

MASTER SUPPLY AGREEMENT

THE LEGAL AGREEMENT SET OUT BELOW GOVERNS THE PURCHASE OF PRODUCTS AND SERVICES FROM IOPPOLO & ASSOCIATES. YOU ARE DEEMED TO HAVE AGREED TO THESE TERMS AND CONDITIONS BY HAVING ACCEPTED A SALES ORDER, INVOICE, SCOPE OF WORKS OR UNDERTAKEN AN ONLINE PURCHASE THAT REFERS TO THIS DOCUMENT.

Contents

Standard Terms and Conditions of Supply.....	4
SECTION A - STANDARD TERMS.....	4
1 Operation of this Agreement.....	4
2 Duration.....	4
3 Orders.....	4
4 Supplier's obligations.....	4
5 Client's Obligations.....	5
6 Exclusions.....	5
7 Change Management Procedures.....	6
8 Access.....	7
9 Non-Solicitation.....	7
10 Warranties.....	7
11 Taxes.....	8
12 Payment.....	8
13 Regular review.....	8
14 Force Majeure.....	8
15 Intellectual property and moral rights.....	9
16 Confidentiality.....	10
17 Termination.....	11
18 Title and risk.....	11
19 [Not Used].....	12
20 Indemnity.....	12
21 Liability.....	12
22 Dispute resolution.....	12
23 Notices.....	13
24 Assignment and Novation.....	14
25 Surviving provisions.....	14
26 General.....	14
SECTION B - DEFINITIONS & INTERPRETATION.....	15
1 Definitions.....	15
2 Interpretation.....	17
3 Parties.....	18
SECTION C - SOFTWARE LICENCE.....	19
SECTION D – MAINTENANCE & SUPPORT MODULE.....	20
SECTION E - CONSULTANCY SERVICES MODULE.....	21
1 Module Scope.....	21
2 Definitions.....	21
3 Management of this Agreement and Projects.....	22
4 Personnel.....	22
5 Use of Software and Hardware.....	22
6 Supplier's Warranties.....	23
7 Charges and Payments.....	23
8 Supplier's Warranty and Indemnity re Intellectual Property.....	24
9 Data Privacy.....	24
SECTION F - Service Level Module (SLA).....	25
1 Module Scope.....	25
2 Definitions.....	25

3	Services.....	25
4	Service Availability	25
5	Access	26
6	Service Period and Renewal	26
7	Service Fees.....	26
8	Intellectual Property Rights.....	27
	SECTION H - Exhibits.....	32
	Exhibit A - Product and Services Price List.....	32
	Schedule 1 - Designated System (Computer or Virtual Machine).....	32
	Schedule 2 – Essatto Products Required	32
	Schedule 3 – Maintenance & Support	32
	Schedule 4 – Statement of Work.....	32
	Schedule 5 – Payment Schedule	32
	Schedule 6 – Post Implementation Support.....	32
	Schedule 7 – Service Specifications	32
	Schedule 8 – Access Fees.....	32

Standard Terms and Conditions of Supply

These Standard Terms will apply to the supply of any Licensed Product or Service to the Client by Supplier. Definitions and interpretation are defined in [Section B](#).

SECTION A - STANDARD TERMS

1 Operation of this Agreement

- 1.1 Client enters into this Agreement and each Contract on its own behalf and as agent for each related entity or trading name of Client with respect to the enforcement of any rights and remedies under this Agreement and any Contract.
- 1.2 This Agreement does not oblige the Client to purchase any Licensed Product or Service from Supplier other than as set out in a Contract.
- 1.3 Each Party and its Personnel must comply with all applicable Laws in the performance of this Agreement and any Contract.

2 Duration

- 2.1 This Agreement commences on the Effective Date and continues for the Term unless otherwise earlier terminated in accordance with the provisions of this Agreement.
- 2.2 On the expiry of the Initial Term, this Agreement is automatically extended unless either Party gives the other Party 90 days' written notice of its intention to terminate this Agreement. Subsequently, this Agreement will continue to be automatically extended unless either Party gives 90 days' written notice of its intention to terminate this Agreement, or unless otherwise terminated in accordance with [Clause 17 of SECTION A – STANDARD TERMS](#).

3 Orders

- 3.1 If Client requires the supply of the Licensed Products or Services by Supplier to Client, Client will send an Order to Supplier, whether by itself or through the Supplier's Representative.
- 3.2 When the Parties agree the details of an Order, each Order will result in the formation of a legally binding agreement ("**Contract**") between the Parties for the Licensed Product and/or Service. A Contract will come into force on the Contract Effective Date set out in that Contract for the term of that Contract. If no such date is specified in the Contract, then the effective date of that Contract will be the date on which the Order is executed by the Parties.
- 3.3 The terms and conditions of a Contract between the Parties are:
 - (a) the provisions of this Master Supply Agreement, with the exception of clauses 1-3 inclusive;
 - (b) the provisions of any Modules included in that Contract; and
 - (c) the Order.
- 3.4 To the extent of any inconsistency between any terms of a Contract, the order of priority (from highest to lowest) for the purpose of any interpretation is:
 - (a) an Order (including any documents attached, annexed or referred to in that Order); then
 - (b) any Module, then
 - (c) the Standard Terms.

4 Supplier's obligations

- 4.1 Supplier will, in accordance with a Contract, and in consideration of payment as specified in the Order being made by the Client:
 - (a) supply and deliver the Licensed Product to the Client; and/or
 - (b) supply the Client with access to the Licensed Product for the Access Term; and/or
 - (c) provide the Client with the Services as specified.

- 4.2 In the event that the Client purchases access to the Licensed Products as an on premise or Private Cloud solution, the Supplier shall deliver the Licensed Products to the Client, and it shall be the Client's responsibility to install, or organise the installation of the Licensed Product, including any software that may be required.
- 4.3 The Client may request that the Supplier provide assistance with respect to the installation of the Licensed Products, in consideration for a fee to be agreed between the Client and the Supplier. If the Client requests that the Supplier provide assistance with the installation of the Licensed Products, the Client shall, where any infrastructure (including, without limitation, power outlets, and computers meeting the technical requirements as set out by the Supplier) are required, supply them to the Supplier at the Client's expense.
- 4.4 Supplier must immediately notify Client of any Conflict of Interest;

5 Client's Obligations

- 5.1 The Client will:
- (a) provide Supplier with reasonable assistance and information to assist it to deliver the Licensed Product and any Services;
 - (b) ensure that Supplier's information and materials in the custody of the Client for the purposes of the Agreement are protected at all times from unauthorized access or use by a Third Party and from misuse, damage or destruction by any person;
 - (c) provide Supplier with access to the Location and Designated System when required for the purpose of the Agreement;
 - (d) keep such records relating to the use and performance of the Licensed Products as may reasonably be requested by Supplier and ensure that Supplier's personnel have access to such records at all reasonable times;
 - (e) carry out and maintain restorable back-up copies of all relevant software, whether operating systems, discreet applications or configurations, and where they are required by Supplier to supply Support Services, make the same available to Supplier upon request.
- 5.2 The Client will not, at any time during or after the Term, directly or indirectly do or attempt to do any of the following acts, or cause or allow any of the following acts to be done:
- (a) translate, or adapt the Licensed Products without the Supplier's express prior written consent;
 - (b) develop for supply, or supply any of the Licensed Products, and any other products which are similar (including in form, function or operation) to the Licensed Products;
 - (c) decompile, disassemble, reverse engineer, or otherwise do any act, matter or thing, or cause or allow any act, matter or thing to be done which has the effect of discovering any code or module in the Licensed Products without the express written consent of the Supplier;
 - (d) make any improvements or adaptations to the Licensed Products;
 - (e) provide the Licensed Products to any Third Party;
 - (f) make any copy of the Licensed Products without the express prior written consent of the Supplier, unless it is expressly permitted to do so under this Agreement or any Contract;
 - (g) combine the Licensed Products with other software products or attempt to do so without Supplier's written approval;
 - (h) anything not expressly permitted in writing by the Supplier, whether under this Agreement, a Contract or otherwise;
 - (i) anything contrary to any other provision in this Agreement, any Contract, or any other agreement between the Parties in relation to the Licensed Products.
- 5.3 Except as permitted by the Supplier under this Agreement, any Contract or any other agreement between the Parties in relation to the Licensed Products, the Client undertakes not to alter or modify any part of the Licensed Products in any way whatsoever, nor permit the Licensed Products to be combined with or become incorporated in any other software other than as expressly permitted by the Supplier.

6 Exclusions

- 6.1 The Licensed Product or Services to be provided by Supplier under this Agreement do *not* include:
- (a) Correction of errors caused by negligence, misuse, operator error, or misapplication of the Licensed Products by any Party other than Supplier or a service provider not authorised by Supplier;
 - (b) The incorporation of the Licensed Products into, or the installation of the Licensed Products with, other software or hardware not supported and authorised by Supplier;
 - (c) Correction of errors or defects caused by operation of the Licensed Products in a manner other than as specified by Supplier or the Software Owner at the date of this Agreement;
 - (d) Correction of errors or defects caused by revision, translation or alteration of the Licensed Products not authorised by Supplier or the Software Owner;

- (e) Correction of errors or defects caused by the use of the Licensed Products by a person not authorised by Supplier or the Licensed Products;
- (f) Correction of errors caused in whole or in part by the use of computer programs other than the Licensed Products;
- (g) Correction of errors caused by the failure of the Client to provide suitably qualified and adequately trained operating and programming staff for the operation of the Licensed Products;
- (h) Correction of errors or defects in hardware or other software used in connection with the Licensed Products;
- (i) Correction of errors or defects caused by any modification made to the Licensed Products by any person other than employees or other authorised representatives of the Supplier (whether by alteration, deletion, addition or otherwise) to the Licensed Products or any equipment on which the Licensed Product is installed);
- (j) Correction of errors caused by any integration or attempted integration of the Licensed Products with other software or equipment, other than as expressly permitted by the Supplier;
- (k) Training of operating and programming staff;
- (l) Rectification of errors caused by incorrect use of the Licensed Products;
- (m) Rectification of errors caused by an equipment fault;
- (n) Equipment maintenance;
- (o) Diagnosis or rectification of faults not associated with the Licensed Products;
- (p) Furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Supplier or the Software Owner;
- (q) Correction of errors arising directly or indirectly out of the Client's failure to comply with this Agreement or any other agreement with Supplier or the Software Owner;
- (r) Correction of errors or defects which are the subject of a warranty under another agreement;
- (s) Assistance in the day to day operational use of the Licensed Products unless a contract is specified under [SECTION F – Service Level Module \(SLA\)](#) ; or
- (t) Correction of errors or defects associated with custom developed modules within the Licensed Products.

7 Change Management Procedures

- 7.1 In addition to any other express right stated in this Agreement or any Contract, a Party may, at any time during the Term, request changes to any part of a Contract by giving to the other Party a Change Request in a form substantially similar to **Exhibit C – Template Change Request Form**.
- 7.2 Each Change Request must be individually sequentially numbered and provide the following details:
- (a) a complete description of the proposed change;
 - (b) the reason(s) for issuing the Change Request;
 - (c) any required date by which the proposed change must be made;
 - (d) the impact of the Change Request on the other Party, including in the case of a Change Request issued by Supplier, a breakdown of estimated costs to implement the Change Request; and
 - (e) provision for signature by the Authorised Signatory of each Party for acceptance of the Change Request.
- 7.3 If Client submits a Change Request to Supplier, Supplier will within 7 days of receiving the Change Request (or such other period as the Parties agree), provide Client with a change proposal detailing how Supplier will implement the requested change, the impact of the requested change on any fees payable by Client, proposed changes to resourcing, delivery or milestone dates and Supplier's ability to meet its other obligations under the Contract (**Change Proposal**).
- 7.4 Supplier may reject any Change Request from Client if it can demonstrate that the proposed change would adversely affect the performance, functionality or security of the relevant Licensed Product or Service, Client's Systems or that it is not technically feasible to implement. If Client disputes Supplier's refusal under this clause, the dispute will be resolved in accordance with clause 22.
- 7.5 Client must, after receiving a Change Request or a Change Proposal, within 5 days, notify Supplier that it:
- (a) accepts the Change Request or Change Proposal; or
 - (b) wishes to negotiate the Change Request or the Change Proposal in which case the Parties will negotiate the Change Request or the Change Proposal and if agreement cannot be reached within 21 days of commencing negotiations, then Client may:
 - i) accept the Change Request or Change Proposal;
 - ii) reject the Change Request or Change Proposal;
 - iii) accept the Change Request or Change Proposal at a reasonable market based price determined by an independent expert in accordance with the processes in [clause 22](#); or
 - (c) withdraws the Change Request made by Client to which the Change Proposal relates; or
 - (d) rejects the Change Request or Change Proposal (as the case may be), after acting reasonably, in which case the Contract to which it relates will continue unchanged.

7.6 Any accepted Change Request or Change Proposal that varies the clauses of a Contract must be executed by an Authorised Signatory of each Party after which it will vary and form part of the Contract to which it relates.

8 Access

8.1 Client will grant to Supplier's Personnel such access to the Client's premises and Systems as may be reasonably required by those Personnel to perform Supplier's obligations under this Agreement.

9 Non-Solicitation

9.1 During the Term of this Agreement and 6 months after the expiry or termination of this Agreement any relevant Contract ("(**Relevant Period**), the Client may not solicit for employment, directly or indirectly through a Related Party or entity or otherwise employ, or engage any person who is or was employed or contracted by the Supplier during the continuance of this Agreement or any relevant Contract, and a period of six months after termination or expiry (**Relevant Employee**), unless:

- (a) written approval has been obtained from the Supplier; or
- (b) the Relevant Employee has:
 - i) ceased to be employed or contracted by the Supplier for a period of not less than 6 months; or
 - ii) responded to a published advertisement of employment with the Client (or with any of its Related Parties) or has independently and without inducement or coercion approached the Client for employment or with its Related Parties.

9.2 If the Client breaches [clause 9.1 above](#), the Client agrees that the Supplier will have suffered loss. Accordingly, the Client agrees to pay to the Supplier on demand:

- (a) costs incurred in recruiting a replacement, including, without limitation, advertisement costs, recruitment agent costs, training and training materials costs; and
- (b) an amount equivalent to three (3) months' of the Relevant Employees entitlements (including salary, superannuation, and any bonus payments) that was made by the Supplier to the Relevant Employee calculated from the date which is three (3) calendar months prior to the Relevant Employee ceasing employment with the Supplier.

9.3 The Client agrees that the payments under [clause 9.2](#) above are a genuine pre-estimate of loss that will be incurred by the Supplier in the event that the Client breaches [clause 9.1](#).

10 Warranties

10.1 Each Party warrants that it:

- (a) is duly authorised to enter into and be bound by this Agreement and any Contract;
- (b) has the authority to grant the licence rights provided to the other Party as set out in this Agreement and any Contract; and
- (c) holds all licences, approvals and permits required by law to perform its obligations under this Agreement and any Contract.

10.2 The Supplier warrants that, to the best of the Supplier's knowledge at the time that this Agreement is entered into, the Licensed Products do not infringe upon the Intellectual Property Rights of any Third Party.

10.3 In the event that the Client becomes aware of any allegation by a Third Party that the Licensed Products infringes upon a Third Party's IPR, the Client shall promptly notify the Supplier in writing of the details of such allegation.

10.4 In the event that the Licensed Products are found to infringe upon the IPR of any Third Party, the Supplier shall, as soon as practicable, at its own election and expense:

- (a) procure a licence for the Client to continue using the Licensed Products; or
- (b) modify the Licensed Products to remove the part of the Licensed Products which are found to be infringing; or
- (c) replace the Licensed Product with equivalent functionality and performance.

10.5 Notwithstanding clause 10.4 above, the Supplier will have no liability to the Client for any Loss or Claim arising as a result of:

- (a) the Licensed Products being found to infringe upon the IPR of any Third Party;
- (b) the use of other than the latest unaltered version of the Licensed Products or the computer's operating system on which the Licensed Products is designed to operate;

- (c) any modification (whether by alteration, deletion, addition or otherwise) to the Licensed Products or any equipment on which the Licensed Products is installed, by persons other than the Supplier or its authorised representatives; or
 - (d) any integration or attempted integration or interoperation of the Licensed Products with any other software or equipment other than:
 - i. software or equipment supplied by the Supplier and expressly represented or designed to function in conjunction with and which integrates or interoperates with the Licensed Products; or
 - ii. the Application Package.
- 10.6 Sub-clauses [10.2](#) to [10.5](#) states the entire liability of the Supplier with respect to the infringement or alleged infringement of any Third Party's rights of any kind by the use of the Licensed Products by the Client.

11 Taxes

- 11.1 If GST is applicable, each time a Taxable Supply is made by a Party to the other under this Agreement or any Contract, the Party making the Taxable Supply must promptly provide the other Party with a correct tax invoice relating to that Taxable Supply. The obligation of the Party receiving the Taxable Supply to pay the GST component of the price for the Taxable Supply is suspended until that tax invoice is provided.
- 11.2 The Client must pay, in addition to the Licensed Products and Services supplied under this Agreement or any Contract, all Taxes imposed or levied in Australia or overseas in connection with the supply of Products and Services under this Agreement.

12 Payment

- 12.1 In consideration for Supplier supplying the Licensed Product or Service in accordance with a Contract, or providing the Client with an Access Licence to access the Licensed Product or Service for the Access Term, the Client will pay Supplier the Access Fees for that Licensed Product or Service or Access Term (as the case may be) on receipt of an invoice correctly rendered in accordance with clause 12.3 (**Tax Invoice**), and in accordance with the terms of that Contract.
- 12.2 Unless stated otherwise in a Contract or in the Tax Invoice, Client will pay Supplier's correct and approved Tax Invoice within 14 days of its receipt.
- 12.3 An Invoice under a Contract is correctly rendered if:
 - (a) the invoice amount is correctly calculated and due for payment;
 - (b) Client is able to ascertain the items of goods and services to which the invoice relates and the amount payable in respect of each item;
 - (c) the invoice is accompanied (where necessary or on Client's request) by verifying documentation; and
 - (d) the invoice complies with GST Law if applicable.
- 12.4 In the event that the Client does not pay the Tax Invoice on or before the due date, the Client acknowledges that the Supplier may issue a Notice of Default (as defined in [clause 17.1](#)) to the Client, and may terminate this Agreement and/or any Contract in accordance with the provisions of [clause 17](#).

13 Regular review

- 13.1 Where the Client has purchased an on-premise solution, they may request that regular reviews in relation to the arrangement between the Client and the supplier under this contract to be conducted. If so requested by the Client, each Party will nominate a Relationship Manager to manage the working arrangements between the Parties under this Agreement and any Contract.
- 13.2 Where clause 13.1 applies, the Relationship Manager of each Party will, during the Term, convene and attend regular review meetings or teleconferences between the Parties to address any operational matters and facilitate the implementation of any potential process, or improvements to the Services and Licensed Products under this Agreement.

14 Force Majeure

- 14.1 To the extent that a Party's delay or inability to perform under this Agreement or any Contract is due to the existence and its notification of Force Majeure, the affected obligations of that Party under this Agreement or

any Contract will be suspended until the passing of that Force Majeure event. A Party must take all reasonable steps to minimise any disruption to and resume the performance of its affected obligations.

- 14.2 If substantially all of a Party's obligations under this Agreement or any Contract are suspended by a Force Majeure event under clause 14.1 by more than 21 days, either Party may elect to terminate this Agreement or the affected Contract without penalty, or the Parties may enter into discussions to modify the affected obligations by variation of this Agreement or the affected Contract.

15 Intellectual property and moral rights

- 15.1 Unless otherwise expressly stated in this Agreement or any Contract, no Pre-existing IPR of either Party is assigned or otherwise transferred.
- 15.2 Supplier or its Licensors retain all ownership and intellectual property rights to the Licensed Products, and nothing in this Agreement or any Contract has the effect of transferring, assigning or altering the ownership of any IPR in the Licensed Products, the Services and the Documentation.
- 15.3 Supplier and the Software Owner retains all ownership and intellectual property rights to anything developed and delivered under this Agreement.
- 15.4 Client may not make any copies of the Licensed Product except with the express written consent of the Supplier, or where it is necessary to temporarily transfer the Licensed Product to a temporary Designated System as a result of a computer malfunction, provided only that the Licensed Product must be removed from the temporary Designated System, or where the malfunctioning computer is unable to be repaired, the Licensed Product must be removed from that computer, and the temporary Designated System will become the new Designated System. The Client must inform the Supplier in writing of such change.
- 15.5 Any Required Third Party Software or other third party technology that may be appropriate or necessary for use of or with the Licensed Products is specified in the Documentation or otherwise notified to the Client by the Supplier. Current Required Third Party Software and other third party technology details can be found at the Supplier's website. Such Third Party technology is licensed to Client only for use with or as a part of the Licensed Products under the terms of the Third Party licence agreement specified in the Documentation or as otherwise notified by the Supplier and not under the terms of the end user licence agreement.
- 15.6 It shall be the Client's responsibility to ensure its own compliance with the relevant Third Party licences, including various open source licences, and this Master Supply Agreement. The Client must indemnify and hold harmless the Supplier and defend the Supplier from and against any claim by any Third Party as a result of the Client's failure to comply with the terms of the Master Supply Agreement or any relevant Third Party licences.
- 15.7 A Client may *not*:
- (a) remove or modify any program markings or any notice of Supplier's or the Software Owners' proprietary rights;
 - (b) copy, reproduce, sell, or otherwise deal with the Documentation as though the IPR subsisting in the Documentation is owned by the Client, or authorise, cause, permit or allow the same to be done by any Third Party;
 - (c) make the Licensed Products or materials resulting from the services available in any manner to any Third Party for use in the Third Party's business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);
 - (d) cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Licensed Products (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by Licensed Products);
 - (e) disclose results of any program benchmark tests without Supplier's prior written consent;
 - (f) use the Licensed Products for rental, timesharing, subscription service, service bureau; hosting or outsourcing;
 - (g) make any modifications, adaptations or improvements to the Licensed Products
 - (h) challenge, contest or oppose, or cause, allow or assist (whether directly or indirectly) or otherwise participate in the challenge of, or opposition to, the ownership of such IPR by the Supplier.
- 15.8 The Client acknowledges that all IPR subsisting in any modifications, adaptations, or improvements to the Licensed Products, whether or not created by the Client, shall immediately vest in the Supplier upon creation, and the Client agrees to do all things necessary (including executing any documents necessary) to give effect to such vesting, and to procure the written consent of the author(s) of such modifications, adaptations or improvements to the Licensed Products to the Supplier, to allow the Supplier exploit the

same in any manner, including without attribution of authorship to the author, or any other manner which may otherwise constitute an infringement of the author's moral rights.

- 15.9 The Client indemnifies and holds harmless the Supplier and the Software Owner from and against any Loss or Claim arising from the use of any modifications, adaptations, or improvements to the Licensed Products by any Third Party, and any Loss or Claim arising from any claim from any Third Party alleging that the modifications, adaptations or improvements infringes on that Third Party's rights, including any Intellectual Property Rights or moral rights.
- 15.10 The Client must inform the Supplier of any:
- (a) creation or development of any modifications, adaptations, or improvements to the Licensed Products, or the creation of any new IPR resulting from the use or exploitation of the Licensed Products or Confidential Information; and
 - (b) adaptation of any part of the Licensed Products, which the Client or any of its employees, contractors, agents, officers, directors or other representatives discover, develop or conceive, immediately upon such discovery, development or conception, whether during the term of this Agreement or subsequent thereto, and assign, and do all things necessary to assign such IPR subsisting therein to the Supplier.

16 Confidentiality

- 16.1 The Parties acknowledge that the Confidential Information of the other is valuable to it. Each Party undertakes to keep the Confidential Information of the other secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.
- 16.2 A Party may only use or reproduce the Confidential Information of the other Party for the purposes of performing its obligations or exercising its rights under this Agreement or any Contract.
- 16.3 A Party must:
- (a) not disclose the Confidential Information of the other Party to any person except as permitted by this Agreement or any Contract;
 - (b) not make, assist or permit any person (including its authorised representatives) to make any unauthorised use, disclosure or reproduction of the other Party's Confidential Information; or
 - (c) co-operate with the other Party in any action that the other Party may take to protect the confidentiality of its Confidential Information.
- 16.4 A Party may disclose Confidential Information of the other Party to:
- (a) its Personnel, professional advisors or an outsourced services provider requiring access to the information in connection with this Agreement or any Contract;
 - (b) with the prior written consent of the other Party; or
 - (c) the extent required by law or any regulations of any government agency or stock exchange having authority, subject to it giving the other Party reasonable notice of any proposed disclosure (if permitted by law) to enable that other Party to seek a protective order or other remedy to prevent or limit the disclosure.
- 16.5 The disclosing Party must ensure that any person to whom Confidential Information is disclosed under clauses 16.4(a) or 16.4(b) is bound by an obligation of confidentiality in respect of that Confidential Information on terms consistent with the provisions of this clause.

Manuals and User Guides

- 16.6 The Client agrees that all Documentation, including, without limitation, Manuals and User Guides (MAUGs) which may be supplied with the Licensed Products constitute the Supplier's Confidential Information and shall be used in accordance with this clause 16.
- 16.7 The Client shall use the Documentation solely for Client internal data processing operations for purposes of:
- (a) implementing Licensed Products,
 - (b) interfacing other software and hardware systems to the Licensed Products; and
 - (c) building extensions to Licensed Products.
- 16.8 Client shall not disclose, use, or cause, permit or allow the disclosure or use by others of the Documentation for any other purpose other than those expressly permitted under clause 16.7 above, or as otherwise expressly permitted by the Supplier in writing.

- 16.9 Client shall not use the Documentation to create software that performs the same or similar functions as any of the Supplier's products, including any Licensed Products which have been licensed to the Client under a Contract, or any other product which the Supplier provides in trade or commerce at any time.
- 16.10 Client agrees to:
- (a) exercise either at least the same degree of care to safeguard the confidentiality of the Documentation as Client exercises to safeguard the confidentiality of Client's own most important confidential information or the minimum standard required by the Supplier, whichever is greater;
 - (b) maintain agreements with Client employees and agents that protect the confidentiality and proprietary rights of the confidential information of Third Parties such as Supplier and instruct Client employees and agents of these requirements for the Documentation;
 - (c) restrict disclosure of the Documentation to those of Client employees and agents who have a "need to know" consistent with the purposes for which such Documentation were disclosed;
 - (d) maintain the Documentation at all times on Client premises; and
 - (e) not remove or destroy any proprietary or confidential legends or markings placed upon the Documentation. Supplier shall retain all title, copyright and other proprietary rights in the Documentation.
- 16.11 Documentation are provided to Client "as-is" without any warranty of any kind. Upon termination of this Agreement or of a Contract for any reason, Client shall cease using, and shall return or destroy, all copies of the applicable Documentation.

17 Termination

- 17.1.1 Either Party may immediately terminate this Agreement and/or any Contract if:
- (a) the other Party breaches any term or condition of this Agreement or any Contract and:
 - i) the non-defaulting Party gives the other Party a notice (**Notice of Default**) specifying the breach, and requiring the other Party to remedy the breach within a period of not greater than 30 days, and
 - ii) the breach cannot be remedied by that defaulting Party; or
 - iii) if it can be remedied, the defaulting Party fails or refuses to take reasonable steps to remedy the breach within a period of not greater than 30 days (or where the Parties agree to a longer period, that longer period) from notification to it, which specifies the nature of the breach and requires the defaulting Party to remedy the breach; or
 - (b) the defaulting Party becomes subject to an Insolvency Event.
- 17.2 Except for non-payment of fees, the non-breaching Party may agree in its sole discretion to extend the 30 day period for so long as the breaching Party continues reasonable efforts to cure the breach.
- 17.3 Termination of this Agreement and/or any specific Contract will not affect the validity of any other existing Contracts, which will each continue in accordance with its terms until their respective termination or expiry.
- 17.4 If the Supplier ends this Agreement as specified under [clause 17.1.1](#), the Client must:
- (a) pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for Licensed Products ordered and/or services received under this Agreement plus related taxes and expenses; and
 - (b) where the Client has purchased an Access Licence to the Supplier's Licensed Products, whether on a public or Private Cloud or on-premise solution, the Client acknowledges that its access to the Licensed Products may be terminated, and must immediately cease and forever desist from using the Licensed Products subsequent to termination, and must destroy or return to the Supplier all copies of the Licensed Products and Documentation that it may have made, and certify to the Supplier that it has done so; and
 - (c) where the Client has purchased a perpetual licence to an on-premise or private cloud solution, the Client must immediately cease and forever desist from using the Licensed Products subsequent to termination, and must destroy or return all copies of the Licensed Products and Documentation that it may have made, and certify to the Supplier that it has done so.

18 Title and risk

- 18.1 Subject to [clause 15](#), title to and risk in a product delivered to the Client (other than in any software) passes to Client on its Acceptance by Client.
- 18.2 Responsibility and risk in any of Supplier's equipment or materials at Client's premises remains with Supplier at all times.

19 [Not Used]

20 Indemnity

- 20.1 A Party that breaches this Agreement or any Contract (the **Breaching Party**) indemnifies the other Party (the **Non-Breaching Party** and its Personnel, and keeps harmless the non-breaching Party and its personnel against any Loss or Claim that the Non-Breaching Party or its Personnel sustains or incurs arising out of or in connection with:
- (a) the personal injury or death to any person or damage to, or loss of any tangible property caused by or contributed to by the Breaching Party or any of its Personnel;
 - (b) any negligent, unlawful or wilful act or omission by the Breaching Party or any of its Personnel; or
 - (c) any failure by the Breaching Party or its Personnel to comply with any laws.

21 Liability

- 21.1 If any Australian legislation implies in this Agreement any term, condition or warranty, and that legislation avoids or prohibits provisions in a Contract excluding or modifying the application of or exercise of, or liability under, that term, condition or warranty, that term, condition or warranty is deemed to be included in this Agreement. However, Supplier's liability for a breach of any implied term, condition or warranty (other than a warranty implied by Part 3-2 of the Australian Consumer Law, or any corresponding provision of any Act of a State or Territory of Australia) is limited to any one or more of the following, at Supplier's option:
- (a) if the breach relates to goods: the replacement or supply of equivalent goods or the repair of the goods; or the payment of the cost of replacing the goods, acquiring equivalent goods or repairing the goods; and
 - (b) if the breach relates to services: the supplying of the services again; or the payment of the cost of having the services supplied again.
- 21.2 Neither the Supplier nor the Software Owner will have any liability to the Client for any consequential or indirect loss (including any loss of profits or loss or corruption of data), however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred in connection with this Agreement, or any Contract, or the Licensed Products.
- 21.3 To the maximum extent permitted by law, the Software Owner shall not be liable to the Client for any Loss or Claim it may suffer, howsoever caused, in connection with the Licensed Software. The Client further acknowledges that to the maximum extent permitted by law, Supplier's entire liability to the Client for any direct loss, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred by the Client in connection with this Agreement or the Licensed Products is limited to, the lesser of:
- (a) the licence fee paid to Supplier by the Client under this Agreement in respect of the Licensed Products (less any Taxes paid in respect of that licence fee); or
 - (b) Ten Thousand Dollars (AUD \$10,000).
- 21.4 The Client is liable for and indemnifies Supplier from and against all Loss or Claim (including legal expenses on a full indemnity basis) that Supplier suffers or incurs in connection with any breach of this Agreement or a Contract by the Client.

22 Dispute resolution

- 22.1 In the event of any dispute between the Parties under or in connection with this Agreement or any Contract, except where a Party seeks urgent interlocutory relief, the Parties will:
- (a) within 7 days (or such other period agreed between the Parties) of a Party providing notice of a dispute to the other Party, ensure that its Relationship Manager meets with the Relationship Manager of the other Party with a view to resolving the dispute; then
 - (b) if the dispute is not resolved, within 7 days (or such other period agreed between the Parties) of that meeting, a senior Client manager and the General Manager (or equivalent) of Supplier will meet to resolve the dispute; then
 - (c) if the dispute remains unresolved within 21 days (or such other period agreed between the Parties) of provision of the notice of dispute or within 7 days (or such other period agreed between the Parties) of the date of the last meeting under [clause 22.1\(b\)](#), whichever is the earlier, then the Parties will refer the dispute to mediation to be conducted by the Australian Disputes Centre in accordance with its then current mediation rules and guidelines for resolution within 10 days (or such other period agreed between the Parties);

then

- (d) if the dispute remains unresolved at the expiry of the 10 day mediation period referred to in [clause 22.1\(c\)](#) (or such other period agreed between the Parties), or if, in the opinion of the mediator, the dispute is unlikely to be resolved through mediation, either Party will be entitled to commence court proceedings in relation to the dispute.

22.2 If a dispute is referred to mediation:

- (a) any meetings organised will be held in Perth or such other place as may be agreed by the Parties;
- (b) the Parties agree to pay costs as directed by the mediator, and if no directions are given, each Party must bear their own costs, and the costs of the mediation shall be borne equally between the Parties; and
- (c) both Parties may be represented by a duly qualified legal practitioner.

22.3 Notwithstanding clauses 22.1 and 22.2 above, the Parties agree that if the dispute relates to questions over the technical functions of the Licensed Products, then such dispute will be referred to a suitably qualified independent expert for analysis and determination. Such expert shall be a person (or organisation) agreed to by both Parties, or where there is no agreement within seven (7) days, a shortlist of acceptable experts will be created and randomly selected by an independent Third Party operated ballot process, and such selection shall be deemed to be the unanimous choice of both Parties.

22.4 Each Party agrees that the decision of the expert will be binding on both Parties.

22.5 For the avoidance of doubt, in this clause 22, an expert or a Third Party shall not be deemed to be independent if the expert or Third Party is:

- (a) an agent, employee, or contractor of either Party, or has been an agent, employee or contractor of either Party in the past twelve (12) months;
- (b) a director, officer, agent, employee, contractor or shareholder in the body corporate that is a shareholder of either Party, or is an Associate of the body corporate that is a shareholder in either Party; or
- (c) an Associate of either Party; or
- (d) a spouse or de facto partner of a sole trader or partner that directs the business of either Party, or of director or officer of the body corporate that are shareholders in either Party; or
- (e) a beneficiary or trustee of a trust, the settlor of which is a sole trader or partner that directs the business of either Party, or a director or officer of the body corporate which holds shares in either Party.

22.6 Notwithstanding anything in this clause 22, nothing prevents either Party from seeking urgent interlocutory injunctions in any matter relating to an infringement of either Party's intellectual property rights, or the use, reproduction, or disclosure of Confidential Information contrary to clause 16 of this [SECTION A – STANDARD TERMS](#).

22.7 Despite the existence of a dispute, each Party must continue to perform its obligations under this Agreement and any Contract, including, without limitation, the Client's obligation to pay to the Supplier all Licence Fees, Access Fees and Maintenance and Support Fees as and when they fall due.

22.8 If the Client disputes the whole or any portion of the claim in an invoice submitted by Supplier, the Client must nevertheless pay the entire amount of the invoice and provide a Notice of Dispute outlining the reasons for disputing the invoice. The Parties must commence to resolve the dispute within 2 days of the receipt of the Client's letter in accordance with clause 22 of [SECTION A – STANDARD TERMS](#).

22.9 If it is resolved that some or all of the amount in dispute ought properly be refunded to the Client, then the Supplier must, within seven (7) days of the resolution of the dispute, refund that amount to the Client.

23 Notices

23.1 Any notice given under this Agreement or any Contract must be in writing and may be delivered by hand, by mail or by email to the address of a Party set out in a Contract or alternate address as may be advised by the other Party from time to time.

23.2 Notice will be taken to have been given by a Party to the other:

- (a) if by hand, on written acknowledgment of receipt by an authorised Employee, agent or representative of the receiving Party;
- (b) if by mail, 3 Business Days after the date of mailing within Australia or 10 Business Days after the date of mailing overseas; and

- (c) if by email, on the same Business Day if sent during Business Hours, or if sent on a day that is not a Business Day, or on a Business Day but outside of Business Hours – the commencement of the next succeeding Business Day.

24 Assignment and Novation

- 24.1 The Client must not assign the benefit of this Agreement without Supplier's written consent.
- 24.2 Supplier may consent to the assignment or novation of this Agreement subject to such conditions as Supplier chooses to impose.

25 Surviving provisions

- 25.1 The covenants, conditions and provisions of this Agreement or any Contract which are intended or capable of having effect after the expiration or termination of this Agreement or any Contract (including provisions relating to warranties, indemnities, liability, licences and Intellectual Property) must remain in full force and effect following any expiration or termination of this Agreement or any Contract.

26 General

- 26.1 Client and Supplier are independent contractors and neither Party has the authority to bind the other. Neither this Agreement nor any Contract is intended and will not be taken to constitute any partnership, agency, employment or joint venture relationship between the Parties.
- 26.2 This Agreement, the Contract and any relevant module attached hereto constitute one entire agreement between the Parties, and supersedes all prior negotiations and representations, whether written or oral.
- 26.3 This Agreement may only be varied by written amendment signed by both Client and Supplier. Any variation of a Contract must be made in accordance with [clause 7](#) hereof.
- 26.4 If any part of this Agreement or any Contract is void or unenforceable in any jurisdiction, it is severed for that jurisdiction and the remainder of this Agreement or that Contract will remain in full force and effect.
- 26.5 Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- 26.6 The Customer must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Supplier.
- 26.7 The Client must pay interest on any amount due and not paid within the time frame required by this Agreement or any Contract at the Interest Rate.
- 26.8 A waiver by either Party in respect of a breach of a provision of this Agreement or any Contract by the other Party will not be taken to be a waiver in respect of any other breach. The failure to enforce any provision of this Agreement or any Contract will not be interpreted as a waiver of that provision. A waiver is not effective unless it is in writing.
- 26.9 Except as otherwise provided in this Agreement or any Contract, all rights and remedies available to a Party under this Agreement or any Contract are cumulative and not exclusive of any other rights or remedies at Law.
- 26.10 Each Party must, and must ensure that any other relevant persons will, do anything (including executing any agreements and documents) necessary to give full effect to the transactions contemplated by this Agreement and any Contract.
- 26.11 This Agreement and each Contract is governed by and construed in accordance with the Laws of the State of Western Australia, and the Parties submit to the jurisdiction of the courts exercising jurisdiction in that State and any courts of appeal from them, and will not object to those courts on the basis that they are inconvenient for a Party.

SECTION B - DEFINITIONS & INTERPRETATION

1 Definitions

Acceptance means, in relation to the delivery of Licensed Products, the Client's acceptance after relevant acceptance tests in relation to the software have been completed;

Affiliates means a **Related Body Corporate, Subsidiary or Holding Company**, as these terms are defined in section 9 of the *Corporations Act* of Australia, 2001;

Agreement means this Master Supply Agreement;

Application Package means the Licensed Products and any other software, application or program, which may be owned by a Third Party, and which is necessary or desirable for the optimal functioning of the Licensed Software, and which together with the Licensed Products forms the package to be supplied by the Supplier to the Client;

Associate means, in relation to a Party, any person or body corporate that:

- (a) is a holding company or subsidiary of that Party;
- (b) is a subsidiary of a holding company of that Party;
- (c) is a director, officer, employee, contractor or agent of that Party or of the bodies corporate referred to in (a) or (b) above; or
- (d) is a beneficiary or trustee of a trust in which any of the persons identified in (c) above is a settlor;

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday in Perth, Western Australia;

Business Hours means 0830 to 1730 on any Business Day;

Change Request has the meaning referred to in clause 7;

Change Proposal has the meaning referred to in clause 7.3;

Client means the Client entity or group specified as a Party to this Agreement in [THE LEGAL AGREEMENT SET OUT BELOW GOVERNS THE PURCHASE OF PRODUCTS AND SERVICES FROM IOPPOLO & ASSOCIATES. YOU ARE DEEMED TO HAVE AGREED TO THESE TERMS AND CONDITIONS BY HAVING ACCEPTED A SALES ORDER, INVOICE, SCOPE OF WORKS OR UNDERTAKEN AN ONLINE PURCHASE THAT REFERS TO THIS DOCUMENT.](#) **THE LEGAL AGREEMENT SET OUT BELOW GOVERNS THE PURCHASE OF PRODUCTS AND SERVICES FROM IOPPOLO & ASSOCIATES. YOU ARE DEEMED TO HAVE AGREED TO THESE TERMS AND CONDITIONS BY HAVING ACCEPTED A SALES ORDER, INVOICE, SCOPE OF WORKS OR UNDERTAKEN AN ONLINE PURCHASE THAT REFERS TO THIS DOCUMENT.**

section. The Licensed Products may not be used or accessed for the business operations of any Third Party, including but not limited to the Client's customers, partners, or Affiliates;

Cloud means the system of online hosting and storage in which data is stored across multiple servers;

Confidential Information means the confidential information of a Party which relates to the subject matter of this Agreement or any Contract and includes information relating to:

- (a) the design, specification and content of the Licensed Products;
- (b) the personnel, policies or business strategies of Supplier or the Client; and
- (c) the terms on which the Licensed Products are supplied under this Agreement, but excludes information which:
 - (a) is or becomes a part of the public domain through no act or omission of the other Party;
 - (b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;
 - (c) is lawfully disclosed to the other Party by a Third Party without restriction on disclosure; or
 - (d) is independently developed by the other Party;

Contract means a contract for the supply of Products and/or Services made between Client and Supplier in accordance with [clause 3 Orders](#) of the Standard Terms under this Agreement;

Contract Effective Date means the date specified as such in each Contract;

Customer Record means each unique Customer Record (including contact records, prospect records and records in external data sources) that Client may access using the Licensed Products;

Designated System means the computer hardware or virtual machine and operating system designated under this Agreement or any Contract on which the Licensed Products are to be installed and operated, or where the Client purchases an Access Licence to the Licensed Product, the Designated Systems shall mean the computer

hardware or virtual machine and operating system which is authorised to access the Licensed Product or Services, and which are specified in a relevant Contract;

Documentation means the user guides and training manuals and associated documentation for installation and use of the Licensed Products provided in electronic or hard copy form;

Effective Date means the effective date of this Agreement as specified in Agreement Details;

Employee means (i) all of Client's full-time, part-time, temporary employees, and (ii) all of Client's agents, contractors and consultants who have access to, use, or are tracked by the Licensed Products;

Essatto means Essatto Software Pty Limited (ABN 40 117 475 055);

GST means the Goods and Services Tax which is payable on a Taxable Supply in accordance with the GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Indemnified IPR means all IPR but excluding any patent or right to patent in any jurisdiction;

Initial Term means the Initial Term specified in the Contract;

Insolvency Event means, in relation to a Party:

- (a) a receiver, receiver and manager, trustee, administrator or other controller (as defined in the *Corporations Act 2001* (Cth)) or similar official is appointed over any of the assets or undertaking of that Party;
- (b) that Party suspends payment of its debts generally,
- (c) that Party is, or becomes unable to pay its debts when they fall due, or is, or becomes unable to pay its debts, or is presumed to be insolvent within the meaning of the *Corporations Act 2001* (Cth);
- (d) that Party enters into, or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the Party ceases to carry on business or threatens to cease to carry on business; or
- (f) a resolution is passed or steps are taken to appoint, or to pass a resolution to appoint, an administrator;

Interest Rate: means 2% above the Westpac Bank's base rate on commercial overdrafts of less than AUD \$100,000;

Intellectual Property Rights or **IPR:** means intellectual property rights including, without limitation, copyright, patent, trade mark, semiconductor or circuit layout rights;

Licensed Products means the Software products listed in Exhibit A - Product and Services Price List of this Agreement or any Contract along with its associated media, documentation and updates;

Licence Type means the type of licence specified in [SECTION C](#) of this Agreement or any Contract;

Location means the location(s) where the Designated System is located or from where the Designated System can be accessed as specified in this Agreement or any Contract;

Loss or Claim means in relation to any person, a damage, loss (excluding consequential loss or loss of profit), cost, expense or liability incurred by the person or a claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent;

Media means the media on which the Licensed Products are recorded or printed;

New Release means a subsequent release of the Licensed Products produced primarily to provide an extension, alteration, improvement or additional functionality to the Licensed Products, made available under a Maintenance & Support Agreement but do not include New Products. New Products are available to the Client by a separate agreement;

New Products means a new software product comprising add on modules or value add options to the Licensed Software;

Order means the written document in a form that Client submits to Supplier or the Supplier's Partner under clause 3.1 of the Standard Terms;

Outsourced Service Provider means an agent or contractor of a Party to this Agreement;

Party or **Parties** means one or both Parties to this Agreement;

Purchase Price means the price at which the Client purchases a licence to the Licensed Product, or an Access Licence for the Access Term to access and use the Licensed Product either in a public or private Cloud or on premise solution;

Regulated Information means all Personal Information (as defined by the *Privacy Act 1988* (Cth)) and any other information or opinion, whether true or untrue, and whether or not recorded in material form, about any entity other than an individual which Supplier received or has access to under, or for the purpose of or in the course of carrying out its obligations under this Agreement and any Contract;

Related Party has the same meaning as '**Related Entity**' as defined in Section 9 of the *Corporations Act 2001* (Cth);

Relationship Manager means a person representing each Party to this Contract to review and manage the relationship between the Parties and to negotiate to resolve disputes, being a person who is authorised to make representations, guarantees or warranties on behalf of that Party, and to legally bind that Party;

Service Centre means the site designated by Supplier from time to time from which Supplier can most conveniently and practicably provide off-site Support Services;

Services means support services, education, hosted/outsourcing services, consulting or other services ordered by the Client;

Software Owner means each owner of the IPR in the Licensed Products and each of its components;

Access Licence has the meaning referred to in [Section C](#);

Supplier means the Supplier entity specified as a Party to this Agreement in the [THE LEGAL AGREEMENT SET OUT BELOW GOVERNS THE PURCHASE OF PRODUCTS AND SERVICES FROM IOPPOLO & ASSOCIATES. YOU ARE DEEMED TO HAVE AGREED TO THESE TERMS AND CONDITONS BY HAVING ACCEPTED A SALES ORDER, INVOICE, SCOPE OF WORKS OR UNDERTAKEN AN ONLINE PURCHASE THAT REFERS TO THIS DOCUMENT.](#) **THE LEGAL AGREEMENT SET OUT BELOW GOVERNS THE PURCHASE OF PRODUCTS AND SERVICES FROM IOPPOLO & ASSOCIATES. YOU ARE DEEMED TO HAVE AGREED TO THESE TERMS AND CONDITONS BY HAVING ACCEPTED A SALES ORDER, INVOICE, SCOPE OF WORKS OR UNDERTAKEN AN ONLINE PURCHASE THAT REFERS TO THIS DOCUMENT.**

section;

Supplier's Partner means the person or body corporate engaged by the Supplier to sell and market the Products, and to take and process Orders from Clients for acceptance by the Supplier;

Support Services means Updates, fixes to standard functionality, security alerts and critical patch updates;

Tax Invoice means an invoice that is correctly rendered in accordance with clause 12.3;

Taxable Supply has the meaning in the GST Law;

Taxes means all taxes, surcharges, duties and similar imposed by a government or statutory body relating to the supply or use of goods and services or otherwise arising out of this Agreement, including, without limitation, goods and services tax (GST) and withholding tax but excluding any tax payable on income;

Term means the Initial Term and any extension under [clause 2.2](#) of [SECTION A – STANDARD TERMS](#);

Third Party and **Third Parties** means any entity or person other than Supplier and the Client and their directors, officers, and employees who are not Subcontractors or Affiliates; and

Update means a subsequent release of the Licensed Products produced primarily by the Software Owner to overcome defects in the Licensed Products, which Supplier makes available to the Client under a Maintenance and Support Agreement. Updates do not include any release, option or future program that the Supplier licenses separately.

2 Interpretation

- 2.1 Headings are for convenience only and do not affect interpretation.
- 2.2 The singular includes the plural, and vice versa.
- 2.3 Including and similar expressions are not words of limitation
- 2.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.5 A provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- 2.6 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- 2.7 A reference to **the end of the Licence** or **the Licence ending** means the expiry by effluxion of time or sooner termination of the Licence.
- 2.8 Expressions which are defined in the *Corporations Act 2001* (Cth) have the same meaning when used in this Agreement, unless otherwise specified.
- 2.9 A reference to:

- (a) a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (b) one gender includes the others;
- (c) a clause, schedule, annexure or exhibit is a reference to a clause of or a schedule, annexure or exhibit to the Standard Terms or any Module (as the context requires);
- (d) an agreement or document (including a reference to this Agreement or any Contract) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or a Contract or that other agreement or document;
- (e) a Party to this Agreement or a Contract or another agreement or document includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives);
- (f) legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (g) dollars and \$ is to Australian currency unless otherwise stated; and
- (h) notice is to notice in writing (including any visible means of reproduction of words in a tangible or permanently viable form).
- (i) anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually;
- (j) lease includes any sublease, licence or other right to occupy premises.

3 Parties

- 3.1 If a Party consists of more than one person, this Agreement binds each of them separately and any 2 or more of them jointly.
- 3.2 An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- 3.3 A Party which is a trustee is bound both personally and in its capacity as a trustee.

SECTION C - SOFTWARE LICENCE

Not Applicable

SECTION D – MAINTENANCE & SUPPORT MODULE

Not Applicable

SECTION E - CONSULTANCY SERVICES MODULE

In addition to the Standard Terms, the provisions of this Consultancy Services Module will apply to the supply of Consultancy Services to the Client by Supplier. Unless defined in this Consultancy Services Module, any definitions and interpretation are defined in Section B of the Standard Terms.

1 Module Scope

- 1.1 Client requires Supplier to provide the Consultancy Services and produce the Deliverables (as detailed in Schedule 4 – Statement of Work) which form part of the Consultancy Services as set out in a Contract Statement of Work for the Client.

2 Definitions

Client Hardware means, in the case of an on-premise client server or private Cloud solution, any computer hardware that is owned, leased or rented by the Client and used by Supplier or the Licensed Products to provide the Services;

Contract Materials means all:

- (a) Computer software or applications developed, written or compiled by Supplier specifically for the Client;
- (b) Software and hardware configuration data relating to the implementation of any software or hardware by Supplier for the Client; and
- (c) Project planning, systems design and implementation documentation developed by Supplier for the Client,

under this Agreement and includes all modifications, enhancements or adaptations to such software or documentation but excludes any materials which were in existence before the commencement of the provision of Services under the Contract;

Consultancy Services means the consultancy or other professional services to be performed by or on behalf of Supplier, as more fully described in the Statement of Work.

Costs means any cost, charge, expense, outgoing, payment or other expenditure of any nature and where appropriate includes fees and disbursements payable to contractors, consultants and lawyers;

Deliverables means the deliverables as detailed in Schedule 4 – Statement of Work

Hardware means Client's Hardware and Supplier Hardware, collectively;

Project means the project for the provision by Supplier to the Client of Services under this Agreement as described in the Contract Statement of Work;

Project Executive has the meaning set out in [clause 3.1](#);

Project Management Committee has the meaning set out in [clause 3.2](#);

Required Consents means any consents or approvals required to give Supplier, its Affiliates and its Subcontractors the right or license to use, execute, reproduce, display, perform, distribute copies of, and modify, any services, products, programs, materials, information, or facilities that Supplier may use or access in providing the Services under this Agreement;

Services means the services and products (if any) provided by Supplier to the Client specified in the Statement of Work.

Software means computer programs, including all supporting documentation, source code, and media that perform data processing and communication tasks;

Statement of Work means the statement of work setting out the details and scope of the Consultancy Services to be performed by Supplier and the Deliverable(s) to be provided to Client, which is set out in [Schedule 4 – Statement of Work](#).

Subcontractors means contractors, vendors, agents, and consultants selected and retained by Supplier or the Client, respectively;

Supplier's Hardware means computer hardware or software that is owned, leased, or rented by or licensed to Supplier and used by Supplier to provide the Services identified in the Contract Statement of Work, including the provision of Supplier hosted private or public Cloud solutions;

Supplier's Products means hardware or software owned or licensed by Supplier and supplied by Supplier to the Client as part of the Services;

Third Party Contracts means the written contracts listed in the Statement of Work or Order under which the Client receives or has the right to use software, hardware or services directly from the Third Party;

Warranty Period has the meaning specified in the Contract.

3 Management of this Agreement and Projects

3.1 Project Executive

Supplier and the Client will each appoint an individual (**Project Executive**) to represent Supplier and the Client, respectively, in connection with all aspects of the Project.

3.2 Project Management Committee

- (a) Supplier and the Client may create a committee (Project Management Committee) consisting of employees from the Client and employees from Supplier to oversee the management of the Project.
- (b) If appointed the Project Management Committee will:
 - (i) conduct regular reviews of the operating and strategic plans prepared by the Project Executives and success or otherwise of the Project;
 - (ii) upon Supplier's or the Client's request, assist in resolving any issues arising during the negotiation of an amendment to a Contract; and
 - (iii) meet regularly to effectively manage the project.

4 Personnel

4.1 Supplier and the Client will each be responsible for the management, direction, control, supervision, and compensation of its own employees.

4.2 The Services will be provided under the management, direction, control, and supervision of Supplier. Supplier may perform its responsibilities under this Agreement or any Contract through its Affiliates or Subcontractors, but will not be relieved of its obligations under this Agreement by the use of such Parties.

5 Use of Software and Hardware

5.1 The Client's Software

With respect to the Software used by the Client to which access is supplied to Supplier to enable Supplier to provide the Services:

- (a) the Client represents and warrants that, during the Term, the Client has the right to access and use such Software in the manner in which it is using at the commencement of the Project; and
- (b) the Client grants to Supplier, for Supplier's provision of the Services, the same rights to use such Software that the Client has, subject to [clause 5.3](#).

5.2 Hardware

- (a) With respect to the Client Hardware, the Client represents and warrants that, during the Term:
 - (i) the Client is either the owner of the Client Hardware or is authorised by its owner to include it under this Agreement; and
 - (ii) the Client has the right to use the Client Hardware in the manner in which it is using it as of the commencement of the Project.
- (b) With respect to the Client Hardware, the Client grants to Supplier, for Supplier's provision of the Services, the same rights to use the Client Hardware that the Client has, subject to [clause 5.3](#).

- 5.3 Required Consents
- (a) The Client will obtain and provide to Supplier all Required Consents, which will be consistent with the terms of this Agreement (such as confidentiality and liability).
 - (b) Supplier will pay any fees required to obtain Required Consents for Third Party Software expressly identified in writing in the Statement of Work duly signed by the Supplier as being Supplier's financial responsibility. The Client will pay for any fees required to obtain all other Required Consents.
 - (c) If any Required Consent is not obtained, the Client and Supplier will cooperate with each other in achieving a reasonable alternative arrangement for Supplier to continue its work under this Agreement with as minimal interference to its business operations as is reasonable until such Required Consent is obtained.

6 Supplier's Warranties

- 6.1 Supplier warrants that:
- (a) Services provided under this Agreement will be free from encumbrances;
 - (b) Services will be provided with due care and diligence and is suitable for the purposes for which the Client engages the Supplier, which is disclosed to the Supplier prior to the provision of Services;
 - (c) Services when used in accordance with the specifications set out in the Statement of Work will perform in accordance with those specifications; and
 - (d) any manuals will provide adequate instruction to enable the Client to properly use the Services and, if they are to be installed by the Client, to install them.
- 6.2 To the extent permitted by law, other than the warranties provided under clause 6.1, Supplier makes no warranty or representation, express or implied, in relation to Services provided by Third Parties under Third Party Contracts.
- 6.3 If, during the Warranty Period, the Client notifies Supplier in writing of a defect in the Services and, Supplier must, at its cost:
- (a) promptly commence remedying or rectifying the defect through a method or procedure agreed between Supplier and the Client;
 - (b) advise the Client of an estimate of how long it will take Supplier to remedy or rectify the defect in accordance with the agreed method or procedure;
 - (c) if on-site attendance is specified as applicable during the Warranty Period, attend the site at which the Client is experiencing the defect to remedy or rectify the defect;
 - (d) provide the Client with regular updates of its progress in remedying or rectifying the defect until Supplier remedies and rectifies the defect;
 - (e) conduct analysis and testing to ensure that the defect is remedied and rectified; and
 - (f) provide written notification to the Client that the defect has been remedied and rectified.
- 6.4 Supplier will not be liable under this clause to the extent that a defect is caused:
- (a) by the Client;
 - (b) by a Third Party providing services or products under a Third Party Contract; or
 - (c) an unauthorised modification to or the use of Supplier's Products by the Client which has not been agreed to by Supplier in writing.
- 6.5 The Client will be permitted to conduct appropriate tests to ensure that the defect has been remedied and rectified. If the defect has not been remedied and rectified, the Client will notify Supplier and Supplier will, at its cost, continue to provide the required services in order to remedy and rectify the defect.

7 Charges and Payments

- 7.1 Supplier will issue invoices for the Services in the manner specified in the Statement of Work.
- 7.2 The Client will pay Supplier's invoices for supply of the Services within 14 days of receipt by the Client of Supplier's invoice.
- 7.3 The Client will pay each invoice by wire funds transfer or other electronic means acceptable to Supplier to an account specified by Supplier.
- 7.4 The Client must pay undisputed charges when payments are due and payable under this clause. The Client may withhold portion of the payment or particular charges that the Client disputes in

good faith and in that case the Client must notify Supplier in writing within 14 days of receipt of Supplier's invoice, of the nature of the dispute.

7.5 The Parties must commence to resolve the dispute within 2 days of the receipt of the Client's letter in accordance with clause 22 of the Standard Terms.

7.6 If the dispute is resolved in favour of the Supplier, whether in whole or in part, the Client must, within 24 hours of the resolution of the dispute, pay all outstanding sums to the Supplier, and any interest payable (calculated in accordance with the Interest Rate) without set-off.

8 Supplier's Warranty and Indemnity re Intellectual Property

8.1 Supplier warrants and agrees that:

- (a) the Contract Materials and Supplier's Products will be owned by or licensed to Supplier and will be capable of being used by the Client under the terms of this Agreement;
- (b) in providing the Services and Products it will use its best endeavours not infringe the IPR of the Client or any other Party.

8.2 Supplier will defend the Client, its Affiliates, and their respective employees, officers, and directors against any Loss or Claim made by a Third Party against the Client alleging that the Licensed Product provided to the Client under this Agreement infringes such Third Party's IPRs.

8.3 Supplier will have no obligation for Loss or Claim pursuant to clause 8.1 to the extent such claims are a result of modifications of Supplier's Products by the Client which have not been authorised by Supplier or the use of Supplier's Products in other than its specified operating environment unless such modification, combination, operation or use was at the direction or request of, or in accordance with the specifications provided by, the Indemnifying Party.

8.4 If a claim is made or appears likely to be made against the Client pursuant to clause 8.1 the Client agrees to permit Supplier to obtain the right for the Client to continue to use Supplier's Products or to modify or replace it with one that is at least functionally equivalent.

8.5 The Client will promptly notify Supplier in writing of a claim.

8.6 Supplier is entitled to take sole control of the defence and investigation of the claim at its own expense, and to use lawyers of its choice, by providing prompt written notice to the Client.

8.7 The Client will cooperate in all reasonable respects with Supplier and its lawyers in the defence of such claim, and may reasonably participate at its own expense, through its lawyers or otherwise, in the defence.

9 Data Privacy

9.1 Supplier must comply with any relevant obligations under the applicable data protection laws governing the Client Data to the extent such data protection laws regulate Supplier's processing of the Client Data in Supplier's provision of the Services.

SECTION F – Post Implementation Support Module

In addition to the Standard Terms, the provisions of this Service Level Agreement Module will apply to the supply of Support Services to the Client by Supplier. Unless defined in this Service Level Agreement Module, any capitalised terms and the rules of interpretation are defined in Section B of the Standard Terms.

1 Module Scope

- 1.1 Client requires Supplier to provide Services necessary to support and sustain the Supported System as specified in *Schedule 6 – contained in a Sales Order (Contract) issued to a customer.*

2 Definitions

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday at the location of the Supplier's Service Centre currently located in Perth, Western Australia. This definition is only applicable to this Module and the definition provided in SECTION B - DEFINITIONS & INTERPRETATION applies elsewhere unless otherwise specified.

Service Fees means the fees specified in Schedule 6 – Post Implementation Support contained in a Sales Order (Contract) issued to a customer.

Service Levels means the service levels specified in Schedule 6 – Post Implementation Support contained in a Sales Order (Contract) issued to a customer.

Service Period means the term of Services granted to the Client as specified in a Contract. Unless otherwise stated in the Contract, Services terms including pricing commences on the Effective Date and reflects a 12 Month Period but is subject to termination pursuant to clause 17 of SECTION A - STANDARD TERMS and Clause 6.1 of this Module.

Services means the services specified in Schedule 6 – Post Implementation Support and Schedule 7 – Service Specifications of the Contract.

Supported System means the supported system specified in Schedule 6 – Post Implementation Support.

Third Party Vendor means the owner of Third Party Vendor Software.

Third Party Vendor Software means supported software that is owned by Third Party Vendors and is governed by Third Party Vendor agreements and does not constitute Licenced Products within the context of this agreement.

3 Services

- 3.1 Supplier will provide the Services to meet the requirements of the Service Levels. The Services will be provided at Supplier's option by:
- (a) email;
 - (b) remote access to the Supported System;
 - (c) telephone advice; and
 - (d) on-site attendance at the Location followed by such advice, programming or re-configuration as Supplier considers necessary.
- 3.2 Supplier need not supply the Services by on-site attendance at the Location if Supplier considers the Services are as or more effectively provided off-site.
- 3.3 All Travel and Accommodation associated with this activity will be charged to the client on a cost recovery basis.

4 Service Availability

- 4.1 Supplier will provide Services during Business Hours on any Business Day
- 4.2 Supplier does not warrant that it can promptly receive, process or otherwise act upon a Service Request which is made outside Business Hours or that it can provide on-site Services outside Business Hours.
- 4.3 Where Services are requested by the Client by any means as specified in section 3.1 outside of

Business Hours on a Business Day, an additional standby fee of AUD \$400 plus GST per day or part thereof will be payable for each day or part thereof outside of Business Hours on a Business Day, and the time spent on providing the Services will be billed at Time & Materials x 1.5 times the daily Severity 1 rate (as detailed in SECTION H - Exhibits).

- 4.4 Where Services are requested by the client by any means as specified in section 3.1 outside of Business Days, an additional standby fee of AUD \$400 plus GST per day or part thereof (where that day is a Saturday or Sunday) or AUD \$400 plus GST per day or part thereof (where that day is not a Saturday or Sunday) will be payable for this service and time spent on providing the Services will be billed at Time & Materials x 1.5 times the daily applicable rate (as detailed in SECTION H - Exhibits).

5 Access

- 5.1 The Client must ensure Supplier's staff have full and safe online and on-site access to the Supported System and the relevant equipment at all reasonable times for the purpose of providing the Services. The Client must also ensure that Supplier's staff are provided with all information, facilities, assistance and accessories reasonably required by Supplier to enable Supplier to comply with its obligations under this Agreement.
- 5.2 If reasonably requested by Supplier, the Client must provide a suitably qualified and informed representative to assist Supplier's personnel and to provide such advice or assistance to those personnel as may be necessary to enable Supplier to access the Supported System and relevant equipment and to otherwise effectively perform the Services.

6 Service Period and Renewal

- 6.1 The Service Period of any Contract will be automatically renewed at the end of the Initial Service Period for successive Service Periods of 1 year (each a Renewal Service Period) unless one Party gives the other written notice to terminate a Contract at least 60 days before the end of the Initial Service Period or the Renewal Service Period.

7 Service Fees

- 7.1 The Client must pay the Service Fees at the rate and in the manner specified in Schedule 6 – Post Implementation Support of the Contract.
- 7.2 If the Client disputes the whole or any portion of the claim in an invoice submitted by Supplier, the Client must nevertheless pay the entire amount of the invoice and provide a Notice of Dispute outlining the reasons for disputing the invoice. The Parties must commence to resolve the dispute within 2 days of the receipt of the Client's letter in accordance with clause 22 of SECTION A - STANDARD TERMS.
- 7.3 If it is resolved that some or all of the amount in dispute ought properly be refunded to the Client, then the Supplier must, within seven (7) days of the resolution of the dispute, refund that amount to the Client.
- 7.4 Supplier may vary the Service Fees at any time after the expiration of the Initial Term by giving not less than 30 days written notice of the variation to the Client, effective from the next Renewal Term. If the Client and Supplier fail to agree on the varied Service Fees within 30 days of the notice by Supplier, either Party may terminate the Agreement by giving 30 days written notice to the other.
- 7.5 The Service Fees payable for a Renewal Term will be the same amount as was payable for the existing term unless varied under clause 7.4.

8 Intellectual Property Rights

- 8.1 Subject to clauses 8.2, 8.3 and 8.4, Supplier indemnifies the Client against liability under any final judgment in proceedings brought by a Third Party against the Client which determine that the Services result in the Supported System infringing any Indemnified IPR.
- 8.2 Supplier does not indemnify the Client as provided in clause 8.1 unless the Client:
- (a) notifies Supplier in writing as soon as practicable of any claim or allegation of infringement or suspected infringement;
 - (b) gives Supplier the option to conduct the defence of the claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
 - (c) provides Supplier with reasonable assistance in conducting the defence of the claim;
 - (d) permits Supplier to alter or substitute the infringing part of the Supported System at its own expense to avoid continuing infringement, or authorises Supplier to procure for the Client the authority to continue the use and possession of the infringing part of the Support Products.
- 8.3 Supplier does not indemnify the Client to the extent that an infringement, suspected infringement or alleged infringement arises from:
- (a) use of the Supported System in combination by any means and in any form with other software or hardware not specifically approved by Supplier; or
 - (b) use of the Supported System in a manner or for a purpose not reasonably contemplated or not authorised by Supplier; or
 - (c) the use of other than the latest unaltered version of the Licensed Products on the Supported System;
 - (d) any modification (whether by alteration, deletion, addition or otherwise) to the Licensed Products or any Supported System on which the Licensed Products is installed, by persons other than the Supplier or its authorised representatives; or
 - (e) any integration or attempted integration or interoperation of the Licensed Products with any other system other than the Supported System.
- 8.4 If proceedings are brought or threatened by a Third Party against the Client in respect of a claim under clause 8.1, Supplier may at its option and at its own expense conduct the defence of the proceedings. If Supplier does this, the Client must provide all necessary co-operation, information and assistance to Supplier in the conduct of the defence of the proceedings.

SECTION G – CLOUD HOSTING MODULE - (ESSATTO CLOUD)

In addition to the Standard Terms and the Software Licence, the provisions of this Cloud Hosting Module will apply to the supply of Cloud Hosting Services to the Client by Supplier (for all Clients other than those who have selected an on-premise client-server solution).

1 MODULE SCOPE

- 1.1 Client has not selected an on-premise client-server based solution and accordingly, requires Supplier to provide Hosting Services for the Licensed Products on the Essatto Cloud.

2 Definitions

- 2.1 Unless otherwise defined in SECTION B - DEFINITIONS & INTERPRETATION or SECTION C - SOFTWARE LICENCE, the following terms shall be defined as follows:

Client Content means the materials, including, without limitation, any input or output data, and any Confidential Information that you upload to the Essatto Cloud;

Cloud Hosting Services means the services provided by the Supplier in which the Licensed Product is hosted on the Supplier's Server;

Essatto Cloud means a network of servers in which digital data is stored in logical pools, duly licensed to Essatto under a separate agreement;

Hosting Fee means the applicable monthly or annual fee payable by the Client to the Supplier in consideration for the provision of Hosting Services (such fees are detailed in [Exhibit A – Product and Services Price List](#) and Schedule 8 – Access Fees or any Contract);

Hosting Period means the period between the commencement of the Cloud Hosting Services and the termination of Cloud Hosting Services in accordance;

Invoice Period means the period between the date of issue of one invoice to the date of issue of the next invoice, which can either be monthly or annually;

Software Owner means the owner of the Essatto Cloud; and

Subscription means the applicable Access Fee for access to and use of the Licensed Product delivered via the Cloud Hosting Services (such fees are detailed in Part 2 of [Exhibit A – Product and Services Price List](#) or any Contract).

3 Cloud Hosting Services

- 3.1 The Supplier agrees, in consideration for payment of the Hosting Fee or a Subscription, to provide Cloud Hosting Services in accordance with the terms outlined in this SECTION G – CLOUD HOSTING MODULE, which forms part of this Master Supply Agreement.
- 3.2 The Client agrees to access and use the Cloud Hosting Services in accordance with the terms outlined in this SECTION G – CLOUD HOSTING MODULE.

4 Use of Essatto Cloud

- 4.1 Supplier agrees to host the Licensed Products and its input and output data on the Essatto Cloud to allow Client access to the Licensed Products in order to use the functions purchased by the Client under an Access Licence, and the data generated by the Client in the ordinary course of using the Licensed Products as the Licensed Products were intended to be used.
- 4.2 All other uses of the Essatto Cloud are hereby prohibited. In its use of the Essatto Cloud, the Client must not and must not cause, authorise or allow the use of the Essatto Cloud contrary to this Cloud Hosting Module, including without limitation:
- (a) publishing any material that is false, discriminatory, defamatory, harassing or obscene;
 - (b) violating any privacy or confidentiality rights;
 - (c) promoting or inciting hatred or racial vilification;
 - (d) sending unsolicited emails, including chain letters, bulk emails or spam;

- (e) infringe a Third Party's intellectual property rights; or
- (f) otherwise breach any applicable laws, by-laws or regulations, or otherwise perform, assist, or participate in any illegal acts;

- 4.3 The Client must not, and must not cause, allow or authorise any Third Party to:
- (a) perform or disclose any benchmarking, availability or performance testing of the Essatto Cloud;
 - (b) perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access, hacking, do anything to discover the source code, or to circumvent measures put in place by the Supplier to prevent or limit access to any area of the Essatto Cloud;
 - (c) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download or copy the Essatto Cloud or any content (other than Client Content);
 - (d) access or use the Essatto Cloud to build or support, directly or indirectly, products or services which are competitive to the Supplier or its licensors;
 - (e) licence, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, or commercially exploit the Essatto Cloud; or
 - (f) send viruses, or any computer code, file or program to the Essatto Cloud which is designed to, or has the effect of, destroying, limiting or interrupting the functionality of any computer software or electronic hardware.

5 Fees and Payment

- 5.1 Where the Client has elected to receive access to and use of the Licensed Products via a Subscription, applicable Access Fees will be payable monthly in advance by direct debit or EFT. The Supplier will during the term of the Subscription issue an invoice for access to the Cloud Hosting Services and Licensed Products for the following month.
- 5.2 Where the Client has not elected to receive access to the Licensed Products under a Subscription but requires the Licensed Products to be hosted the Supplier will, upon the commencement of an Invoice Period, generate a tax invoice with respect to the Hosting Fee in consideration for Cloud Hosting Services to be provided during the specified Invoice Period.
- 5.3 The Client must pay the Subscription Access Fee and Hosting Fee in accordance with the invoice terms, notwithstanding any dispute with respect to the service or any invoice.
- 5.4 If the Client disputes the services under a Subscription or an amount invoiced, it must nevertheless pay the Subscription Access Fee or Hosting Fee invoice in full, and the dispute will be dealt with in accordance with Clause 22 of SECTION A - STANDARD TERMS.

6 Client Content

- 6.1 The Client warrants that it owns, or otherwise has all necessary licences to the Client Content that it hosts on the Essatto Cloud, including any copyrightable works (or subject matter other than works) posted on the Essatto Cloud.
- 6.2 In order for the Supplier to perform the Cloud Hosting Services, the Client shall grant to the Supplier a non-exclusive, transferrable, revocable (upon termination of this Agreement in accordance with Clause 17 of SECTION A - STANDARD TERMS) to host, use, process, display and transmit the Client Content in the course of performing the Cloud Hosting Services using the Essatto Cloud.
- 6.3 The Client shall be liable for its own Client Content. In the event that the Supplier suffers any loss, cost, expense, damage or liability as a result of, in connection with, or otherwise as a natural result of the Client Content hosted on the Essatto Cloud (including, without limitation, the interruption of functionality of the Essatto Cloud as a result of any viruses, malware or spyware present in the Client Content), the Client shall indemnify and hold harmless from, and defend the Supplier against any such loss, cost, expense, damage or liability, whether such loss, cost, expense, damage or liability is actual or contingent, present or future, quantified or unquantified.

7 Confidentiality

- 7.1 The Parties acknowledge that in the course of performing their respective obligations under this Cloud Hosting Module, the Confidential Information of the other Party may be disclosed.
- 7.2 The Parties acknowledge that each Party's Confidential Information is valuable to it. Each Party undertakes to keep the Confidential Information of the other secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.

- 7.3 A Party may only use or reproduce the Confidential Information of the other Party for the purposes of performing its obligations or exercising its rights under this Agreement or any Contract
- 7.4 A Party must:
- (a) not disclose the Confidential Information of the other Party to any person except as permitted by this Agreement or any Contract;
 - (b) not make, assist or permit any person (including its authorised representatives) to make any unauthorised use, disclosure or reproduction of the other Party's Confidential Information; or
 - (c) co-operate with the other Party in any action that the other Party may take to protect the confidentiality of its Confidential Information.
- 7.5 A Party may disclose Confidential Information of the other Party to:
- (a) its Personnel, professional advisors or an outsourced services provider requiring access to the information in connection with the Cloud Hosting Services;
 - (b) with the prior written consent of the other Party; or
 - (c) the extent required by law or any regulations of any government agency or stock exchange having authority, subject to it giving the other Party reasonable notice of any proposed disclosure (if permitted by law) to enable that other Party to seek a protective order or other remedy to prevent or limit the disclosure.
- 7.6 The disclosing Party must ensure that any person to whom Confidential Information is disclosed under clauses 7.5(a) or 7.5(b) is bound by an obligation of confidentiality in respect of that Confidential Information on terms consistent with the provisions of this clause.

8 Disclaimer and Limitation of Liability

- 8.1 In providing the Cloud Hosting Services, the Supplier will use all reasonable efforts to keep secure the Client Content hosted on the Essatto Cloud.
- 8.2 Notwithstanding clause 8.1 above, no data transmission over the internet can be guaranteed to be fully secure, and accordingly, the Supplier cannot guarantee or warrant the security of any Client Content hosted on the Essatto Cloud. The Client acknowledges that any information it places on the Essatto Cloud is placed at the Client's own risk.
- 8.3 The Supplier warrants that it will perform the Cloud Hosting Services with due care and diligence. However, to the maximum extent permitted under the *Australian Consumer Law*, the Supplier makes no warranties that the Cloud Hosting Services will be error or interruption free, or that the Supplier will correct all errors, or that the Cloud Hosting Services will meet Client requirements or expectations. The Supplier shall not be responsible for any performance, operation or security issues that arise from Client Content, or any content posted on the Essatto Cloud by third parties.
- 8.4 In *no* event will the Supplier be liable for any indirect, consequential, incidental, or special damages, or for any loss of revenue, profits, sales, data, or goodwill and reputation.
- 8.5 In no event shall the aggregate liability of the Supplier arising out of or related to this Cloud Hosting Agreement, whether in contract, tort or other legal theory, exceed the total amount paid by the Client in consideration for the Cloud Hosting Services in accordance with this SECTION G – CLOUD HOSTING MODULE in the immediately preceding twelve (12) months, up to and including the date of such liability arising.

9 Indemnity

- 9.1 In the event that the Supplier suffers any loss, cost, expense, damage or liability as a result of, in connection with, or otherwise as a natural result of the Client Content hosted on the Essatto Cloud (including, without limitation, where the Client Content is alleged to infringe upon any Third Party's intellectual property rights), the Client shall indemnify and hold harmless from, and defend the Supplier against any such loss, cost, expense, damage or liability, whether such loss, cost, expense, damage or liability is actual or contingent, present or future, quantified or unquantified.
- 9.2 If, in the reasonable opinion of the Supplier, or it is determined by a court of competent jurisdiction that the Client Content breaches any law, or infringes upon the rights of any Third Party, the Supplier may, in addition to other remedies which may be available to it, remove the infringing Client Content from the Essatto Cloud, or require the Client to modify the Client Content to remove the infringing Client Content, or terminate this Agreement in accordance with Clause 17 of SECTION A - STANDARD TERMS.

10 Term and Termination

- 10.1 This Cloud Hosting Module shall commence on the Contract Effective Date and terminate:
- (a) immediately upon non-payment of the Hosting Fee or Subscription; or
 - (b) otherwise in accordance with Clause 17 of SECTION A - STANDARD TERMS.
- 10.2 The Supplier may, at its discretion, indefinitely suspend the Client's access to or use of the Essatto Cloud if the Supplier believes on reasonable grounds that:
- (a) the Client Content poses a significant threat to the functionality, security, integrity or availability of the Essatto Cloud or any content thereon; or
 - (b) the Client is using the Essatto Cloud for an illegal act; or
 - (c) the Client has violated this Agreement, whether in whole or in part.
- 10.3 If the Client's access to or use of the Essatto Cloud is suspended for any reason, the Supplier may lift the suspension if it is satisfied that the Client:
- (a) does not pose any threat to the functionality, security, integrity or availability of the Essatto Cloud or any content thereon; or
 - (b) is not using the Essatto Cloud for an illegal act; or
 - (c) has not violated this Agreement.
- 10.4 The Supplier may, immediately upon suspension of the Client's access to or use of the Essatto Cloud, commence steps to terminate this Agreement in accordance with Clause 17 of SECTION A - STANDARD TERMS.
- 10.5 Upon termination for any reason, Supplier shall make Client Content available to the Client for download for a period of thirty (30) days, subsequent to which all Client Content hosted on the Essatto Cloud will be deleted, unless otherwise required by law.

11 Monitoring and Audit

- 11.1 The Supplier may, but is not obliged to, monitor the Client Content to ensure that the Client Content complies with this Agreement and this Cloud Hosting Module, and to detect and prevent threats to the functionality, security, integrity and availability of the Hosting Services.
- 11.2 The Supplier may compile statistical data in relation to the performance, operation and use of the Hosting Services, and may use the data or transmit such data to a Third Party for the purposes of statistical analysis or research and development.
- 11.3 The Client agrees that Supplier, or the relevant Software Owner may, upon twenty-eight (28) days' written notice to the Client, and no more frequently than once in every calendar year, audit the Client's use of the Essatto Cloud. If an audit reveals that the Client has used the Essatto Cloud otherwise than in accordance with this Agreement and this Cloud Hosting Module, the Supplier may take action to suspend or terminate this Agreement in accordance with clause 10 in this SECTION G – CLOUD HOSTING MODULE. The Client further agrees that the Supplier may share the results of the audit with the Software Owner.

12 Export Laws

- 12.1 The Essatto Cloud is provided to the Client in accordance with Export Laws, The Client agrees that no data, information, software programs and/or materials resulting from the use of the Essatto Cloud will be exported, directly or indirectly, in violation of these Export Laws, or will be used for any purpose prohibited by these Export Laws, including, without limitation, in conjunction with nuclear, chemical or biological weapons or missile technology.

SECTION H - Exhibits

Exhibit A - Product and Services Price List

As specified in a sales order issued to the customer

Exhibit B - Template Order Form

As specified in a sales order issued to the customer

Order Schedules

Schedule 1 - Designated System (Computer or Virtual Machine)

As specified in a sales order (Contract) issued to the customer

Schedule 2 – Essatto Products Required

As specified in a sales order (Contract) issued to the customer

Schedule 3 – Maintenance & Support

As specified in a sales order (Contract) issued to the customer

Schedule 4 – Statement of Work

As specified in a sales order (Contract) issued to the customer

Schedule 5 – Payment Schedule

As specified in a sales order (Contract) issued to the customer

Schedule 6 – Post Implementation Support

As specified in a sales order (Contract) issued to the customer

Schedule 7 – Service Specifications

As specified in a sales order (Contract) issued to the customer

Schedule 8 – Access Fees

As specified in a sales order (Contract) issued to the customer

Exhibit C – Template Change Request Form

Will be provided as required.