

OPERATIVE PART

1 Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

ACDC has the meaning given in clause 18.3.

ACL has the meaning given in clause 16.1.

Additional Costs means any additional costs, expenses, damages or losses suffered or incurred by the Company.

Affected Party has the meaning given in clause 22.2.

Agreement means these General Terms and Conditions and all schedules, annexures, documents and attachments included or referred to in it and any Order Form and all schedules, annexures, documents and attachments included or referred to in it.

Authorised User means the user(s) permitted to use the SaaS Services specified in an Order Form;

Business Day means a day on which banks are open for general banking business in Western Australia, excluding Saturdays, Sundays and public holidays.

Business Hours means 9am to 5pm on a Business Day.

Change of Control occurs if, after the Commencement Date, a person acquires (directly or indirectly):

- (a) shares in the Customer conferring alone or in aggregate 50% or more of the voting or economic interests in the Customer on a fully diluted basis;
- (b) the power to control the appointment or dismissal of a majority of the Customer's directors; or
- (c) the capacity to control the financial and operating policies or management of the Customer.

Commencement Date means the date on which the Parties execute an Order Form.

Company means the entity described as such in an Order Form.

Confidential Information includes information or documentation which:

- (a) is disclosed to the recipient in connection with this Agreement (whether before or after the Commencement Date);
- (b) is prepared or produced under or in connection with this Agreement (whether before or after the Commencement Date); or
- (c) relates to:

- (1) the business, assets or affairs of a Party or any of its Related Bodies Corporate;
- (2) the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and whether it is disclosed to the recipient or received, acquired, overheard or learnt by the recipient in any way whatsoever.

Contract Year means a 12 month period commencing on: (i) the Order Commencement Date; and (ii) each subsequent anniversary of the Order Commencement Date, during the Services Term.

Customer means the entity described as such in an Order Form.

Customer Environment means the computing environment of the Customer including all hardware, software, information technology and telecommunications services and Systems.

Data means all of the information, documents and other data provided by the Customer, its Personnel or any Authorised User to the Company, any content uploaded by the Customer, its Personnel or any Authorised User to the Company’s System, or otherwise accessed by the Company in providing the Services.

Data Access Policy means the document of the same name and amended from time to time by the Company in respect of Company policies and directions for the collection, storage, use and disclosure of data.

Development Fee means the fee agreed by the Parties for any Development Services in accordance with clause 5.

Development Services means the services to be provided by the SaaS Provider pursuant to this Document for the development of the additional functionality relating to the SaaS Services.

Dispute has the meaning given in clause 18.1(a).

Dispute Notice has the meaning given in clause 18.2(a).

Expiry Date means the date set out in an Order Form.

Fees means the fees set out in an Order Form.

Field of Use means the authorised field of use or purpose specified in an Order Form.

Force Majeure means any event or circumstances beyond the reasonable control of the Affected Party (including any fire, lightning strike, flood, earthquake, natural disaster, sabotage, nuclear contamination, terrorism, war or civil riot that occurs) to the extent that it:

- (a) would be unreasonable to expect the Affected Party to have planned for, avoided or minimised the impact of such circumstance by appropriate risk management, disaster recovery or business resumption plan; and

- (b) results in the Affected Party being unable to perform an obligation under this Agreement on time.

Insolvency Event means the occurrence of any one or more of the following events in relation to a Party:

- (a) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable Laws;
- (b) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under any applicable Laws is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of its property;
- (e) it is deregistered under the *Corporations Act 2001* (Cth) or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
- (g) it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
- (i) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under any applicable Laws occurs in respect of it.

Intellectual Property means any:

- (a) copyright;
- (b) registered or unregistered design, patent, trade mark rights;
- (c) trade, business, company or domain names;
- (d) know-how, inventions, processes, trade secrets, Confidential Information;
- (e) circuit layouts, databases or source codes; or

(f) similar rights in any part of the world,

including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means all present and future rights to Intellectual Property.

Laws means any local, state, federal and international laws and regulations.

Liability means any expense, charge, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Order Commencement Date means the date Company will commence providing the Services as specified in the relevant Order Form.

Order Form means an order form for Services signed by the Parties.

Party means a party to this Agreement, and **Parties** means both of them.

Payment Method is set out in an Order Form.

Payment Terms is set out in an Order Form.

Personnel means in relation to a Party, any employee, contractor, officer and agent of that Party.

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

Products means hardware or software.

Related Body Corporate has the meaning given in section 9 of the Corporations Act.

SaaS Licence has the meaning given in clause 4.1.

SaaS Services means the Software as a service described in an Order Form.

Service Levels means any service levels, including hosting Service availability, set out on the Website.

Services means the SaaS Services and the Support Services to be provided by the Company to the Customer on the terms and conditions set out in this Agreement.

Services Term has the meaning given in the Order Form.

Software means the Company's software delivered as a SaaS Service described in an Order Form.

Statutory Rights has the meaning given in clause 16.1.

Support Hours means:

(a) the hours the Company will provide the Support Services as set on the Website; or

(b) if such hours are not specified, Business Hours.

Support Services means the services set out on the Website.

System means a combination of Products or a combination of Products and services which are integrated and operate together, including a network.

Territory has the meaning given in an Order Form.

Third Party Software means all software owned by or provided by the Customer or some other person other than the Company or the Company (but excluding the Software).

Usage Metric means the standard of measurement for determining the Field of Use and calculating the fees due for the Services as set forth in an Order Form.

Variation means a change to the Services after the Commencement Date.

Variation Fee means any variation to the Fees as a consequence of a Variation.

Website means the Company website at www.sentient-hubs.com.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (h) includes and similar words mean includes without limitation;
- (i) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (j) a reference to a party to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;

- (k) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (l) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (m) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a reference to time is to local time in Western Australia, Australia; and
- (o) a reference to \$ or dollars refers to the currency of Australia from time to time.

2 Structure

2.1 Customer has requested the Services. Customer agrees and accepts that these General Terms and Conditions, including the Schedules (**General Terms and Conditions**) and the Order Form, form the Agreement under which Company will supply Services to Customer. Please read the General Terms and Conditions carefully.

2.2 In the event of any inconsistency between:

- (a) an Order Form;
- (b) these General Terms and Conditions, excluding the Schedules; and
- (c) the Schedules,

the document listed higher in the above list will take precedence to the extent of the inconsistency.

3 Term

3.1 These General Terms and Conditions commence on the Commencement Date and continue until terminated under clause 3.3 or clause 17.

3.2 Each Order Form commences on the Order Commencement Date specified in the Order Form and continues for the period specified in the Order Form.

3.3 If there are no Order Forms in effect, either party may terminate this Agreement by giving the other party 30 day's written notice.

4 SaaS Service Licence

4.1 Licence

- (a) Subject to the restrictions set out in paragraph (b) of this clause, in consideration for payment of the Fees, the Company grants to the Customer a non-exclusive, non-transferable, non-sublicensable (except as otherwise permitted under this Agreement),

personal, revocable licence to access and use the SaaS Services in the Territory within the Field of Use for the Services Term commencing on the Order Commencement Date (**SaaS Licence**).

- (b) The Customer agrees that:
- (1) the SaaS Licence permits the Customer to use the SaaS Services in accordance with the SaaS Services' normal operating procedures and not otherwise;
 - (2) the SaaS Licence permits the Customer and its Authorised Users to access and use the SaaS Services;
 - (3) SaaS Licence usage is limited to the Usage Metrics and volumes stated in the Order Form; and
 - (4) the Company reserves the right at any time and from time to time to:
 - (A) refuse any request in relation to the SaaS Services that it deems illegal;
 - (B) modify or change or remove features of the SaaS Services,provided that, where there is any material alteration to the SaaS Services in accordance with this clause, the Company will provide the Customer with 20 Business Days' notice and the Customer agrees that any material alteration is at the Company's discretion.
- (c) Company may permit Third Party Software to be used with the Software from the following sources:
- (1) Customer supplied third-party applications for which Customer must pay any licence fees and is responsible;
 - (2) Customer applications for which Customer is responsible;
 - (3) Company supplied applications subject to the payment of any Fee set out in an Order Form.
- (d) The Customer acknowledges that it is responsible for all Third Party Software not provided by the Company and the Company is not responsible for any such Third Party Software the Customer may use in conjunction with the Software.
- (e) The Customer must hold all necessary licences to use the Third Party Software and provide all necessary executable code in a format acceptable to the Company.
- (f) The Customer indemnifies and agrees to keep the Company indemnified against any Liability (including legal costs on a full indemnity basis) arising out of the use of Third Party Software with the Software.

4.2 Restrictions

- (a) The Customer acknowledges and agrees that this Agreement incorporates by reference the terms of any acceptable use policy as set out on the Website or as provided to the Customer from time to time.
- (b) The Customer must not (and must ensure the Authorised Users do not) access or use the SaaS Services except as permitted by the SaaS Licence and must not do, omit to do or authorise any act that would or might invalidate or be inconsistent with the Company's Intellectual Property Rights in the SaaS Services or Software.
- (c) Without limiting clause 4.2(b), the Customer must not and must not permit any person to:
 - (1) resell, assign, transfer, distribute or provide others with access to the SaaS Services;
 - (2) "frame", "mirror" or serve any of the SaaS Services on any web server or other computer server over the Internet or any other network;
 - (3) copy, alter, modify, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance the SaaS Services or Software; or
 - (4) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or other means of identification used on or in relation to the SaaS Services or Software;
 - (5) use the SaaS Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property Rights;
 - (6) use the SaaS Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
 - (7) use the SaaS Services in any way that damages, interferes with or interrupts the supply of the Services;
 - (8) introduce malicious programs into our Systems, including viruses, worms, trojan horses and e-mail bombs;
 - (9) reveal the Customer's account password to others or allow use of the Customer's account by those who are not the Customer's Personnel or Authorised Users;
 - (10) use the SaaS Services to make fraudulent offers of goods or services;
 - (11) use the SaaS Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where the Customer is not the intended recipient or logging into a server or account that the Customer is not expressly authorised to access or corrupting any data (including network

sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);

- (12) use any program, script, command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the SaaS Services;
- (13) send any unsolicited email messages through or to users of the SaaS Services in breach of the *Spam Act 2003* (Cth) or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the SaaS Services in breach of any person's privacy (such as by way of identity theft or "phishing");
- (14) use the SaaS Services to circumvent user authentication or security of any of the Customer's networks, accounts or hosts or those of the Customer's customers or suppliers; or
- (15) solicit or entice away any person or organisation that was an actual or prospective client, employee, contractor, representative, agent, or developer of the Company during the Term.

5 Development Services

5.1 Provision of Development Services

- (a) If, during the Services Term, the Customer requires any changes to the scope, functionality or nature of the SaaS Services or the elements of the Software used to provide the SaaS Services or any bespoke customisations to the SaaS Services, the Customer will notify the Company of any changes it requires.
- (b) Following notification, the Company will provide the Customer with written notice in the form of a statement of work setting out:
 - (1) the Development Services required in respect of such changes; and
 - (2) the Development Fee in respect of such Development Services.
- (c) If the Customer agrees to the Development Services and the Development Fee set out in the notice provided by the Company:
 - (1) subject to the terms of this Agreement, the Company must provide such Development Services to the Customer; and
 - (2) the Customer must pay the Development Fee in respect of such Development Services to the Company using the Payment Method in accordance with the Payment Terms (unless otherwise agreed between the Parties).

5.2 General

- (a) The Company reserves the right to refuse any request for or in relation to the Development Services that it deems inappropriate, unreasonable, illegal or otherwise non-compliant.
- (b) The Parties agree that the Company will provide the Development Services to the Customer on a non-exclusive basis.

6 Support and Service Levels

6.1 Provision of Support Services

During the Services Term, the Company must provide the Support Services in accordance with the Service Levels during the Support Hours, provided that:

- (a) the Customer provides the Company with notice for applicable Support Services in accordance with any applicable systems and processes; and
- (b) where required, the Customer assists with investigating and ascertaining the cause of the fault and provides the Company with all necessary information relevant to the fault (including what the Customer or its Personnel or Authorised User has done in relation to the fault).

6.2 General

- (a) The Company reserves the right to refuse any request in relation to the Support Services that it deems inappropriate, unreasonable, illegal or otherwise non-compliant.
- (b) The Parties agree that the Company will provide the Support Services to the Customer on a non-exclusive basis.

7 Data

7.1 Licence

The Customer grants to the Company and its sub-processors a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to (i) use, copy, back-up, process, transmit, store, edit, modify, aggregate, combine, reproduce, distribute, display, and prepare derivative works of the Data and (ii) otherwise access, use or make reference to the Data or any Intellectual Property Rights in the Data:

- (a) to supply the Services including to enable the Customer, its Personnel and any Authorised Users to access and use the Services;
- (b) for diagnostic purposes;
- (c) to test, enhance and otherwise modify the Services whether requested by the Customer or not;

- (d) to develop other services; and
- (e) as reasonably required for the performance of the Company's obligations under this Agreement.

7.2 Moral Rights

If the Customer or any of its Personnel or Authorised Users have any Moral Rights in any Data, the Customer consents (and the Customer will ensure that its Personnel or Authorised Users consent) to the infringement of those Moral Rights by the Company or the Company's Personnel.

7.3 General

- (a) The Customer must, at all times, ensure the integrity of the Data and that its use of the Data is compliant with all Laws.
- (b) The Customer represents and warrants that:
 - (1) it has obtained all necessary rights, releases and permissions to provide the Data to the Company and to grant the rights granted to the Company in this Agreement;
 - (2) the Data and its transfer to and use by the Company, as authorised by the Customer under this Agreement, does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity; and
 - (3) any use, collection and disclosure of the Data authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.
- (c) The Company assumes no responsibility or Liability for the Data. The Customer is solely responsible for the Data and the consequences of using, disclosing, storing or transmitting it.

7.4 Removals

The Company has no obligation to monitor any Data uploaded to the SaaS Services. Nonetheless, if the Company deems such action necessary for any reason, it may (without limiting its other rights) remove any or all Data from the SaaS Services. The Company has no Liability to the Customer for removing any or all Data from the SaaS Services.

8 Customer Responsibilities and Obligations

The Customer must, at its own expense:

- (a) provide the Company with all materials and all reasonable assistance and cooperation it requires in order to enable it to provide the Services in an efficient and timely manner, including obtaining from Authorised Users any consents necessary to allow the Customer and its Personnel to engage in the activities described in this Agreement and to allow the Company to provide the Services;
- (b) permit the Company and its Personnel to have reasonable access to the Customer Environment for the purposes of supplying the Services;
- (c) ensure that only the Customer's Personnel and Authorised Users will access and use the SaaS Services and such use and access will be in accordance with the terms and conditions of the SaaS Licence;
- (d) make any changes to the Customer Environment that may be required to support the delivery and operation of any Services;
- (e) immediately notify the Company in writing, giving full particulars, if any of the following matters come to its attention:
 - (1) any actual, suspected or threatened infringement of any of the Company's Intellectual Property;
 - (2) any actual, suspected or threatened unauthorised disclosure, misappropriation or misuse of the Company's Intellectual Property;
 - (3) any claim made of threatened that any of the Company's Intellectual Property infringes the rights of a third party;
 - (4) any person applies for, or is granted a patent or other rights which conflict with any of the rights granted by the Company to the Customer under this Agreement;
 - (5) any other form of attack, charge or claim to which the Company's Intellectual Property may be subject; and
- (f) execute all documents and do all things reasonable and necessary to aid and co-operate in the prosecution of any actions brought by the Company against any third party in respect of any of the matters listed in paragraph (e).

9 Communication

- (a) Each Party will appoint and maintain at all times a relationship manager who will be responsible for the day to day management of this Agreement.
- (b) The details of each Party's relationship manager as at the Commencement Date are set out in an Order Form. A Party may change its relationship manager, or the contact details for that Party's relationship manager, by giving notice to the other Party.
- (c) The Parties' respective relationship managers will meet from time to time to ensure the appropriate and efficient management of this Agreement.

10 Audit and Monitoring

- (a) The Customer must keep a record of the use of and access to the SaaS Services and provide a copy of it to the Company upon request.
- (b) The Company, its Personnel and any person authorised by the Company has the right to audit and inspect, and appoint one or more auditors to audit and inspect, any of the Customer's Systems, documents and records to verify the Customer's compliance with this Agreement.
- (c) Upon receipt of written notice from the Company, the Customer must permit the audits and inspections referred to in clause 10(b) and must give such persons reasonable assistance, access and facilities to enable the auditing or monitoring by the Company.
- (d) The Parties agree that the Company must bear all costs associated with any audits and inspections under this clause.

11 Payment

11.1 Fees

The Customer must pay the Company:

- (a) the Fees; and
- (b) any other amount payable to the Company under this Agreement, without set off or delay using the Payment Method in accordance with the Payment Terms.

11.2 Variation

If there is a Variation, the Company will include the Variation Fees due and payable for the Variation performed in invoice(s) subsequent to the performance of any Variation.

11.3 Non-payment

If any payment is not made in accordance with the Payment Terms, the Company may (at its absolute discretion):

- (a) immediately cease providing the Services, and recover as a debt due and immediately payable from the Customer its Additional Costs of doing so;
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date;
- (c) engage debt collection services and/or commence legal proceedings in relation to any such amounts; and/or
- (d) report the Customer to any independent credit data agencies.

12 Confidentiality

- (a) Subject to clause 12(b), each Party must (and must ensure that its Personnel and Authorised Users do):
 - (1) keep confidential; and
 - (2) not use or permit any unauthorised use of, all Confidential Information.
- (b) Clause 12(a) does not apply where:
 - (1) the information is in, or comes into, the public domain (other than by a breach of this clause 12 by the relevant Party);
 - (2) the relevant Party has the prior written consent of the Party that disclosed the Confidential Information;
 - (3) the disclosure is required by law;
 - (4) the disclosure is required in order to comply with this Agreement, provided that the Party disclosing the Confidential Information ensures the recipient complies with the terms of this clause 12; and
 - (5) the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the Party disclosing the Confidential Information ensures the adviser complies with the terms of this clause 12.
- (c) Each Party acknowledges and agrees that monetary damages may not be an adequate remedy for a breach of this clause 12. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 12.
- (d) This clause 12 will survive the termination or expiry of this Agreement.

13 Intellectual Property Rights

- (a) All Intellectual Property developed, adapted, modified or created by the Company or its Personnel (including in connection with this Agreement, the Software and/or the Services) will at all times vest, or remain vested, in the Company.
- (b) The Customer must not, without the Company's prior written consent:
 - (1) copy or use, in whole or in part, any of the Company's Intellectual Property;
 - (2) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of the Company's Intellectual Property to any third party; or

- (3) breach any Intellectual Property Rights connected with the Software or the Services, including altering or modifying any of the Company's Intellectual Property; causing any of any of the Company's Intellectual Property to be framed or embedded in another website; or creating derivative works from any of the Company's Intellectual Property.
- (c) This clause 13 will survive the termination or expiry of this Agreement.

14 Privacy

- (a) Each Party must (and must ensure that its Personnel and Authorised Users) comply with its obligations under the Privacy Act and any other applicable legislation or privacy guidelines as amended from time to time in relation to personal information collected, used or disclosed by that Party or its Personnel or its Authorised Users in connection with the Services and this Agreement.
- (b) Details on how the Company complies with the Privacy Act and how it collects, discloses, holds or uses personal information is available in the Company's privacy policy as set out on the Website or as provided to the Customer from time to time. The Company may amend its Privacy Policy as required from time to time. Where Company must comply with the *Privacy Amendment (Notifiable Data Breaches) Act 2017 (Cth)*, the Notifiable Data Breach process in Annexure 1 applies to both parties.
- (c) The Company will take all reasonable steps to notify the Customer in writing if it becomes aware of any actual, threatened or suspected breach of Data where such breach involves personal information.
- (d) This clause 14 will survive the termination or expiry of this Agreement.

15 Representations and Warranties

15.1 General

Each Party represents and warrants to the other Party:

- (a) it has full legal capacity and power to enter into this Agreement, to perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement, to own its property and assets and to carry on its business;
- (b) no Insolvency Event has occurred in respect of it;
- (c) this Agreement constitutes its legal, valid and binding obligations, enforceable in accordance with its terms; and
- (d) the execution and performance by it of this Agreement and each transaction contemplated by it does not conflict with any law, order, judgment, rule or regulation applicable to it or any document binding on it.

15.2 Company

The Company warrants that to the best of its knowledge the Services do not infringe the Intellectual Property Rights of any third party.

16 Indemnity and Liability

16.1 Customer guarantees

Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer the Customer with rights, warranties, guarantees and remedies relating to the Company's provision of services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement attempts to exclude, restrict or modify the Customer's Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.

16.2 Limitation of Liability

- (a) Despite anything to the contrary, to the maximum extent permitted by the law:
- (1) the Company's maximum aggregate Liability arising from or in connection with this Agreement, including any Order Forms, (including the Services or the subject matter of this Agreement) will be limited to, and must not exceed, in any Contract Year, the total amount of Fees paid to the Company by the Customer in the prior Contract Year or \$1 if no such Fees have been paid; and
 - (2) the Company will not be Liable to the Customer for any loss of profit (including anticipated profit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated 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.

- (b) Despite anything to the contrary, to the maximum extent permitted by the law, the Company will have no Liability, and the Customer releases and discharges the Company from all Liability, arising from or in connection with any:
- (1) Injury, damage or loss to any person or property;
 - (2) failure or delay in providing the Services;
 - (3) unavailability, outage or interruption to the Services or the Customer Environment; or
 - (4) breach of this Agreement or any Laws,

where caused or contributed to by any:

- (5) Force Majeure;
- (6) a fault, defect, error or omission in any item of the Customer Environment or Data; or
- (7) act or omission of the Customer, its Personnel, its Authorised Users or a third-party service provider,

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services. The Customer acknowledges and agrees that:

- (8) it is responsible for all users using the Services including its Personnel and any Authorised Users;
- (9) it uses the Services and any associated programs and files at its own risk;
- (10) the technical processing and transmission of the Services, including the Data, may be transferred unencrypted and involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- (11) the Company uses third-party service providers to host the Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, the Company may cease providing any affected features without Liability or entitling the Customer to any refund, credit, or other compensation;
- (12) the Company does not guarantee that any file or program available for download and/or execution from or via the Services is free from viruses or other conditions which could damage or interfere with Data or Products with which it might be used;
- (13) the Company may pursue any available equitable or other remedy against the Customer if it breaches any provision of this Agreement;
- (14) any collation, conversion and analysis of Data performed as part of the Services (whether by the Services or otherwise) is likely to be subject to human input and machine errors, omissions, delays and losses, including any loss of Data; the Company is not Liable for any such errors, omissions, delays or losses; and the Customer is responsible for adopting reasonable measures to limit the impact of such omissions, delays losses and errors;
- (15) the Company may relocate the Data to another jurisdiction, in which case it will give the Customer 15 Business Days' notice and use all reasonable endeavours to minimise the effect of such change on the Customer's access and use of the Services;

and

- (16) the Company is not responsible for the integrity or existence of any Data on the Customer's Environment, network or any device controlled by the Customer or its Personnel or Authorised Users.

16.3 Survival

This Clause 16 will survive the termination or expiry of this Agreement.

17 Termination

17.1 The Parties may terminate this Agreement by mutual signed agreement. All Order Forms in existence at the time of termination shall survive termination of this Agreement, unless a Party has terminated this Agreement in accordance with clause 17.2, 17.3 17.4 as applicable, in which event any Order Forms will terminate simultaneously.

17.2 The Company may terminate this Agreement and any affected Order Form immediately by giving written notice to the Customer where to the extent permitted by law:

- (1) the Customer undergoes a Change of Control to a competitor of the Company (as determined by the Company);
- (2) an Insolvency Event occurs in relation to the Customer; or
- (3) the Customer commits a breach of this Agreement which is not capable of remedy.

17.3 Either party may terminate this Agreement and any affected Order Form, if the other Party:

- (1) has breached a material term of these Terms and has failed to remedy such breach within 10 Business Days of receiving notice to do so, subject to any other express right of termination; or
- (2) ceases operation without a successor.

17.4 The Company may suspend overdue accounts without notice to the Customer. A reinstatement charge applies to reactivate any suspended account once full payment has been received. The reinstatement charge will be equal to the then current fee charged by the Company for four hours of a Senior Developer's time at the time of reinstatement. Company may terminate this Agreement by providing Customer with five business days' notice, in Company's sole discretion, if Company fails to pay an Invoice within 10 Business Days of the payment date.

17.5 Events Following Termination

- (a) Upon termination of this Agreement, the Company will:
 - (1) immediately stop providing the Services;
 - (2) immediately stop placing orders for supplies or services required in connection with the provision of the Services; and

- (3) return to the Customer or destroy all property, including Confidential Information, Intellectual Property and Data, in its possession that belongs to the Customer within 60 days of the date of termination.
 - (b) Upon termination of this Agreement, the Customer will immediately:
 - (1) stop accessing and/or using the Services;
 - (2) return to the Company all property, including Confidential Information and Intellectual Property, in its possession that belongs to the Company; and
 - (3) pay the Fees for all Services completed and all other amounts due and payable by the Customer to the Company under this Agreement (including by way of indemnity) as a debt immediately due and payable.
 - (c) The expiry or termination of this Agreement for any reason will be without prejudice to any rights or liabilities which have accrued prior to the date of expiry or termination of this Agreement.
 - (d) This clause 17.5 will survive the termination or expiry of this Agreement.

18 Dispute Resolution

18.1 Disputes

- (a) A Party must not commence court proceedings relating to any dispute arising from, or in connection with, this Agreement (**Dispute**) without first complying with this clause 18 unless:
 - (1) that Party is seeking urgent interlocutory relief; or
 - (2) the Dispute relates to compliance with this clause.
- (b) Notwithstanding the existence of a Dispute, the Parties must continue to perform their obligations under this Agreement.

18.2 Negotiation

- (a) In the event of a Dispute, the Party claiming there is a Dispute must give written notice to the other Party setting out the details of the Dispute and proposing a resolution (**Dispute Notice**).
- (b) Within 10 Business Days after receipt of the Dispute Notice, each Party must (if applicable by its senior executives or senior managers who have authority to reach a resolution on its behalf) meet at least once to attempt to resolve the Dispute in good faith. All aspects of every such conference, except for the occurrence of the conference, will be privileged.

18.3 Mediation

- (a) If the Parties are unable to resolve the Dispute within 15 Business Days after receipt of the Dispute Notice, either Party may (by written notice to the other Party) submit the Dispute to mediation administered by the Australian Commercial Disputes Centre (**ACDC**), with such mediation to be conducted:
 - (1) in good faith;
 - (2) in Western Australia; and
 - (3) in accordance with the ACDC Mediation Guidelines.
- (b) The costs of mediation are to be split between the Parties, provided that each Party will bear its own costs in relation to the mediation.
- (c) If the Dispute has not been settled within 20 Business Days after the appointment of a mediator, or such other period as agreed in writing between the Parties, the Dispute may be referred by either Party (by written notice to the other Party) to litigation.

18.4 Survival

This clause 18 will survive the termination or expiry of this Agreement.

19 Subcontracting

The Parties agree the Company may engage subcontractors to provide the Services on its behalf.

20 Insurance

Each Party must:

- (a) effect and maintain, at its own expense, the insurance policies set out in an Order Form; and
- (b) upon reasonable request, provide to the other Party a certificate of currency for each such insurance policy.

21 GST

21.1 Taxable supply

If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

21.2 Adjustment events

If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued (if required), and any payments to give effect to the adjustment must be made.

21.3 Payments

If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

21.4 GST terminology

The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

21.5 Survival

This clause 21 will survive the termination or expiry of this Agreement.

22 General

22.1 Notices

- (a) A notice or other communication given under this Agreement must be:
 - (1) in writing, in English and signed by or on behalf of the sender; and
 - (2) addressed and delivered to the intended recipient by hand, prepaid post or email in accordance with the notice details last notified by the recipient to the Parties.
- (b) The Parties' notice details are set out in an order Form. A Party may change its notice details by written notice to the other Party.
- (c) A notice or communication is taken as having been given:
 - (1) when left at a Party's current address for notices;
 - (2) if mailed, on the third Business Day after posting (if delivered to an address within the same country) or on the tenth Business Day after posting (if delivered to an address within another country); or
 - (3) if sent by email, if sent before 5pm on a Business Day in the place of receipt then on the Business Day when it is sent, otherwise on the following Business Day.

22.2 Force Majeure

If performance of this Agreement or any obligation under this Agreement is prevented, restricted or interfered with by reasons of Force Majeure and the Party unable to carry out its obligations (**Affected Party**) gives the other Party prompt written notice of such event, then the obligations of the Affected Party shall be suspended to the extent necessary by such event. The Affected Party shall use reasonable efforts under the circumstances to remove such prevention, restriction or interference or to limit the impact of the event on its performance and must continue to perform with reasonable dispatch when the Force Majeure is removed.

22.3 Waiver

Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing.

22.4 Consents or approvals

Except as provided in this Agreement, a Party may give, attach conditions to or withhold any consent or approval under this Agreement at its sole and absolute discretion. A Party is not obliged to give reasons for giving or withholding its consent or approval or for giving its consent or approval subject to conditions.

22.5 Assignment

The Company may assign its rights and interest in this Agreement without the consent of the Customer but must give notice of that assignment to the Customer within 10 Business Days of such assignment. The Customer may not assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the Company. Any purported dealing in breach of this clause 22.5 is of no force or effect.

22.6 Further assurance

Each Party must promptly do all things and execute all further documents necessary to give full force and effect to this Agreement and its obligations under it. This clause 22.6 will survive the termination or expiry of this Agreement.

22.7 Costs and expenses

Each Party must pay its own costs and expenses (including legal costs) in connection with the negotiation, preparation and execution of this Agreement and any document relating to it.

22.8 Relationship of Parties

- (a) This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
- (b) Nothing in this Agreement gives a Party authority to bind any other Party in any way.

22.9 Independent legal advice

Each Party acknowledges and agrees that it has had an opportunity to read this Agreement, it agrees to its terms and, prior to executing it, it has been provided with the opportunity to seek independent legal advice about its terms.

22.10 Severance

- (a) If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision must be read down as narrowly as necessary to allow it to be valid or enforceable.
- (b) If it is not possible to read down a provision (in whole or in part), that provision (or that part of that provision) is severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

22.11 Entire agreement

This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

22.12 Amendment

This Agreement may only be amended by written document executed by both Parties.

22.13 Cumulative Rights

- (a) Except as provided in this Agreement or permitted by law, the powers, rights and remedies of a Party under this Agreement are cumulative and in addition to any other powers, rights and remedies the Party may have.
- (b) Each indemnity in this Agreement is a continuing obligation that is separate and independent from the other obligations of the Parties under this Agreement.
- (c) A Party is not obliged to take any action, or incur any expense, before enforcing any indemnity under this Agreement.

22.14 Counterparts

This Agreement may be executed in any number of counterparts that together will form one document.

22.15 Governing law and jurisdiction

This Agreement is governed by the laws of Western Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

Annexure 1 -

1.1. **Data Breach Incidents:** To the extent the Notifiable Data Breaches scheme under Part IIIC of the [Privacy Act 1988](#) applies to Company:

- a) if Company becomes aware of a Data Incident, Company will:
 - (i) notify Customer of the Data Incident by telephone and email;
 - (ii) retain system logs and other information that may be relevant to the Data Incident, or to assessing the cause or impact of the Data Incident;
 - (iii) provide all information Company deems relevant to the Data Incident reasonably requested by Customer for the purpose of investigating the Data Incident; and
 - (iv) immediately take all action reasonably necessary to:
 - (i) mitigate the impact of the Data Incident (including to restore or recover any lost data); and
 - (ii) prevent any repeat of the Data Incident in the future.
- b) If Company *suspects* that a Data Incident has occurred, it will, within 30 days, prepare an assessment to determine whether there are reasonable grounds to believe that a Data Incident has occurred.
- c) Where Customer *suspects* that a Data Incident has occurred, Company will, within 30 days of receiving notice from Customer of its suspicion, prepare an assessment to determine whether there are reasonable grounds to believe that a Data Incident has occurred, the costs of such assessment must be paid by Customer.
- d) If Company *believes* a Data Incident has occurred, it will provide notice to the OAIC of such Data Incident and it will be the sole Party to notify the individuals who are likely to be at risk of serious harm arising from the Data Incident.

This Annexure 1 is subject to our Privacy Policy.

Data Incident means any actual or Company suspected:

- (I) breach of Company's obligations relating to protection of Personal Information under this Agreement;
- (II) unauthorised access to, or unauthorised disclosure of, any Personal Information; or
- (III) loss of Personal Information, including where Personal Information is damaged or corrupted so that it becomes unusable,

where, as determined by Company, the access or disclosure is likely to result in serious harm to one or more individuals and Company has not been able to prevent the likely risk of serious harm with remedial action.