property of the party;
- (b) the party becomes bankrupt;
- (c) a controlling trustee is appointed to the party, or over any of the property of the party;
- (d) the party or the party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt Agreement under part IX Bankruptcy Act;
- (e) the party is unable to pay its debts when they become due and payable;
- (f) the party ceases to carry on business; or
- (g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

- (h) Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition.

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.

Interest means interest on any payment owing under this Agreement calculated:

- (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant interest.

Licence Fees means the fees for the Term Licence.

Loss or Damage includes any loss, damage, liability, penalty, fine, charge, expense, outgoing, payment, or cost of any nature or kind (including all legal and other professional costs on a full indemnity basis), however caused (including by negligence) or arising including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable and includes loss of profits or expected profit and diminution in value.

Master Agreement means the standard terms and conditions set out in the main body of this Agreement.

Official Order means an order for the provision of:

- (a) Hardware; or
 - (b) a Term Licence and/or Subscription Software Services; or
 - (c) Consulting Services; or
 - (d) Other goods and services,
- in accordance with the Supplier's standard format, as notified from time to time.

Payment Schedule means the schedule for payment of the Fees as set out in a Statement of Work.

Personal Information has the meaning given to that term by the Privacy Act.

Personnel means Supplier's employees, secondees, directors, officers, contractors, professional advisers, and agents.

Points means the points which may be earned and redeemed by End Users in accordance with the Agreement between the End User and the Customer.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Privacy Act means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under it, as amended from time to time.

Privacy Laws means:

- (a) the Privacy Act;
- (b) the Australian Privacy Principles (or APPs) contained in schedule 1 Privacy Act; and
- (c) all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

Progressive or Periodic Supply means a Taxable Supply that satisfies the requirements of section 156–5 GST Act.

Purchase Money Security Interest or **PMSI** has the meaning given to it in the PPSA.

Related Body Corporate has the meaning given to that term by section 9 of the Corporations Act.

Rollover Period means the rollover period specified in an Official Order for a Term Licence and/or Subscription Software Services.

Scope of Services means the agreed specifications for the Consulting Services as set out in a Statement of Work, or as varied under the terms of this Agreement.

Second Level Discussions means discussions referred to in clause 15.5.

Security Agreement has the meaning given to it in the PPSA.

Security Interest has the meaning given to it in the PPSA.

Services means the Subscription Software Services, Designated Software Services, and/or Consulting Services as applicable.

Service Fees means the fees for the provision of Services set out in an Official Order or Statement of Work.

Service Site means the location as identified in the relevant Official Order or Statement of Work (as applicable) where the Supplier may be required to provide the Services.

Software means the software program(s) identified in an Official Order or Statement of Work (including all modules of the software program(s)), and any modified, updated, upgraded, or enhanced versions of such program(s) that the Supplier may provide to the Customer under this Agreement.

Software Fees means the fee for the Designated Software in an Official Order or Statement of Work.

Software Site means the location as identified in the relevant Official Order where the Customer is authorised to use the Software or receive the Services.

Source Code means the human-readable version of a software program that can be compiled into executable code.

Statement of Work means a statement of the work proposed for Consulting Services to be performed by the Supplier for the Customer, including without limitation the term, Scope of Services, Deliverables, Fees, Assumptions, Customer Responsibilities, Payment Schedule, and Delivery Schedule.

Subscription Software means the Software licensed to the Customer by the Supplier under a Term Licence.

Subscription Software Services means the services specified in an Official Order for Subscription Software Services and include, but are not limited to, hosting, support and maintenance services.

Supplier means the group of companies controlled by MSL Solutions Limited ABN 120 815 778 irrespective of whether the control is direct or indirect (including through subsidiaries of MSL Solutions Limited) and whether it is because of control of shares, votes at general meetings of shareholders, votes at meetings of directors or the appointment or removal of directors or otherwise.

Supplier Material means any material provided by or to which access is given by the Supplier to the Customer for the purposes of this document including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means and includes the Software.

Support Services means the Supplier's standard support and maintenance services for the Designated Software (including the provision of Updates and Upgrades) as amended from time to time and which may be acquired by the Customer pursuant to this Agreement.

Term means the term contemplated by clause 7.

Term Licence means the granting of a licence by the Supplier to the Customer for the right to use, and direct the use of, the Subscription Software over the Term.

Third Party Material means any material that is owned by a third party including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.

Third Party Product means a software program owned by a third party (Third Party Supplier) and which is licensed by the Supplier to the Customer under this Agreement.

Update means a subsequent release, correction or revision of the Designated Software which the Supplier makes available as part of the Support Services.

Upgrade means a subsequent release of the Designated Software containing improvements or additional functionality, which the Supplier makes available as part of the Support Services.

Usage Report means a report of Customer's usage of the Designated Software, including details of the current licence restriction (for example, the number of maximum concurrent users or named users), in a form to be agreed upon by the parties.

Interpretation

17.2 In this Agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) no rule of construction applies in the interpretation of this Agreement to the disadvantage of the party preparing this Agreement on the basis that it put forward this Agreement or any part of it;
- (c) a reference to a party is a reference to the Supplier or the Customer, and a reference to the parties is a reference to both the Supplier and the Customer; and
- (d) a reference to applicable law is to any relevant law (including any subordinate or delegated legislation or statutory instrument of any kind) of a jurisdiction in or out of Australia, and also to any relevant judgment, order, policy, guideline, official directive, code of conduct, authorisation or request (even if it does not have the force of law) of any government agency or regulatory body, such as a stock exchange, within or outside Australia.

Additional Terms relating to Term Licence and Subscription Software Services

1. Application

These Additional Terms apply to the supply of a Term Licence and Subscription Software Services.

2. Supply

Monitoring, back up and security

2.1 The Customer acknowledges that:

- (a) the Customer must not resupply the Subscription Software and Subscription Software Services to third parties, or permit third parties to access the Subscription Software and Subscription Software Services;
- (b) where the Customer is hosting the Subscription Software Services, the Customer must backup any Customer Data or any other data as often as is necessary to ensure that it can be recovered following an outage of the Subscription Software Services, and the Supplier is not responsible for performing backups;
- (c) the Customer must ensure that its computer and telecommunications network is secure, and the Supplier is not responsible for the security of the Customer Material or the computer and telecommunications network of the Customer;
- (d) the Customer must ensure all usernames, passwords and other sensitive information associated with the Term Licence and Subscription Software Services are kept secure from unauthorised use or access at all times; and
- (e) the Customer must notify the Supplier if there is a security breach or unauthorised access to the Term Licence, Subscription Software, and Subscription Software Services or disclosure of sensitive information including usernames and passwords.

Acknowledgment

2.2 The Customer acknowledges and agrees that:

- (a) the Subscription Software and Subscription Software Services are provided "as is," and we do not guarantee the functionality of the Subscription Software or a particular result from the use or integration of the Subscription Software.
- (b) any timeframes given by the Supplier to the Customer in relation to the supply of the Subscription Software Services are estimates only and are not binding on the Supplier;
- (c) the Subscription Software and Subscription Software Services may contain errors and not all errors or problems can or will be corrected;
- (d) the Supplier is not responsible for the resilience or availability of the communications network over which the Subscription Software and Subscription Software Services are supplied;
- (e) it is the Customer's sole responsibility to determine that the Subscription Software and Subscription Software Services meet the needs of its business;
- (f) the Subscription Software and Subscription Software Services may not be available (including at a certain speed) from time to time; and
- (g) To the extent permitted by law, the Supplier expressly disclaims any responsibility for the loss or damage, including personal injury or death, resulting from the use of the Subscription Software or any unauthorised access of Customer Data.

Customer requirements

2.3 The Customer must:

- (a) only use the Software for the purpose for which it has been developed;
- (b) provide the Supplier with any information and assistance necessary to enable the Supplier to provide the Term Licence and Subscription Software Services;
- (c) procure that each End User enters into an agreement with the Customer regarding the use of the Subscription Software Services on terms acceptable to the Supplier;
- (d) have all resources necessary to receive the Subscription Software Services, including hardware, software, telecommunication resources and internet access acceptable to the Supplier;
- (e) give the Supplier any Customer Data requested by the Supplier in a form acceptable to the Supplier;
- (f) without limiting clause 10 of the Master Agreement (Privacy), ensure that the Customer has necessary consents for the Supplier to store and use any Personal Information entered in the Subscription Software Services in the manner contemplated by these Additional Terms, including to transfer that Personal Information outside Australia;
- (g) comply with the recommendations of the Supplier from time to time in relation to the Customer's network and use of the Subscription Software and Subscription Software Services including back up routines and virus checking;
- (h) comply with the Supplier's fair use policies;
- (i) give the Supplier reasonable access to the Customer's network including by installation of any remote support tools and hardware monitoring and reporting tools nominated by the Supplier from time to time; and
- (j) cooperate with the Supplier, act reasonably and follow the Supplier's directions in connection with these Additional Terms and receipt of the Subscription Software Services.

2.4 The Customer must not, and must ensure each End User does not:

- (b) perform any illegal or unlawful acts in connection with receipt or use of the Subscription Software or Subscription Software Services; or
- (c) use the Subscription Software or Subscription Software Services if the Customer or End User is a direct competitor to any of the Subscription Software or Subscription Software Services, or a sales agent, consultant or distributor for a direct competitor of any Subscription Software or Subscription Software Services.

2.5 The Customer acknowledges and agrees that:

- (a) if the Customer does not comply with either of clauses 2.3 or 2.4 then the Supplier is not obliged to supply the Term Licence or Subscription Software Services to the Customer; and
- (b) if the Customer does not have the minimum hardware and communications infrastructure recommended by the Supplier, the Customer's ability to receive the Term Licence and Subscription Software Services may be diminished.

Platform

2.6 Where the Subscription Software and Subscription Software Services are to be incorporated into the Customer's website or digital media platform, the Customer:

- (a) must provide a website and subdomain for the Supplier to provide the Subscription Software and Subscription Software Services;
- (b) must provide access to relevant technical staff to allow the Supplier to incorporate the Platform; and
- (c) may provide updates to the Platform from time to time but is under no obligation to do so.

Service levels

2.7 Any service levels nominated by the Supplier from time to time are non-binding targets only however the Supplier will use best endeavours to meet the service levels.

Suspension

2.8 Without limiting any other remedy the Supplier may have under these Additional Terms or at law, the Supplier may suspend the Customer's access to the Subscription Software and Subscription Software Services at any time including if:

- (a) the Supplier suspects that the Customer has done or may do any of the things described in clause 2.4;
- (b) a third party alleges that the Customer has done or threatened to do any of the things described in clause 2.4; or
- (c) the Supplier receives a request or notice from a third party (including any regulatory body) requiring the Supplier to cease providing the Subscription Software and Subscription Software Services to the Customer or remove any content the Customer makes available through the Subscription Software and Subscription Software Services.

Delivery and acceptance

2.9 Where the Supplier submits to the Customer any Deliverables for testing, each deliverable will be deemed accepted if:

- (d) no certificate of acceptance or rejection has been received by the Supplier within 2 Business Days after the completion of an acceptance testing period; or
- (e) if the Deliverable is placed into live production use by the Customer.

3. Subscription services related to End Users

3.1 The following terms apply where the Subscription Software Services relate to End Users who are members or customers of the Customer, and those services reference or effect loyalty programs associated with those members or customers.

Eligibility of membership

- 3.2 The Customer is responsible for determining which individuals are eligible to use the Subscription Software Services as an End User and for importing the End User's information (including Personal Information) into the Platform.
- 3.3 The Customer is responsible for all data entry and data maintenance of the Subscription Software Services.
- 3.4 The Customer will actively promote the Subscription Software Services to End Users, in accordance with a marketing campaign determined and agreed by both Supplier and Customer, including the promotion of associated advertising, on digital signage throughout the Customers premises;

Points

3.5 The Customer acknowledges and agrees (to the extent applicable), points have earn and redemption methods and rates which may be limited, withdrawn, modified, cancelled, increased, decreased or otherwise amended from time to time.

3.6 In the course of providing the Customer the Subscription Software Services, the Supplier will provide the Customer with appropriate access to the Platform and the Customer Services to facilitate the issuance and redemption of Points.

Redemption providers

- 3.7 In the course of providing the Subscription Software Services, the Supplier may provide the Customer with access to a variety of redemption providers for End Users to issue and redeem Points.
- 3.8 The Supplier is not responsible for, or liable to, any redemption provider or End User in relation to the issuance and redemption of Points.

4. Support Services

- 4.1 The Supplier will provide the Support Services while the Customer has complied with their obligation for the payment of Fees, as outlined in clause 3 of the Master Agreement (**Fees**).
- 4.2 The Support Services will commence on live production use of the Software.

5. Term and termination

5.1 These Additional Terms commence on the date set out in an Official Order and continue for the Initial Period and each Rollover Period unless terminated earlier under clause 5 of these Additional Terms or clause 7 of the Master Agreement (**Term and Termination**).

Termination by notice at end of period

5.2 Either party may terminate an Official Order by giving at least three months' written notice to the other party prior to commencement of a Rollover Period, in which case the termination is effective immediately upon the expiry of the current period.

After termination

- 5.3 On termination of any Official Order, and in addition to any other rights the Supplier may have:
 - (f) the Customer's right to use the Subscription Software and Subscription Software Services will be immediately withdrawn; and
 - (g) any Points held by End Users will remain an obligation between the End User and the Customer.

Renewal

5.4 On renewal of the Term for each Rollover Period, the Fees applicable to the Subscription Software Services will increase by the higher of CPI and 2.5%.

Additional Terms relating to Supply of Designated Software and Designated Software Service

1. Application

These Additional Terms apply to the Supply of Designated Software and Designated Software Services.

2. Supply

Acknowledgment

2.1 The Customer acknowledges and agrees that:

- (a) any timeframes given by the Supplier to the Customer in relation to the supply of the Designated Software and Designated Software Services are estimates only and are not binding on the Supplier;
- (b) the Designated Software and Designated Software Services may contain errors and not all errors or problems can or will be corrected;
- (c) it is the Customer's sole responsibility to determine that the Designated Software and Designated Software Services meet the needs of its business; and
- (d) the Designated Software Services may not be available from time to time.

Delivery and acceptance

2.2 Where the Supplier submits to the Customer any Deliverables for testing, each deliverable will be deemed accepted if:

- (a) no certificate of acceptance or rejection has been received by the Supplier within 2 Business Days after the completion of the acceptance testing period; or
- (b) if the Deliverable is placed into live production use by the Customer.

Inspections

2.3 The Customer must allow the Supplier or its nominated representatives to:

- (a) remotely monitor the Customer's use of the Designated System;
- (b) access the Customer's premises; and
- (c) inspect and copy the Customer's relevant records, documents, and equipment,

to verify the Customer's compliance with these Additional Terms.

2.4 The Supplier will give the Customer at least 5 days' written notice of any physical inspection, which must occur during the Customer's normal business hours in a manner that does not unreasonably interfere with the Customer's normal operations.

2.5 For the purposes of complying with clause 2.4, the Customer must promptly give the Supplier, or the Supplier's nominated representatives, any assistance they require.

2.6 If the inspection or verification contemplated by clause 2.4 reveals that the Customer has failed to comply with the Additional Terms, then:

- (a) the Supplier's costs in connection with that inspection or verification must be paid by the Customer;
- (b) any amounts including the Fees which have been underpaid by the Customer are deemed to be overdue Fees and must be immediately paid to the Supplier together with Interest.

Back up and security

2.7 The Customer acknowledges that:

- (a) the Customer must not resupply the Designated Software and Designated Software Services to third parties, or permit third parties to access the Designated Software and Designated Software Services;
- (b) the Customer must backup any Customer Data or any other data as often as is necessary, and the Supplier is not responsible for performing backups;
- (c) the Customer must ensure that its computer and telecommunications network is secure, and the Supplier is not responsible for the security of the Customer Material or the computer and telecommunications network of the Customer;
- (d) the Customer must ensure all usernames, passwords and other sensitive information associated with the Designated Software and Designated Software Services are kept secure from unauthorised use or access at all times; and
- (e) the Customer must notify the Supplier if there is a security breach, unauthorised access to the Designated Software and Designated Software Services or disclosure of sensitive information including usernames and passwords.

Customer requirements

2.8 The Customer must:

- (a) provide the Supplier with any information and assistance necessary to enable the Supplier to provide the Designated Software and Designated Software Services;
- (b) have all resources necessary to receive the Designated Software Services, including hardware, software, telecommunication resources and internet access acceptable to the Supplier;
- (c) give the Supplier any Customer Data requested by the Supplier in a form acceptable to the Supplier;
- (d) without limiting clause 10 of the Master Agreement (Privacy), ensure that the Customer has necessary consents for the Supplier to store and use any Personal Information entered in the Designated Software or Designated Software Services in the manner contemplated by these Additional Terms, including to transfer that Personal Information outside Australia;
- (e) comply with the recommendations of the Supplier from time to time in relation to the Customer's network and use of the Designated Software and Designated Software Services including back up routines and virus checking;
- (f) comply with the Supplier's fair use policies;
- (g) give the Supplier reasonable access to the Customer's network including by installation of any remote support tools and hardware monitoring and reporting tools nominated by the Supplier from time to time; and
- (h) cooperate with the Supplier, act reasonably and follow the Supplier's directions in connection with these Additional Terms and receipt of the Designated Software Services.

2.9 The Customer must not:

- (a) perform any illegal or unlawful acts in connection with receipt or use of the Designated Software and Designated Software Services; and
- (b) use the Designated Software and Designated Software Services if the Customer is a direct competitor to any of the Designated Software and Designated Software Services, or a sales agent, consultant or distributor for a direct competitor of any Designated Software and Designated Software Services.

2.10 The Customer acknowledges and agrees that:

- (a) if the Customer does not comply with either of clauses 2.8 or 2.9 then the Supplier is not obliged to supply the Designated

- Software and Designated Software Services to the Customer; and
- (b) if the Customer does not have the minimum hardware and communications infrastructure recommended by the Supplier, the Customer's ability to receive the Designated Software and Designated Software Services may be diminished.

Suspension

- 2.11 Without limiting any other remedy the Supplier may have under these Additional Terms or at law, the Supplier may suspend the Customer's access to the Designated Software and Designated Software Services at any time including if:
- (a) the Supplier suspects that the Customer has done or may do any of the things described in clause 2.9;
- (b) a third party alleges that the Customer has done or threatened to do any of the things described in clause 2.9; or
- (c) the Supplier receives a request or notice from a third party (including any regulatory body) requiring the Supplier to cease providing the Designated Software and Designated Software Services to the Customer or remove any content the Customer makes available through the Designated Software and Designated Software Services.

3. Licence

- 3.1 Subject to clause 3.2, the Supplier grants to Customer a non-exclusive, non-transferable licence for the term set out in an Official Order to use the Designated Software solely for Customer's internal business purposes on the Designated System at the Site in accordance with the Documentation and any other the restrictions in an Official Order.

Restrictions on use

- 3.2 Customer must not:
- (a) modify, adapt, alter, translate, or create derivative works from the Designated Software or Source Code;
- (b) merge the Designated Software with other software;
- (c) sublicense, lease, rent, loan, or otherwise transfer the Designated Software to any third party reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for the Designated Software;
- (d) otherwise use or copy the Designated Software or the Source Code except that Customer may make a reasonable number of copies of the Designated Software solely for backup or archival purposes. All copies of the Designated Software will remain subject to the terms of this agreement;
- (e) publish the results of any benchmark tests run on the Designated Software or any component of the Designated Software;
- (f) use the Designated Software to provide application service provider (ASP) services or bureau services;
- (g) use the Designated Software to develop a product that is competitive with the Designated Software;
- (h) enable or use functionality in the Designated Software that is not licensed to Customer under an Official Order,

without the Supplier's prior written consent.

- 3.3 In the event that the Customer does any of the acts contemplated by clause 3.2 without the Supplier's consent, the warranty under clause 7 is null and void.
- 3.4 If the Customer requires use of the Source Code to develop an integration with the Designated Software, the Customer must send a written request to the Supplier identifying relevant details of the product with which integration is sought and the nature of the

information required. Upon receipt of that notice, the Supplier, at its sole discretion, may make available to the Customer the information that may reasonably be required to allow the Customer to develop the integration.

Use of database

- 3.5 The Supplier reserves the right to access and use the database and the information contained in the database in any manner it considers necessary in order to provide the Support Services and undertake other commercial activities, subject at all times to clause 10 of the Master Agreement (Privacy).

Delivery

- 3.6 As soon as practicable after an Official Order pursuant to these Additional Terms is signed, the Supplier will deliver to the Customer the current version of the Designated Software.
- 3.7 Without limiting the warranties in clause 7, the Designated Software will be delivered to the Customer via a delivery source selected by the Supplier, F.O.B. the Supplier's offices.

4. Support Services

- 4.1 This clause 4 applies if an Official Order indicates that Support Services are to be provided.
- 4.2 The Support Services will commence on delivery of the Designated Software and will continue for the term set out in an Official Order unless terminated earlier under clause 4.3 of these Additional Terms.
- 4.3 Either party may terminate the Support Services, by giving the other party written notice at least 90 days' prior notice.
- 4.4 Unless notice is given under clause 4.3, the Supplier will provide the Support Services while the Customer has complied with their obligation for the payment of Fees, as outlined in clause 3 of the Master Agreement (Fees) or until termination of the Official Order under which they are provided.
- 4.5 On an annual basis, the Fees applicable to the Support Services will increase by the higher of CPI and 2.5%.
- 4.6 The Customer's right to receive Updates and Upgrades of the Designated Software is conditional upon the payment of all Fees in accordance with clause 3 of the Master Agreement (Fees). The Supplier may charge additional Fees for Third Party Products incorporated in an Upgrade.
- 4.7 In addition to any other rights the Supplier may have, the Supplier may, on 12 months' written notice to the Customer:
- (a) cease providing support for a particular Designated System; and
- (b) cease providing Support Services for a version of the Designated Software if that version of the Designated Software is not one of the two most recent major releases of the Designated Software made available by the Supplier.
- 4.8 If the Customer has terminated the Support Services under clause 4.3 and wishes to reinstate the Support Services during the term of the Official Order:
- (a) the Customer must pay to the Suppliers a reinstatement fee in addition to the Fees applicable to the Support Services for the new term of Support Services;
- (b) The commencement date for the new term will be the anniversary of the Commencement Date of the original Official Order under which the Support Services were first purchased for the Designated Software; and
- (c) the reinstatement fee will be:

- (i) payable in advance; and
- (ii) calculated at the then current rates applicable for the Designated Software; and
- (iii) equivalent to 1/12th of one full year's worth of Fees applicable to the Support Services multiplied by the number of full or partial months between the last day of Support Services prior to termination and the commencement date of the new term as defined in clause 4.8(b).

5. Fees

The Customer must pay the Fees specified in the Official Order in accordance with the Payment Schedule and clause 3 of the Master Agreement (Fees).

6. Infringement Claims

- 6.1 Subject to clause 6.2, the Supplier will defend and indemnify the Customer against a successful third party claim that the Designated Software infringes an Intellectual Property Right of any third party, provided that:
- (a) the Customer notifies the Supplier in writing within 30 days after it becomes aware of the claim;
 - (b) the Customer provides the Supplier with sole control of the defence and all related settlement negotiations (other than negotiations that may impose an obligation or liability on the Customer); and
 - (c) the Customer provides the Supplier with the assistance, information and authority necessary to perform its obligations under this clause. Reasonable and pre-agreed out-of-pocket expenses incurred by the Customer in providing such assistance will be reimbursed by the Supplier.
- 6.2 The Supplier is not liable for any claim of infringement based on use:
- (a) of a superseded version of the Designated Software where the Customer has had an opportunity to adopt an upgraded version of the Designated Software;
 - (b) of the Designated Software which the Customer or anyone it has authorised on its behalf has altered or modified;
 - (c) not contemplated within the Documentation.
- 6.3 If the Supplier agrees that the Designated Software is infringing on a third party's Intellectual Property Rights, the Supplier will have the option, at its expense, to:
- (a) modify the Designated Software to be non-infringing; or
 - (b) obtain for the Customer a licence to continue using the Designated Software; or
 - (c) terminate the Official Order to the extent that it relates to the infringing portion of the Designated Software, and may pursue its rights at law.
- 6.4 This clause 6 contains the Supplier's entire liability and the Customer's exclusive remedy for any claims of infringement.

7. Warranties

Media

- 7.1 The Supplier warrants that the media on which the Designated Software is provided to Customer will be free of defects in materials and workmanship under normal use for a period of 90 days after delivery of the Designated Software to Customer.

Performance

- 7.2 Whilst the Customer is receiving Support Services, the Supplier:
- (a) will ensure that the Designated Software, when used as permitted by the Supplier and in accordance with the instructions in the Documentation (including use on the Designated System), will operate substantially as described in the Documentation;
 - (b) does not warrant the Customer's use of the Designated Software will be error-free or uninterrupted;
 - (c) will, at no additional cost and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Designated Software reported to the Supplier.
- 7.3 The warranty under clause 7.2 is immediately void in the event of the Customer breaching clause 3.2 of these Additional Terms.

Third Party Products

- 7.4 The Supplier warrants that it has and will continue to have the necessary rights from Third Party Suppliers to grant licences to the Customer to use the Third Party Products.
- 7.5 The Customer acknowledges that Fees for Support Services for Third Party Products are based on the fees charged to the Supplier by the Third Party Supplier. The Supplier reserves its right to pass on Third Party Supplier fee increases.
- 7.6 The Customer acknowledges that it is the Customer's responsibility to monitor its usage of the Software (including Third Party Products) to ensure that it is properly, legally licensed. Any increase in the Customer's usage of the Software over and above the relevant restriction in an Official may require an increase in the number of licences for its Third Party Products.
- 7.7 To the extent that Third Party Products are provided to the Customer pursuant to these Additional Terms, the warranties and indemnities provided to the Customer are limited to those that the Supplier is able to obtain from the Third Party Supplier.

8. Term and termination

Term

- 8.1 These Additional Terms commence on the date set out in an Official Order and continue for the term set out in the Official Order unless terminated earlier in accordance with clause 7 of the Master Agreement (Term and Termination).

After termination

- 8.2 On termination of these Additional Terms, and in addition to any other rights the Supplier may have:
- (a) the Customer's right to use to the Designated Software and Designated Software Services will be immediately withdrawn; and
 - (b) the Customer must immediately discontinue all use of the Designated Software and return or destroy all copies of the Designated Software and Documentation.

Additional Terms relating to supply of Consulting Services and Deliverables

1. Application

1.1 These Additional Terms apply to the supply of Consulting Services and Deliverables.

2. Supply

Acknowledgement

2.1 The Customer acknowledges and agrees that:

- (a) the Supplier is not responsible for any failure to provide the Consulting Services and Deliverables where any Assumptions are not met, or where a failure results from events that are outside the Supplier's reasonable control;
- (b) a Delivery Schedule is an estimate only and the Supplier does not guarantee any fixed deadlines for the delivery of Consulting Services or Deliverables;
- (c) the Supplier is not responsible for any delays caused by the Customer's delay in providing instructions or necessary access to a Service Site;
- (d) the Consulting Services may contain errors and not all errors or problems can or will be corrected; and
- (e) it is the Customer's sole responsibility to determine that the Consulting Services meet the needs of its business.

Customer Responsibilities

2.2 The Customer must:

- (a) give the Supplier access to the Customer's premises and the Services Site as necessary to enable the Supplier to provide the Consulting Services;
- (b) if the Supplier provides any Consulting Services at a Service Site or other premises of the Customer:
 - (i) be present at its premises or the Service Site at the required times to enable the Supplier to perform its obligations at the times reasonably required by the Supplier;
 - (ii) ensure that it has, where applicable, prepared the Service Site as necessary and by the appropriate time for the Supplier's provision of the Consulting Services;

- (iii) give the Supplier all information and assistance necessary to enable the Supplier to provide the Consulting Services; to enable the Supplier to provide the Consulting Services; follow the reasonable directions of the Supplier in connection with the provision of the Consulting Services;
- (d) ensure that the Supplier is provided with the contact details of Customer personnel that can be contacted at any time and who are authorised to take all steps necessary to facilitate the Supplier supplying the Consulting Services (for example, to authorise corrective action by the Supplier in the event of a critical incident);
- (e) promptly perform any Customer Responsibilities;
- (f) cooperate with the Supplier and act reasonably in connection with the supply of the Consulting Services; and
- (g) without limiting clause 10 of the Master Agreement (Privacy), ensure that the Customer has necessary consents for the Supplier to store and use any Personal Information as necessary to provide the Consulting Services in the manner contemplated by these Additional Terms, including to transfer that Personal Information outside Australia.

2.3 The Customer acknowledges and agrees that, if the Customer does not comply with clause 2.2, then the Supplier is not obliged to supply the Consulting Services to the Customer.

Delivery and acceptance

2.4 Where the Supplier submits to the Customer any Deliverables for testing, each deliverable will be deemed accepted if:

- (a) no certificate of acceptance or rejection has been received by the Supplier within 2 Business Days after the completion of an acceptance testing period; or
- (b) if the Deliverable is placed into live production use by the Customer.

3. Invoices

3.1 The Supplier will invoice the Customer for the Service Fees on the execution of a Statement of Work.

3.2 The Customer must pay an invoice issued under clause 3.1 in accordance with an applicable Payment Schedule.