

# MASTER SERVICES AGREEMENT

## SECTION A - GENERAL TERMS AND CONDITIONS

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### 1 Operation of this Agreement

- 1.1 The terms of this Agreement apply to each Order that is agreed between Citadel Capital Group Pty Ltd (ACN 009195322) as trustee for The Ioppolo Trust and Janti Pty Ltd (077791792) as trustee for The Lepore Family Trust (ABN 14 146 404 137) trading as Ioppolo and Associates, Suite 6, Level 1, 12-20 Railway Road SUBIACO WA 6008 (**Supplier**) and the party to whom the Services are supplied (**Client**).
- 1.2 Client enters into each Order 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 any Order.
- 1.3 This Agreement does not:
- (a) oblige the Client to purchase any Service from the Supplier other than as set out in an Order;
  - (b) oblige the Supplier to provide any Service to the Client other than as set out in an Order; or
  - (c) create any exclusivity relationship between the Parties.
- 1.4 Each Party and its Personnel must comply with all applicable Laws in the performance of the Order.

### 2 Not Used

### 3 Orders

- 3.1 If Client requires the supply of Services by Supplier, the Client and the Supplier will discuss the Client's requirements. The Supplier will then issue an Order to the Client for review and confirmation. If the Client agrees to the terms in the Order, the Client must:
- (a) electronically execute the Order in accordance with the requirements of the Order; or
  - (b) print off the Order, execute and return to the Supplier.
- 3.2 Upon execution of an Order by a Client in accordance with clause 3.1, a legally binding agreement between the Parties for the Services outlined in the Order is formed. Unless the Order provides otherwise, the Order will commence on the date that the Client executes the Order in accordance with clause 3.1 (**Order Effective Date**) and continue for the Order Term unless otherwise earlier terminated in accordance with these terms.
- 3.3 On the expiry of the Initial Order Term, the Order is automatically extended unless either Party gives the other Party 30 days' written notice of its intention to terminate the Order. Subsequently, this Order will continue to be automatically extended unless either Party gives 30 days' written notice of its intention to terminate the Order, or unless otherwise terminated in accordance with clause 17.
- 3.4 The Supplier may change the Fees payable for each Renewal Order Term by providing 30 days' written notice prior to each Order Renewal Term.
- 3.5 To the extent there is any inconsistency between the terms of the Order and these terms, the terms of the Order shall prevail.

### 4 Supplier's obligations

- 4.1 In consideration for the Client's payment of the Fees, the Supplier will provide the Services in accordance with the requirements of each Order.

### 5 Client's Obligations

- 5.1 In consideration for the Supplier's provision of the Services, the Client will pay the Supplier the Fee.
- 5.2 The Client must and must ensure that the Client's Employees:
- (a) use the Services only in accordance with the terms of the Order;
  - (b) use the Required Third Party Software only in accordance with the terms of the licence that is granted in connection with that Required Third Party Software;

- (c) provide Supplier with reasonable assistance and information required for the Supplier to provide the Services;
- (b) ensure that Supplier's information and materials in the custody of the Client for the purposes of the Order 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 Order;
- (d) keep such records relating to the use and performance of the Required Third Party Software 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 Post Implementation Support Services, make the same available to Supplier upon request.

5.3 The Client must 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, including by its Employees:

- (a) develop for supply, or supply any of the Services, and any other products which are similar (including in form, function or operation) to the Services;
- (b) 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 Services without the express written consent of the Supplier;
- (c) circumvent user authentication or security of any of our networks, accounts or hosts or those of any third party;
- (d) anything contrary to any other provision in these terms, any Order, or any other agreement between the Parties in relation to the Services.

## 6 Exclusions

6.1 Unless an Order expressly provides otherwise, the Services do *not* include:

- (a) correction of errors caused by negligence, misuse, operator error, or misapplication of the Services by any person other than the Supplier or a person authorised by Supplier;
- (b) any warranty that the Services will be fit for any purpose;
- (c) training of operating and programming staff;
- (d) rectification of errors caused by incorrect use of the Services;
- (e) rectification of errors caused by an equipment fault;
- (f) equipment maintenance;
- (g) diagnosis or rectification of faults not associated with the Services;
- (h) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Supplier or the Software Owner;
- (i) correction of errors arising directly or indirectly out of the Client's failure to comply with these terms or any other agreement with the Software Owner; or
- (j) assistance in the day to day operational use of the Services.

## 7 Change Management Procedures

7.1 In addition to any other express right stated in any Order, a Party may, at any time during the Term, request changes to any part of an Order by giving to the other Party a Change Request.

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 14 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 Order (**Change Proposal**).

7.4 Supplier may accept or reject any Change Request from Client at its sole discretion.

7.5 Client must, after receiving a Change Request or a Change Proposal from Supplier, within 7 days, notify Supplier that it:

- (a) accepts the Change Request or Change Proposal;
- (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 20.3; 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 Order to which it relates will continue unchanged.

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

## 8 Access

8.1 Client will grant to Supplier's Personnel such access to the Client's premises, Client Hardware and the Client's systems as may be reasonably required by those Personnel to perform Supplier's obligations under an Order.

## 9 Non-Solicitation

9.1 During the Term of any Order and for 6 months after the expiry or termination of an Order ("**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 any Order, 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 Employee's 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 commensurate with 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 any Order;
- (b) has the authority to grant the licence or access rights provided to the other Party as set out in any Order; and
- (c) holds all licences, approvals and permits required by law to perform its obligations under the Order.

10.2 The Supplier warrants that, to the best of the Supplier's knowledge at the time that an Order is entered into, access to or the provision of the Services does 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 Services infringe 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 Services 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) replace the Services with services of equivalent functionality and performance; or
- (b) terminate the relevant Order and issue a pro rata refund of the fee to the Client having regard to the fee paid and the amount of time that remains in the term of the Order.

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) any modification (whether by alteration, deletion, addition or otherwise) to the Services by persons other than the Supplier or its authorised representatives; or
- (b) any integration or attempted integration or interoperation of the Services with any other software or equipment other than software or equipment supplied by the Supplier and expressly represented or designed to function in conjunction with and which integrates or interoperates with the Services.

## 11 Taxes

- 11.1 The Fee is exclusive of all Taxes. The Client must pay all Taxes imposed or levied in Australia or overseas in connection with the supply of Products and Services under an Order.
- 11.2 Goods and services supplied to Australian residents or for use in Australia are subject to tax under the GST law. If the Client provides assurances to the Supplier that:
- (a) the Client is a non-resident for Australian income tax purposes;
  - (b) the Client is not registered or required to be registered for GST purposes in Australia; and
  - (c) the Client requires the goods and services solely for use in its business or operations outside of Australia,
- the Supplier may rely upon such assurances and treat goods or services supplied to the Client under this an Order as GST-free supplies under the GST Law. If the Services supplied to the Client are subsequently classified as taxable because any of the Client's assurances were incorrect, the Client must reimburse the Supplier on demand for the GST payable (including any interest, fine, penalty or other amount imposed upon the Supplier for failing to collect the GST).
- 11.3 If GST is applicable, each time a Taxable Supply is made by a Party to the other under an Order, 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.

## 12 Payment

- 12.1 Unless stated otherwise in an Order or in the Tax Invoice, Client will pay the Fees in accordance with the Tax Invoice within 14 days of its receipt.
- 12.2 A Tax Invoice 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) by verifying documentation; and
  - (d) the invoice complies with GST Law if applicable.
- 12.3 In the event that the Client does not pay the Tax Invoice in accordance with clause 12.1, the Client acknowledges that the Supplier may issue a Notice of Default (as defined in clause 17.1) to the Client, and may terminate the Order in accordance with the provisions of clause 17.

## 13 Not Used

## 14 Force Majeure

- 14.1 Except for the Client's obligation to pay any amount under the Order and its obligations under clause 5, neither Party will be liable for any delay or failure to perform its obligations under an Order if such delay is due to any circumstance beyond the relevant Party's reasonable control (including but not limited to epidemics, pandemics, and Government sanctioned restrictions and orders, whether known or unknown at the time of entering into an Order) (**Force Majeure Event**).
- 14.2 To the extent that a Party's delay or inability to perform under the Order is due to the existence and its notification of Force Majeure, the affected obligations of that Party under the Order 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.
- 14.3 If a Party is unable to perform its obligations under the Order for a period of 45 days or more, either party may elect to terminate the Order without penalty or cost.

## 15 Intellectual property and moral rights

- 15.1 Unless otherwise expressly stated in these terms or the Order, no Pre-existing IPR of either Party is assigned or otherwise transferred.
- 15.2 The Supplier or the Software Owner (as relevant) retains all ownership of and IPR in:
- (a) the Required Third Party Software;
  - (b) the Services; and
  - (c) the Documentation,
- and nothing in the Order has the effect of transferring, assigning or altering this.
- 15.3 As between the Parties:

- (a) Supplier retains all ownership of and IPR in anything developed and delivered in connection with providing the Services under the Order, including any New Materials; and
  - (b) all IPR subsisting in the Services, whether or not created by the Client and including any New Materials, 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 Supplier, to allow the Supplier to 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.
- 15.4 Any Required Third Party Software or other third party technology that may be appropriate or necessary for use of or with the Services 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 Required Third Party Software is licensed to Client only for use with or as a part of the Software under the terms of the Required Third Party Software licence agreement specified in the Documentation or as otherwise notified by the Supplier. The Client may be required to sign or agree to an end user licence agreement with the provider of the Required Third Party Software.
- 15.5 It is the Client's responsibility to ensure its own compliance with all Third-Party licences, including various open-source licences.
- 15.6 Client must *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 New 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) disclose results of any program benchmark tests without Supplier's prior written consent;
  - (e) 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.
- 15.7 The Client must inform the Supplier of any:
- (a) creation or development of any modifications, adaptations, or improvements to the Required Third Party Software, or the creation of any new IPR resulting from the use or exploitation of the Software or Confidential Information; and
  - (b) adaptation of any part of the Required Third Party Software, 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 Order Term or subsequent thereto, and assign, and do all things necessary to assign such IPR subsisting therein to the Supplier.

## 16 Confidentiality

- 16.1 Each Party acknowledges that the Confidential Information of the other Party 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 an Order.
- 16.3 A Party must:
- (a) not disclose the Confidential Information of the other Party to any person except as permitted by an Order;
  - (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 the Order;
  - (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 Services 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) the Services;
  - (b) interfacing other software and hardware systems to the Required Third Party Software; and
  - (c) building extensions to Required Third Party Software (to the extent permitted under an Order).
- 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 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 the Order for any reason, Client shall cease using, and shall return or destroy, all copies of the applicable Documentation.

## **17 Termination**

- 17.1 Either Party may immediately terminate an Order by written notice if:
- (a) the other Party breaches a term of the Order 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 defaulting Party fails 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;
  - (b) the other Party breaches a material term of the Order and such breach is incapable of being remedied; or
  - (c) the other Party becomes subject to an Insolvency Event.
- 17.2 The non-breaching Party may, in its sole discretion, extend the 30-day remedy period for so long as the breaching Party continues reasonable efforts to cure the breach. Such extension shall not be considered a waiver of its rights in connection with the relevant breach.
- 17.3 Termination of the Order will not affect the validity of any other existing Orders, which will each continue in accordance with its terms until their respective termination or expiry.
- 17.4 Upon termination of the Order in accordance with clause 17.1:
- (a) the Supplier will immediately cease providing the relevant Services;
  - (b) all amounts for Services provided up to the date of termination, including Services which have been provided and have not yet been invoiced will be a debt due and payable by the Client within 30 days of the date of the termination;
  - (c) any amount that would be payable by the Client for the remainder of the Initial Order Term or Order Renewal Term had the Order not been terminated will be a debt due and payable by the Client within 30 days of the date of the termination;
  - (d) where the relevant Services involve an on-premise solution, the Client agrees to grant the Supplier such rights of access to any necessary premises to allow the Supplier to retrieve any equipment of the Supplier; and
  - (e) each Party agrees to, as soon as reasonably practicable, return to the other Party (where possible), or delete or destroy (where not possible to return), any of the other Party's property (including any Confidential Information and Intellectual Property).

## **18 Indemnity**

- 18.1 The Client indemnifies the Supplier and keeps harmless the Supplier against any Loss or Claim that the Supplier sustains or incurs arising out of or in connection with:
- (a) any breach of clause 15 or clause 16 by the Client; and
  - (b) breach of Third Party IPR.

## 19 Liability

- 19.1 If any Australian legislation implies in an Order any term, condition or warranty, and that legislation avoids or prohibits provisions in an Order 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 the Order.
- 19.2 Neither the Supplier nor the Software Owner will have any liability to the Client for any Consequential Loss.
- 19.3 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 Software. The Client further agrees and acknowledges that to the maximum extent permitted by law, Supplier's aggregate liability to the Client, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred by the Client in connection with an Order, will not exceed the greater of:
- (a) the Fees paid to the Supplier under the Order; and
  - (b) \$10,000.

## 20 Dispute resolution

- 20.1 In the event of any dispute between the Parties under or in connection with the Order, 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 (and if no Relationship Manager is appointed, a relevant representative of that Party who has sufficient understanding of the Order); 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 20.1(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 30 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 20.1 (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.
- 20.2 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.
- 20.3 Notwithstanding clauses 20.1 and 20.2 above, the Parties agree that if the dispute relates to questions over the technical functions of the Services, 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.
- 20.4 Each Party agrees that the decision of the expert will be binding on both Parties.
- 20.5 For the avoidance of doubt, in this clause 20, 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 Affiliate of the body corporate that is a shareholder in either Party; or
  - (c) an Affiliate 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.

20.6 Notwithstanding anything in this clause 20, 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.

20.7 Despite the existence of a dispute, each Party must continue to perform its obligations under the Order, including, without limitation, the Client's obligation to pay to the Supplier all Fees as and when they fall due.

20.8 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 this clause.

20.9 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.

## 21 Notices

21.1 Any notice given under these terms must be in writing and may be delivered by hand, by mail or by email to the address of a Party set out in an Order or alternate address as may be advised by the other Party from time to time.

21.2 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.

## 22 Privacy

22.1 Each Party will at all times comply with the Privacy Act and any other privacy law or privacy regulation applicable to that Party (**Privacy Laws**).

22.2 In relation to Customer Data that contains or is Personal Information, we will only use this Customer Data in the manner permitted by these terms and Privacy Laws.

22.3 You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Customer Data.

22.4 Without limiting this clause 22, you may only disclose Personal Information in your control to us, if:

- (a) you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by these terms;
- (b) you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties; and
- (c) where any Personal Information is Sensitive Information, you have obtained the specific consent to that disclosure from the individual to whom the Sensitive Information relates.

## 23 Assignment and Novation

23.1 The Client must not assign the benefit of the Order without Supplier's written consent.

23.2 Supplier may consent to the assignment or novation of the Order subject to such conditions as Supplier chooses to impose.

## 24 Surviving provisions

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

## 25 General



- 25.1 Client and Supplier are independent contractors and neither Party has the authority to bind the other. No Order is intended and will not be taken to constitute any partnership, agency, employment or joint venture relationship between the Parties.
- 25.2 Each Order constitutes one entire agreement between the Parties, and supersedes all prior negotiations and representations, whether written or oral.
- 25.3 Subject to clause 7, the Order may only be varied by written amendment signed by both Client and Supplier.
- 25.4 If any part an Order is void or unenforceable in any jurisdiction, it is severed for that jurisdiction and the remainder of the Order will remain in full force and effect.
- 25.5 Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of any Order.
- 25.6 The Client must pay all stamp duty and other government imposts payable in connection with any Order and all other documents and matters referred to in any Order when due or earlier if requested in writing by the Supplier.
- 25.7 The Client must pay interest on any amount due and not paid within the time frame required by any Order at the Interest Rate.
- 25.8 A waiver by either Party in respect of a breach of a provision of any Order 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 any Order will not be interpreted as a waiver of that provision. A waiver is not effective unless it is in writing.
- 25.9 Except as otherwise provided in these terms or any Order, all rights and remedies available to a Party under the Order are cumulative and not exclusive of any other rights or remedies at Law.
- 25.10 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 any Order.
- 25.11 If the Client consists of more than one person each Order binds each person jointly and severally.
- 25.12 If a Party consists of more than one person, an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- 25.13 If a Party agrees to an Order as a trustee:  
(a) that party enters into the Order only in its capacity as a trustee of the trust of which is described as the trustee; and  
(b) despite any other provision of these terms, a liability arising under or in connection with these terms is limited and can be enforced against a trustee only to the extent to which the trustee is indemnified out of the assets of the trust,  
but the limitation in (b) above does not apply where the trustee's right to indemnification is reduced or lost as a result of fraud, breach of trust or breach of duty by the Trustee.
- 25.14 Each Order 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.

## 26 Definitions

**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*;

**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 Hardware** means the hardware used by the Client in connection with Services, including equipment located on client's premises and a Client's private cloud, which is provided by a third party cloud service provider such as Amazon, Google or Azure;

**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 any Order and includes information relating to:

- (a) the design, specification and content of the Services;
- (b) the personnel, policies or business strategies of Supplier or the Client; and
- (c) the terms on which the Services are supplied under the Order,

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;

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that the Client's obligation to pay the Fees and any other amounts due and payable under an Order will not constitute "Consequential Loss" for the purposes of this definition;

**Customer Data** means the information, logos, documents, customer information, Personal Information and other data to which the Client provides the Supplier access to, or which is stored by the Services, or generated by the Services as a result of the Client's use of the Services.

**Designated System** means the computer hardware or virtual machine and operating system designated under the Order in connection with which the Services are going to be provided and which are specified in the Order;

**Documentation** means the user guides and training manuals and associated documentation in connection with the Services provided in electronic or hard copy form;

**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 Services;

**Fee** means the amount payable by Client for the provision of Services by the Supplier under an Order;

**Force Majeure Event** has the meaning given to it in clause 14.1;

**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);

**Initial Order Term** means in the term specified in an Order;

**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;

**Location** means the location(s) where the Designated System is located or from where the Designated System can be accessed as specified in the Order;

**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;

**New Material** means any material that is developed, enhanced or augmented, including the development of new software, in the provision of providing the Services;

**Order** means the written document in accordance with clause 3, in a form provided by the Supplier specifying the Services, the Fee and all other relevant information required;

**Order Effective Date** has the meaning given to it in clause 3.2;

**Order Renewal Term** means, in connection with an Order, a further period that is equivalent in duration to the Initial Order Term;

**Order Term** means the Initial Order Term and any extension under clause 3.3 of this SECTION A - GENERAL TERMS;

**Outsourced Service Provider** means an agent or contractor of a Party to the Order;

**Party or Parties** means one or both Parties to the Order;

**Personal Information** is defined in the Privacy Act;

**Privacy Act** means the Privacy Act 1988 (Cth);

**Privacy Laws** has the meaning given to it in clause 22.1;

**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 the Order 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;

**Required Third Party Software** means certain third party software which is required in connection with the Services and for which the Client may be required to enter into a separate licence agreement or EULA with third party suppliers and for which an Access Fee may be applicable.

**Sensitive Information** is defined in the Privacy Act;

**Services** means the services provided by the Supplier to the Client under an Order and may include provision of cloud hosting services and consultancy services;

**Software Owner** means each owner of the IPR in the Required Third Party Software and each of its components;

**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 Order Statement of Work, including the provision of Supplier hosted private or public Cloud solutions;

**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;

**Post Implementation Support Services** means updates, fixes to standard functionality, security alerts and critical patch updates provided in accordance with SECTION D;

**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 the Order, including, without limitation, goods and services tax (GST) and withholding tax;

**Term** means the Initial Term and any extension under clause **Error! Reference source not found.** of this SECTION A - GENERAL TERMS;

**Third Party** and **Third Parties** means, in respect of each Party, any person or entity other than that Party's directors, officers, and employees, and Affiliates (and such Affiliates' directors, officers and employees); and

## 27 Interpretation

27.1 Headings are for convenience only and do not affect interpretation.

27.2 The singular includes the plural, and vice versa.

27.3 Including and similar expressions are not words of limitation.

27.4 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.

27.5 A provision of these terms must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of these terms or the inclusion of the provision in these terms.

27.6 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.

27.7 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.

27.8 Expressions which are defined in the *Corporations Act 2001* (Cth) have the same meaning when used in these terms, unless otherwise specified.

27.9 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 these terms (as the context requires);
- (d) an agreement or document (including a reference to the Order) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by an Order or that other agreement or document;
- (e) a Party to an Order 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.



## SECTION B - CONSULTANCY SERVICES – ADDITIONAL TERMS AND CONDITIONS

In addition to the Terms and Conditions in Section A, to the extent that the Services in an Order include consultancy services, the provisions of this Section B will apply. Unless otherwise defined in this Section B, any capitalised terms and rules of interpretation have the meaning given in clause 26 of Section A. To the extent there is any inconsistency between this Section B and Section A, this Section B prevails.

### 1 Scope

- 1.1 Client requires Supplier to provide the Consultancy Services and produce the Deliverables which form part of the Consultancy Services as set out in the Order.

### 2 Definitions

**Agreement 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 the Order 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 Order;

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

**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 required under an Order;

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

**Project** means the project in connection with which the Supplier will provide consultancy services under an Order;

**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 the Order;

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

**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, as per an Order;

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

**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;

**Third Party Software** means software used by the Client that is not supplied by the Supplier; and

**Warranty Period** has the meaning specified in the Order and if no Warranty Period is specified there is no Warranty Period.

### **3 Management of the Order 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 an Order; 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 these terms or any Order through its Affiliates or Subcontractors, but will not be relieved of its obligations under these terms by the use of such Parties.

### **5 Use of Software and Hardware**

#### **5.1 The Client's Software**

With respect to the Client Software 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 Client 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 Client 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 the Order; 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 these terms (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 the Order 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 will be free from encumbrances;
- (b) Services will be provided with due care and diligence;
- (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 Unless otherwise specified, 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 notice in accordance with clause 20 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.

## SECTION C – CLOUD HOSTING – ADDITIONAL TERMS AND CONDITIONS

In addition to SECTION A - GENERAL TERMS AND CONDITIONS, to the extent that the Services in an Order include the granting of access to the Designated Cloud Solution, the provisions of this Section C will apply. Unless otherwise defined in this Section C, any capitalised terms and rules of interpretation have the meaning given in clause 26 of Section A. To the extent there is any inconsistency between this Section C and Section A, this Section C prevails.

### 1 Scope

Client requires Supplier to provide Hosting Services as set out in an Order

### 2 Definitions

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

**Cloud Hosting Services** means the cloud hosting services provided by the Supplier as per the Order;

**Cloud Owner** means the owner of the Designated Cloud Solution;

**Designated Cloud Solution** means the cloud solution that is specified in the Order;

**Designated Software** means the software that is specified in the Order;

**Export Laws** means US Export Administration Regulations and all applicable export laws and regulations of the United States of America;

**Hosting Fee** means the applicable monthly or annual fee payable by the Client to the Supplier in consideration for the provision of Hosting Services;

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

**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.

### 3 Cloud Hosting Services

3.1 The Supplier agrees, in consideration for payment of the Hosting Fee, to provide Cloud Hosting Services in accordance with the terms outlined in this Section C – Cloud Hosting, which forms part of these terms.

3.2 The Client agrees to access and use the Cloud Hosting Services in accordance with the terms outlined in this Section C – Cloud Hosting.

### 4 Use of Designate Cloud Solution

4.1 Supplier agrees to host the Designated Software and its input and output data on the Designated Cloud Solution to allow Client access to the Designated Software and the data generated by the Client in the ordinary course of using the Designated Software as the Designated Software were intended to be used.

4.2 The Client acknowledges and agrees that its use of the Designated Cloud Solution may be subject to additional terms with the provider of the Designated Cloud Solution and the Client will be solely responsible for executing and complying with those terms and conditions.

4.3 All uses of the Designated Cloud Solution other than as provided in these terms and the Order are prohibited. In its use of the Designated Cloud Solution, the Client must not and must not cause, authorise or allow the use of the Designated Cloud Solution contrary to this Section C – Cloud Hosting, 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.

4.4 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 Designated Cloud Solution;
- (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 Designated Cloud Solution;
- (c) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download or copy the Designated Cloud Solution or any content (other than Client Content);
- (d) access or use the Designated Cloud Solution 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 Designated Cloud Solution; or
- (f) send viruses, or any computer code, file or program to the Designated Cloud Solution 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 the Designated Cloud Solution, applicable Hosting Fees will be payable monthly in advance by credit card, direct debit or EFT. The Supplier will during the term as set out in the Order, issue an invoice for access to the Cloud Hosting Services and for the following month.

5.2 The Client must pay the Hosting Fees in accordance with the invoice terms, or if no term is specified, within 14 days of receipt of the invoice, notwithstanding any dispute with respect to the service or any invoice.

5.3 If the Client disputes the services or an amount invoiced, it must nevertheless pay the Hosting Fee invoice in full, and the dispute will be dealt with in accordance with Clause 20 of SECTION A - GENERAL 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 Designated Cloud Solution, including any copyrightable works (or subject matter other than works) posted on the Designated Cloud Solution.

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 the Order in accordance with Clause 17 of SECTION A - GENERAL TERMS or upon expiration of the Order) to host, use, process, display and transmit the Client Content in the course of performing the Cloud Hosting Services using the Designated Cloud Solution.

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 Designated Cloud Solution (including, without limitation, the interruption of functionality of the Designated Cloud Solution 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 Disclaimer and Limitation of Liability**

7.1 In providing the Cloud Hosting Services, the Supplier will use all reasonable efforts to keep secure the Client Content hosted on the Designated Cloud Solution.

7.2 Notwithstanding clause 7.1 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 Designated Cloud Solution. The Client acknowledges that any information it places on the Designated Cloud Solution is placed at the Client's own risk.

7.3 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 Designated Cloud Solution by third parties.

## **8 Term and Termination**

- 8.1 This SECTION C – CLOUD HOSTING shall commence on the Order Effective Date and terminate:
- (a) immediately upon non-payment of the Hosting Fee;
  - (b) expiration of the relevant Order Term; or
  - (c) otherwise in accordance with Clause 17 of Section A,
- whichever occurs first.
- 8.2 The Supplier may, at its discretion, indefinitely suspend the Client’s access to or use of the Designated Cloud Solution 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 Designated Cloud Solution or any content thereon; or
  - (b) the Client is using the Designated Cloud Solution for an illegal act; or
  - (c) the Client has breached the Order, whether in whole or in part.
- 8.3 If the Client’s access to or use of the Designated Cloud Solution 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 Designated Cloud Solution or any content thereon; or
  - (b) is not using the Designated Cloud Solution for an illegal act; or
  - (c) has not breached the Order.
- 8.4 The Supplier may, immediately upon suspension of the Client’s access to or use of the Designated Cloud Solution, commence steps to terminate the Order in accordance with, and subject to the terms of, Clause 17 of SECTION A - GENERAL TERMS.
- 8.5 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 Designated Cloud Solution will be deleted, unless otherwise required by law.

## **9 Monitoring and Audit**

- 9.1 The Supplier may, but is not obliged to, monitor the Client Content to ensure that the Client Content complies with these terms and this SECTION C – CLOUD HOSTING, and to detect and prevent threats to the functionality, security, integrity and availability of the Hosting Services.
- 9.2 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.
- 9.3 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 Designated Cloud Solution. If an audit reveals that the Client has used the Designated Cloud Solution otherwise than in accordance with these terms, the Supplier may take action to suspend or terminate the Order in accordance with clause 8 in this SECTION C – CLOUD HOSTING. The Client further agrees that the Supplier may share the results of the audit with and the Software Owner.

## **10 Export Laws**

- 10.1 The Designated Cloud Solution 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 Designate Cloud Solution 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 D – POST IMPLEMENTATION SUPPORT – ADDITIONAL TERMS AND CONDITIONS**

In addition to SECTION A - GENERAL TERMS AND CONDITIONS, to the extent that the Services in an Order include the Supplier providing Post Implementation Support, the provisions of this Section D will apply. Unless otherwise defined in this Section D, any capitalised terms and rules of interpretation have the meaning given in clause 26 of Section A. To the extent there is any inconsistency between this Section D and Section A, this Section D prevails.

### **1 Scope**

Client requires Supplier to provide Post Implementation Support as set out in an Order.

### **2 Definitions**

**Service Levels** means the service levels specified in an Order.

### **3 Services**

3.1 Supplier will provide the Post Implementation Support 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 Designated System;
- (c) telephone advice; and/or
- (d) on-site attendance to the Location followed by such advice, programming or re-configuration as the 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 costs associated with attendance at the Location will be charged to the Client at cost.

### **4 Service availability**

4.1 Supplier will provide Services during Business Hours on any Business Day.

4.2 Any Service Request which is made outside Business Hours will be received and processed on the next Business Day.

4.3 The Supplier will only provide the Services on Location outside of Business Hours subject to the payment of additional fees that either specified in the Order or otherwise provided to the Client by the Supplier in adv

### **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 the Order.

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.