

Managed Service Agreement

Terms and Conditions

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Managed Service Agreement

1. Definitions & Interpretation

1.1 Definitions

In this Agreement, unless the context or subject matter otherwise requires:

Agreement means this agreement between the Parties for the Service Provider to provide the Services to the Client as more accurately defined in clause 2.1;

Business Day means:

- (a) for the purpose of service of notices and other communications, a day which is not a Saturday, Sunday or public holiday in the place of service, or for communications sent electronically, in the principal place of business of the recipient Party; or
- (b) for any other purpose, a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

Commencement Date means the date set out as the Commencement Date in the Proposal;

Client means the entity specified as the Client in the Proposal and where the context requires includes its officers, employees, agents and its successors, administrators and assigns;

Client Data means all data and information relating to the Client and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed as part of the Services and any other data relating to the Services;

Client Representative means the person named as Client Representative in the Proposal;

Confidential Information means the information, concepts, ideas, methodologies, systems, designs, data, formulae, forms, specifications, algorithms, processes, statements, charts, graphs, trade secrets, drawings, manuals, software (including source and object code versions) and data (and copies and extracts made of or from that information and data) disclosed to either Party pursuant to this Agreement and includes:

- (a) confidential information relating to either Party's clientele;
- (b) information relating to the personnel, policies or business strategies of either Party; or
- (c) information relating to the terms of this Agreement;
- (d) any information of or relating to a Party which, by its very nature, would be presumed to have been disclosed in confidence or which would reasonably be regarded as detrimental to the business or reputation of the Party if disclosed.

The Confidential Information does not include any information that is or becomes publicly known in a manner for which only minimal search is required to assemble the information without breach of the terms of this Agreement or any other non-disclosure agreement;

Consulting and Technical Engineering means any work involving the following:

- (a) network design;
- (b) telecommunications consultancy;
- (c) system engineering;
- (d) security reviews and investigations; and
- (e) technology / product research and introduction;

Equipment means all Supported Equipment and all other plant and equipment including without limitation software programs, systems, electronic document retention, storage and retrieval processes, telephony systems and all other information, communication and technology of whatsoever kind or nature reasonably required by the Client in order to efficiently conduct the Client's business, and includes any additional information, communications and technology which the Client may acquire, develop or create during the Term which the Service Provider agrees in writing to maintain and support under this Agreement;

Fees means the charges payable by the Client to the Service Provider for the performance of the Services pursuant to this Agreement, as specified in the Proposal;

Intellectual Property Rights means:

- (a) jointly and severally any Rights as they relate to the Confidential Information, copyright, the design rights, the patent rights, trademark rights, the eligible layout rights, the improvements;
- (b) all other Rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
- (c) any application or Right to apply for registration of any of the Rights referred to in the subclause (a) or (b);

Materials means any documents, code, programs or other material forms of expression or any other object, process or thing comprising Intellectual Property Rights;

Minimum Specification means the minimum system requirements and specifications set out in the Proposal;

Notice means a written notice, consent, approval, direction, order or other communication;

Notice Address means in respect of a Party:

- (a) the physical or email address specified in the Proposal; or
- (b) where a Party gives Notice to all other Parties of another physical or email address, the last such address so notified;

Obligation means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Party means either the Service Provider or the Client as the context dictates and Parties shall mean both or either of them as the context requires;

Premises means the location of the Client's business at the Commencement Date specified as such in the Proposal;

Proposal means the document titled Managed Services Agreement executed by the Client and the Service Provider outlining the details of this Agreement;

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;

Services means the services to be provided by the Service Provider as specified in the Proposal and this Agreement;

Service Level Agreement means provisions described as Service Level Agreement in Proposal;

Service Provider means the Party specified as such in the Proposal;

Site Establishment Fee means any up-front site establishment fee listed in the Proposal;

Supported Equipment means Equipment in respect of which the Service Provider is to provide connectivity, maintenance and support as part of its Services;

Term means the period of time (including any provision for extension) as specified in the Proposal; and

Termination Payment means the amount calculated in accordance with the formula in clause 13.3(a);

Terms & Conditions means this document titled Terms & Conditions.

1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (m) a reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns.

2. Agreement Terms

2.1 Proposal and Agreement

- (a) The Client acknowledges that the Service Provider has made a Proposal to the Client to enter into this Agreement and the Proposal is available for acceptance by the Client by executing and returning the Proposal within a period of 30 days the date it is offered. Once the Proposal has lapsed, this Agreement may only be entered into at the Service Provider's discretion.
- (b) On the date of execution of the Proposal by both Parties, the Service Provider agrees to provide the Services to the Client and the Client agrees to accept the Services from the Service Provider in consideration for payment by the Client to the Service Provider of the Fees.

2.2 Agreement Terms

- (a) The terms of this Agreement are wholly set out in the Proposal and any attachments, appendices and exhibits to it and these Terms & Conditions, as amended or supplemented by the Parties in accordance with its terms.
- (b) This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, negotiations, agreements, statements and understandings, whether verbal or in writing.
- (c) In the event of any inconsistency between a term contained in the Proposal and any other term of this Agreement, the term contained in the Proposal will prevail to the extent of any inconsistency.
- (d) For the avoidance of doubt, no terms (whether written or verbal) introduced by the Client, including the Client's own terms and conditions and any invoicing or receipt terms, form part of this Agreement unless expressly agreed in writing by the Service Provider.

2.3 Term

- (a) The Service Provider will provide the Services for the Term commencing on the Commencement Date.
- (b) If the Proposal provides for a renewal mechanism of the Term, this Agreement will renew in accordance with the renewal mechanism set out in the Proposal.

- (c) If the Proposal does not provide for a renewal mechanism of the Term or if the renewal is not effected or for any other reason this Agreement expires by effluxion of time in circumstances where the Service Provider continues to provide Services under this Agreement, at the Customer's request or acquiescence, those Services will be deemed provided on a monthly arrangement on the same terms and conditions of this Agreement and the monthly arrangement may be terminated by either Party by giving the other not less than one month notice in writing.

3. Services

3.1 Provision of Services

- (a) The Service Provider will provide the Services as described in the Proposal in accordance with the terms and specifications of the Proposal and these Terms & Conditions.
- (b) The Client agrees that the Services will be solely and exclusively provided by the Service Provider at all times during the course of this Agreement.

3.2 Client information and assumptions

- (a) The Client acknowledges that the Service Provider has relied upon the information provided by the Client for the purpose of preparation of the Proposal upon which certain assumptions have been made including as expressly listed in the Proposal.
- (b) The Client:
- (i) warrants the accuracy and completeness of the information provided, including that the Client has fully and comprehensively set out, to the best of the Client's knowledge, the needs and requirements of the Client; and
 - (ii) acknowledges that the Service Provider is not under an obligation to verify such information.
- (c) The Client acknowledges that a change to the Client's information or instructions may necessitate a variation of the Services under this Agreement.

3.3 Minimum System Requirements

- (a) The Client accepts and acknowledges that the Service Provider will not be required to provide the Services unless the Client ensures that the Client, including the Client's Equipment, meets the Minimum Specifications set out in the Proposal.
- (b) The Service Provider may, at its sole discretion, agree to provide services where the Equipment does not meet the Minimum Specification, including but not limited to where Macintosh operating systems are used, upon request from the Client.
- (c) If the Service Provider agrees to provide services pursuant to clause 3.3(b), the extent of the services to be provided and the fees which will be required will be agreed between the Parties prior to any work being undertaken by the Service Provider, as a variation of this Agreement.

3.4 Service Provider Commitments

Unless otherwise provided in the Proposal the Service Provider will:

- (a) provide the Services according to the terms of this Agreement, in a thorough, competent and workmanlike manner;
- (b) ensure that its personnel complies with paragraph (a) of this clause; and
- (c) ensure that it and its personnel hold and keep current all necessary and appropriate licenses, permits, approvals, qualifications and policies of insurance to perform the Services.

3.5 Client Commitments

- (a) The Client must:
 - (i) use and maintain all Equipment at all times in accordance with its operating manuals and as would otherwise be conducted by a reasonable person in the position of the Client;
 - (ii) in respect of Supported Equipment:
 - (A) ensure that all its personnel and any other persons permitted to access the Supported Equipment are appropriately trained, competent and do not misuse or recklessly or negligently damage the Equipment;
 - (B) ensure the Service Provider is the only provider of Services to the Supported Equipment;
 - (C) Ensure that the Service Provider staff have prompt and free access to the Supported Equipment as required;
 - (D) Provide a suitable environment for the effective servicing of the Supported Equipment;
 - (E) Provide conditions which are consistent with Supported Equipment specifications and that the necessary auxiliary services for the correct operation of the Supported Equipment are available;
 - (F) Provide adequate storage for spare parts including consumable parts held on-site (if applicable);
 - (G) Replenish stock of consumable items ensuring a satisfactory level of service can be maintained (if applicable);
- (b) Give the Service Provider and its employees and consultants reasonable access required to the Premises and the Supported Equipment when necessary to enable the Service Provider to carry out and provide the Services and the client agrees that such access:
 - (i) shall include an appropriately furnished area to work and access to all other Equipment of the Client as reasonably required; and
 - (ii) whilst all care will be taken to avoid any major inconvenience to the Client, the Client agrees that the access may interrupt or disrupt the Client's business while maintenance or other work is being conducted to the Supported Equipment;
- (c) Provide and maintain a remote access capability to the Supported Equipment to enable the Service Provider to provide remote support to the extent permitted by the Proposal, acknowledging that, should this remote access be denied or become unavailable and as

a result an on-site support attendance is necessary, the Service Provider reserves the right to charge a site attendance Fee.

- (d) Where requested by the Service Provider acting reasonably, shut down or cease using the whole or part of its Equipment so as to allow the Service Provider to provide the Services until permitted by the Service Provider to resume use, provided that:
 - (i) if it is impractical for the Client to shut down or cease use of the Equipment at the time requested by the Service Provider the Client must notify the Service Provider as such and the Parties must reschedule such work to occur at a time appropriate for both Parties; and
 - (ii) where the Client wishes to reschedule work under this clause, the Service Provider will not in any circumstances be liable for any loss, damage or delay which occurs in connection with this clause;
- (e) Ensure that all of the Client's employees, agents and contractors co-operate with the Service Provider, its employees and consultants at all times and provide the Service Provider with all information, support and assistance as reasonably required to perform the Services; and
- (f) Provide the Service Provider a remote access capability to the equipment to enable the Service Provider to provide remote support to the extent contemplated by the Proposal, acknowledging that, should this remote access be denied or become unavailable and as a result an on-site support attendance is necessary, the Service Provider reserves the right to charge a site attendance Fee.

3.6 Services exclusions

Except as stated in the Proposal, the Services do not include:

- (a) installation of software and hardware supplied including upgrades, which may be arranged in certain cases for an additional Fee;
- (b) work required to make the Client's Equipment meet the Minimum Specifications;
- (c) labour, parts & materials for the repair of damage or malfunction caused by storm, lightning, flood, electrostatic interference, power surge, or failure in electrical power, air conditioning or humidity control or other circumstances beyond the reasonable control of the Service Provider;
- (d) replacement, transposition or repair of backbone and external cabling other than system integral interconnecting cables;
- (e) repair of any parts, equipment or software not covered by vendor/manufacture warranty or support;
- (f) the cost of any:
 - (i) parts, equipment, or shipping charges;
 - (ii) software, licensing, or renewals or upgrades;
 - (iii) third party vendor or manufacturer support or incident fees;
- (g) any modification of software code and software maintenance;

- (h) servicing of software that has been customised after initial installation, except where the customisation has been performed under a software maintenance agreement existing between the Service Provider and the Client;
- (i) servicing of Equipment that has been misused or neglected, or not operated in accordance with the recommended operating procedures, directions or recommendations of the Service Provider or the manufacturer;
- (j) services and parts required where the Client has allowed services or works to be performed on the Equipment by any person other than the Service Provider without prior written approval;
- (k) consumable and disposable items (for example, telephone cords, discs, standby batteries, etc.);
- (l) remedial software maintenance for software platform versions which are older than the current release minus 1 (N-1);
- (m) removal, relocation and reinstallation of Equipment, devices or attachments;
- (n) remedial maintenance of external power supply equipment (which the Client agrees is not Supported Equipment);
- (o) repair of damage or errors arising as the result of the acts or omissions (including system administration changes) of the Client (including the Client's employees, agents or contractors) or a third party (whether or not that third party is under the Client's control, direction or authority);
- (p) repair of damage or errors arising from the relocation, reinstallation or removal of the Equipment, devices or attachments except by the Service Provider; or
- (q) moves, adds or changes (MACs) except as contemplated by the Proposal;
- (r) changing, upgrading or altering a qualified network environment;
- (s) providing training of any kind;
- (t) supporting virtual machine management consoles (HyperV, VMware, etc) and associated clustered environments; or
- (u) any services considered Consulting and Technical Engineering.

3.7 Maintenance and Upgrades

- (a) The replacement of component parts, assemblies and sub-assemblies due to normal wear and tear is at the sole discretion of the Service Provider. Such replacement shall be made with new or "as new" parts. Removed parts become the property of the Service Provider, replacement parts become the property of the Client.
- (b) The Service Provider may, from time to time, give reasonable advice or recommendations to the Client as to the use, storage and maintenance of the Supported Equipment or other Equipment, including and the purchase of upgrades to software and operating systems.

- (c) If the Client does not follow the recommendations or advice provided by the Service Provider within a reasonable time of request in circumstances where the failure affects the Service Provider's ability to provide the Services, or places the Service Provider at risk of being liable to the Client or a third party, or suffer any other kind of loss or damage, the Service Provider may, in its absolute discretion and sole opinion:
- (i) suspend the Services until the Client follows the recommendations or advice provided; or
 - (ii) terminate this Agreement by written notice to the Client; or
 - (iii) require a variation of the Services or Fees under this Agreement.
- (d) Without limiting the foregoing, where Supported Equipment includes items which are not at their current version or the version prior to the current version, or are no longer actively supported by the manufacturer; the Service Provider's continued maintenance of those items will be provided on a "best efforts" basis only.
- (e) If the Client acquires, varies and/or installs software systems, hardware, telephony or any other Equipment componentry without consultation or recommendation by the Service Provider, the Service Provider does not accept liability in connection with the changes effected by the Client and:
- (i) may refuse to maintain or provide Services with regards to such new systems, componentry and hardware; or
 - (ii) may require a variation of the Services or Fees payable under this Agreement.
- (f) The Client may request specific opinion or advice from the Service Provider as to any aspect of the Equipment and the Service Provider may, at its discretion, respond to such a request. The Client agrees and accepts that the Service Provider will not in any circumstance be liable to the Client for any damage or loss associated with any opinion, advice or recommendation provided by the Service Provider except to the extent that the damage or loss is caused by the Service Provider's wilful or negligent act or omission.

3.8 Location and Hours of Services

- (a) The Service Provider will provide the Services during the hours and at the locations set out in the Proposal, including by remote access or advice (without attendance) when contemplated or considered reasonable and appropriate by the Service Provider.
- (b) Except as otherwise specified in the Proposal, the Client acknowledges that attendances, whether physical or by remote access or advice, outside of the designated hours of service will incur an additional Fee as stated in the Proposal.
- (c) If the Client ceases to carry on the Client's business at the Premises detailed in the Proposal and moves the Client's business to another address (New Premises) which is located more than 25 km from the Premises the Service Provider may, at its option:
- (i) by written notice to the Client terminate this Agreement on the date the Client is scheduled to relocate to the New Premises; or
 - (ii) agree to provide the Services at the New Premises with such amendment to the terms of the Service Level Agreement as the Service Provider considers necessary as a result of the change in geographical location, including but not limited to delays associated with travel arrangements and time.

3.9 Authorisation Processes

Unless otherwise provided in the Proposal the following must be requested, and will only be actioned if requested, by the Client Representative:

- (a) changes to the Equipment;
- (b) ordering Equipment equipment or systems;
- (c) escalating incident reports;
- (d) requesting Consulting and Technical Engineering time; and
- (e) any other action advised by either Party from the to time is required to be authorised by the Client Representative.

4. Fees

4.1 Fees

The Client must pay the Fees to the Service Provider as specified in the Proposal.

4.2 Payment terms

Except as otherwise specified in the Proposal:

- (a) the Service Provider will, from time to time, render invoices monthly in advance to the Client for work and Services to be performed in the following month;
- (b) invoices are payable within 14 days of the date of receipt by the Client;
- (c) invoices will be provided to the Client by email to the email address stated in the Proposal or as otherwise notified by the Client from time to time;
- (d) all invoices provided to the Client by email will be deemed to have been received by the Client on the date sent by the Service Provider;
- (e) payments must be made to the bank account nominated by the Service Provider in writing or otherwise on the invoice provided to the Client;
- (f) the Service Provider shall be entitled to require payment by direct debit from an account or credit facility approved by the Service Provider and the Client agrees that its direct debit authority shall extend to any and all payments due to the Service Provider under this Agreement;
- (g) the Client may only cancel the direct debit arrangements if it gives the Service Provider at least 28 days' notice in writing before the next payment day and the Parties agree to an alternative method of payment; and
- (h) the Client accepts and acknowledges that it is the Client's responsibility to ensure that there are sufficient clear funds available in the account to allow the debit payment to be made in accordance with the DDRF.

4.3 Fee review

- (a) If the Proposal contains a provision for Fee reviews or variations, Fees shall vary or be reviewed in accordance with the terms of the Proposal.
- (b) Except as otherwise expressly stated in the Proposal or to the extent that the parties have agreed to a different Fee variation under clause 7 of these Terms & Conditions, the Service Provider shall be entitled to increase its Fees yearly on 1 July each year by any increase in the Consumer Price Index (All Groups) for the city of Brisbane, as issued by the Australian Bureau of Statistics, or its replacement body and the Client may not object to this minimum increase.

4.4 Interest

Without limiting any other rights of the Service Provider, where the Client has failed to pay the Fees by the due date for payment the Service Provider may charge interest on any money overdue until full payment is received and cleared in the Service Provider's bank account, which interest will be at a rate of 11% per annum.

5. Projects

5.1 Project Work

The Service Provider may but is not obliged to, on request from the Client, agree to undertake work or provide equipment outside of the scope of the Services (**Project Work**) in accordance with the following process:

- (a) The Client must provide a request to the Service Provider in writing (**Project Work Request**);
- (b) The Service Provider must respond to the Client within 14 days of receiving the Project Work Request either:
 - (i) refusing to undertake the Project Work; or
 - (ii) agreeing to undertake the Project Work and detailing:
 - (A) the equipment or services required to satisfy the Project Work Request;
 - (B) the estimated time frame for the Project Work to be completed;
 - (C) the costs and expenses involved in completing the Project Work (**Quote**);
- (c) Within 14 days of receipt of the Service Provider's response pursuant to clause 3.1(b)(ii), the Client may, by notice in writing to the Service Provider:
 - (i) withdraw the Project Work Request; or
 - (ii) not accept the Quote and provide a counter-offer;
 - (iii) accept the Quote;
- (d) If the Client does not provide notice to the Service Provider before the expiry of the 14 day notice period provided pursuant to clause 3.1(c), the Client will be deemed to have

accepted the Quote and the Service Provider will commence the Project Work in accordance with the Quote provided;

- (e) If the Client provides notice to the Service Provider in accordance with clause 3.1(c)(ii) the Parties agree to negotiate in good faith and co-operate in an effort to reach an agreement within 14 days. If an agreement cannot be reached between the Parties within this time the Client will be deemed to have withdrawn the Project Work Request.

5.2 Project Work Recommended by the Service Provider

The Service Provider may recommend to the Client that work or equipment outside of the scope of the Services is required (**Suggested Project Work**) in accordance with the following process:

- (a) The Service Provider must give to the Client notice in writing detailing the Suggested Project Work specifying:
 - (i) the equipment or services required to satisfy the Project Work Request;
 - (ii) the estimated time frame for the Project Work to be completed;
 - (iii) the costs and expenses involved in completing the Project Work (**Suggested Project Work Quote**);
- (b) Within 14 days of receipt of the Suggested Project Work Quote pursuant to clause 3.2(a), the Client may, by notice in writing to the Service Provider:
 - (i) refuse the Suggested Project Work Quote; or
 - (ii) not accept the Suggested Project Work Quote and provide a counter-offer;
 - (iii) accept the Suggested Project Work Quote;
- (c) If the Client does not provide notice to the Service Provider before the expiry of the 14 day notice period provided pursuant to clause 3.2(b), the Client will be deemed to have accepted the Suggested Project Work Quote and the Service Provider will commence the Suggested Project Work in accordance with the Suggested Project Work Quote provided;
- (d) If the Client provides notice to the Service Provider in accordance with clause 3.2(b)(ii) the Parties agree to negotiate in good faith and co-operate in an effort to reach an agreement within 14 days. If an agreement cannot be reached between the Parties within this time the Client will be deemed to have refused the Suggested Project Work Quote.

5.3 Invoicing and Payment for Project Work

- (a) The Service Provider will, from time to time, render invoices to the Client for any Project Work undertaken in accordance with this clause 3.
- (b) The Client will make payment to the Service Provider within 30 days of receipt of a rendered invoice.
- (c) If the Client disputes the amount of an invoice submitted by the Service Provider pursuant to this clause, then the Client is not obliged to pay the disputed portion of the invoice until the dispute is resolved, but must pay all other non-disputed amounts.

- (d) If the Client disputes an invoice, the Service Provider may suspend, cancel or withdraw the provision of the Project Work and the Services in whole or in part until such time as the dispute is resolved or the full amount of the invoice is paid.

6. Software as a service (SAAS)

6.1 Qualifications of SAAS Services

Where the Services include the subscription to a software service (**Subscribed Software**) the Client acknowledges and agrees as follows in connection with the Subscribed Software:

- (a) The Client has satisfied itself as to the Subscribed Software capabilities and determined that the Subscribed Software is fit for the Client's needs. The Services do not include, and it may not be possible to, effect changes to the Subscribed Software code or functionality.
- (b) The Client accepts all additional terms of service of the Subscribed Software promulgated by the manufacturer or provider of the Subscribed Software (**Subscribed Software Provider**) as provided to the Client by the Service Provider or as publicly available via the Subscribed Software provider's website. All such additional terms of service will be deemed part of the terms of this Agreement and any breach of the Subscribed Software terms of service by the Client, or any user accessing the Subscribed Software via or with the authority of the Client, will be a breach of the terms of this Agreement.
- (c) Without limiting any other Right of the Service Provider under this Agreement, if there is a breach of the Subscribed Software terms of service by the Client, or any user accessing the Subscribed Software via or with the authority of the Client, the Service Provider shall be entitled to immediately suspend and/or terminate the Client's access to the Subscribed Software, which suspension or termination shall not be regarded as a suspension or termination of any other Service or the terms of this Agreement.
- (d) The Client accepts that the Service Provider is not responsible for:
- (i) any breach of the Subscribed Software terms of service by the Subscribed Software Provider;
 - (ii) any interruption, malfunction, fault or breakdown in the Subscribed Software;
 - (iii) any loss of Client Data contained in the Subscribed Software;
- except where caused by the Service Provider's willful or negligent act or omission.
- (e) The Service Provider will seek to facilitate but is not responsible for any dispute resolution between the Client and the Subscribed Software Provider.

7. Variations

7.1 Variations by Service Provider

- (a) The Service Provider may request a variation of the Services and or the Fees at any time:
- (i) if there is a change in the Client's business or Equipment from that specified or contemplated by the Proposal;

- (ii) if there is a change in law or any other third party requirements impacting the delivery of the Services including changes to underlying pricing of third party products and services required to be acquired by the Service Provider to provide the Services;
 - (iii) if more than 12 months has passed since the Service Provider's last Services and Fee review; or
 - (iv) if another event occurs which the Service Provider reasonably considers to necessitate a variation;
- (b) The Service Provider must give the Client at least 30 days written notice of the variation.
 - (c) Before the expiry of the 30 day notice period, the Client may terminate this Agreement by written notice to the Service Provider if the proposed variation is materially detrimental to the Client.
 - (d) If the Client does not provide notice to the Service Provider before the expiry of the 30 day notice period terminating this Agreement, the Client will be deemed to have accepted the variation, which will take effect immediately upon the expiry of the 30 day notice period.
 - (e) Without limiting the foregoing, the Service Provider may terminate this Agreement by no less than 30 days written notice to the Client if the Client does not accept a variation requested by the Service Provider.

7.2 Variations by Client

- (a) The Client may at any time propose to the Service Provider in writing a variation of the Services and or the Fees, provided that any such variation:
 - (i) is at the discretion of the Service Provider; and
 - (ii) will not be considered accepted except in writing by the Service Provider;

8. GST

8.1 Definitions

For the purpose of this clause:

GST means the goods and services tax under the GST Act;

GST Act has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and

Expressions used in this clause have the same meaning as those expressions in the GST Act.

8.2 Consideration

- (a) All sums listed in the Proposal and other consideration or payment stipulated in this Agreement is exclusive of GST unless stated otherwise.

- (b) The consideration (including any non-monetary consideration) for a Supply made under or in connection with this agreement which is a Taxable Supply is increased by an additional amount or value equal to the amount of that consideration multiplied by the relevant GST rate.
- (c) The additional amount under paragraph (a) is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.

8.3 Tax Invoice

A Party who receives consideration, whether monetary or otherwise, must give the other Party a Tax Invoice in a form which complies with the GST Act within 10 Business Days after the end of the month in which any consideration is paid, or an invoice issued, in relation to the Supply, whichever occurs first.

8.4 Payments

Unless otherwise stated in this Agreement, the following principles apply when determining the amount of a payment under this Agreement:

- (a) if a Party is entitled under this Agreement to be reimbursed or indemnified by another Party in respect of any loss, damage or outgoing, paid, suffered or incurred by or any action, proceeding, claim or demand against the first mentioned Party in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the claim, loss or outgoing for which an Input Tax Credit may be claimed; and
- (b) if a Party sets off an amount under this Agreement, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph (a).

8.5 Adjustment Event

If an Adjustment Event occurs, the Parties must do all things necessary to make sure that the Adjustment Event may be properly accounted for, including the issue of an Adjustment Note.

9. Security of Information

9.1 Service Provider's commitment

Subject to the remaining provisions of this clause 9:

- (a) the Service Provider will take reasonable precautions to safeguard all information of the Client in the custody of the Service Provider against loss or unauthorised access; and
- (b) the Service Provider will make all attempts, where possible and commercially reasonable, to establish and maintain safeguards against the destruction, loss or alteration of the Client Data in the Service Provider's possession or control that:
 - (i) are consistent with the data security requirements notified by the Client from time to time;
 - (ii) comply with all applicable Laws concerning data security;

- (iii) reasonably prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to Client Data; and

notify the Client immediately and comply with all reasonable directions of the Client if the Service Provider becomes aware of the contravention of any data security requirement.

9.2 Privacy Policy

The Client acknowledges that the Service Provider may collect from time to time personal information of the Client and other persons in connection with and for the purpose of delivery of the Services. All personal information collected will be collected, held, disclosed and or disposed of as necessary in accordance with the provisions of the Service Provider's privacy policy which may be accessed at the Service Provider's website: xxx and which the Client acknowledges having reviewed and approved before entering into this Agreement.

9.3 User names and passwords

- (a) All user names, passwords and access codes of any kind to any of the Equipment remain the sole and exclusive property of the Client at all times and will not be used or disclosed by the Service Provider except where proper and reasonably necessary in providing the Services
- (b) The Client accepts the responsibility for the custody of user names, passwords and access codes within the control of the Client and agrees that the Service Provider:
 - (i) is not responsible for any loss or damage to the Client and/or any costs associated with unauthorized access of the Equipment via those user names, passwords and access codes; and
 - (ii) may charge a Fee to attend to retrieval of data, re-issue of access parameters and any other actions required in consequence of such data breach.

9.4 Client Data

- (a) The Client Data is and will remain the property of the Client at all times.
- (b) Except as required by Law, the Service Provider undertakes that it will not:
 - (i) use Client Data for any purpose other than directly in relation to the performance of its obligations under this Agreement;
 - (ii) allow its representatives sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Client Data;
 - (iii) make any Client Data available to a third party other than an approved subcontractor and then only the extent necessary to enable the approved subcontractor to perform its part of the Service Provider's obligations under this Agreement; and
 - (iv) remove or transfer the Client Data to any non-Client premises or systems without obtaining the prior approval of the Client.
- (c) Where included in the Services, the Service Provider will backup the Client Data to the location and extent requested by the Client as a safeguard against the destruction or loss of the Client Data, including:

- (i) scheduling backups in accordance with the reasonable requests of the Client;
 - (ii) monitoring the success or failure of backups; and
 - (iii) testing successful reinstatement on random backup images.
- (d) Notwithstanding the above, the Service Provider is not, in any circumstances, liable to the Client:
- (i) for any costs, expenses, loss, liability or damage of any kind in connection with loss of Client Data resulting from unauthorized access or loss of Client Data:
 - (A) due to a flaw or apparent flaw in the Client's or a third party provider's systems; or
 - (B) by means other than through the use of the Service Provider's own user names, passwords and IT system;
 - (ii) for any consequential loss, including without limitation loss of profit or anticipated profit, loss of reputation, loss of goodwill or loss of business opportunity, whether arising in contract, tort (including for negligence), under statute or on any other basis in law in connection with loss or unauthorized access of Client Data.

10. Intellectual Property

10.1 Title

The Service Provider and the Client acknowledge that the benefit, Right, title and interest in Materials and all Intellectual Property Rights in the Materials:

- (a) supplied by the Client in relation to the Client's business, shall remain with the Client, unless otherwise agreed in writing signed by the Client and the Service Provider; and
- (b) supplied by the Service Provider in relation to the Service Provider's business, shall remain with the Service Provider, unless otherwise agreed in writing signed by Service Provider; and
- (c) created or arising out of the Services performed by the Service Provider, shall immediately be assigned to and vest upon creation absolutely in the Service Provider.

10.2 Pre-Existing Rights and Licence in created Materials

- (a) The vesting of title in clause 10.1(c) does not affect the Intellectual Property Rights in any pre-existing material of the Client (including but not limited to software, documentation and data) which is incorporated into the created Materials.
- (b) The Service Provider licenses the use of the Materials created by the Service Provider and supplied to the Client's in connection with the Services, and all Intellectual Property Rights contained therein, to the Client under a perpetual royalty free licence to use such Materials for the purpose for which they were intended and at all times in accordance with this Agreement, but not to distribute those Materials to any other person or utilize them for any other purpose.
- (c) To the extent that the Intellectual Property Rights of either Party (including in any pre-existing material) are required for the performance of this Agreement, each Party grants

the other an exclusive, non-transferable licence to use such Intellectual Property Rights for the purposes of this Agreement only. This licence terminates immediately on termination of this Agreement.

10.3 Further Assurances

Each Party shall at the request of the other and within a reasonable time execute all documents and do all things as required by the requesting Party to give effect to this clause.

10.4 Indemnity

- (a) Each Party indemnifies and agrees to keep the other indemnified for any loss, damage, cost or expense (including legal costs on an indemnity basis) for any breach by each Party of the Intellectual Property Rights of the other under this clause 10.
- (b) Each Party acknowledges and agrees that damages may not be an appropriate or sufficient remedy for any breach by a Party of the Intellectual Property Rights of the other under this clause 10 and agrees that each Party shall be entitled to obtain injunctive relief to prevent any such breach, including any anticipated breach or the continuation of any breach.

10.5 Third Party IP

Whilst the Service Provider will take reasonable precautions, the Service Provider does not warrant that the Materials and any other documents or information delivered by the Service Provider to the Client under this Agreement do not and will not infringe the Intellectual Property Rights of any person and the Client acknowledges that such Materials are provided to the Client for the Client's personal use only.

10.6 Survival

This clause 10 survives the expiration or termination (for any reason) of this Agreement and is in addition to and not in derogation of Obligations at law or under any law or trade or professional custom or use.

11. Confidential Information

11.1 No Disclosure

Each Party must not, and must ensure that all of its personnel does not:

- (a) disclose, directly or indirectly, any Confidential Information of the other Party to any person except pursuant to clause 10.2; or
- (b) use (including by making copies or reverse engineering or analyzing) any Confidential Information of the other Party other than for the purposes of this Agreement,

and each Party must immediately notify other if they become aware of any unauthorised access to, or use or disclosure of, any of Confidential Information has occurred.

11.2 Permitted disclosure

- (a) Clause 11.1 does not prohibit a Party from disclosing Confidential Information:
 - (i) with the prior written consent of the other Party;
 - (ii) to its employees, agents, contractors and advisers (financial, legal or any other kind)

but only on a need to know basis and provided the person to whom information is disclosed is the subject of confidentiality obligations in the nature of this clause 11 by deed or operation of law; and

- (iii) as required by law but only to the extent which cannot reasonably be avoided.
- (b) Notwithstanding clause 11.2(a)(a)(ii), a Party who discloses Confidential Information to a person under clause 11.2(a)(a)(ii) is liable for any unauthorized disclosure of Confidential Information by that person.

11.3 Delivery

The Service Provider, at the written request of the Client, is required to immediately deliver to the Client all records and documents, including, without limitation, all copies or records containing or referring to Confidential Information which are in its possession, power or control, or (at the Client's request) delete all copies of such documents in its possession, power or control, including electronic copies.

11.4 Indemnity

- (a) Each Party indemnifies and agrees to keep the other indemnified for any loss, damage, cost or expense (including legal costs on an indemnity basis) for any breach by each Party of the terms of clause 11.1.
- (b) Each Party acknowledges and agrees that damages may not be an appropriate or sufficient remedy for any breach by a Party of clause 11.1 and agrees that each Party shall be entitled to obtain injunctive relief to prevent any breach, including any anticipated breach or the continuation of any breach a Party of clause 11.1.

11.5 Survival

This clause 11 survives the expiration or termination (for any reason) of this Agreement and is in addition to and not in derogation of Obligations at law or under any law or trade or professional custom or use.

12. Limitation of Liability

12.1 Warranties by Service Provider

- (a) To the fullest extent permitted by law, the Service Provider makes no representation or warranty in respect of the provision of the Services except that it will carry out the Services competently, professionally and to the best of its ability within the scope of the Proposal and the terms of this Agreement.
- (b) The Service Providers warranties with respect to the state, quality or condition of the Services are limited to those imposed upon the Service Provider by statute, including those contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the Service Provider expressly disclaims all other implied warranties and conditions except where the infringement is known by the Service Provider beforehand.

12.2 Limitations of liability

- (a) The Client expressly accepts and acknowledges that the Service Provider is not liable to the Client for any costs, expenses, loss, liability or damage of any kind, howsoever arising from or in connection with:

- (i) any inability of the Client to access or use the Supported Equipment due to breakdown, failure or interruption in the Supported Equipment;
- (ii) any delay, failure or inability in the Service Provider to repair any breakdown, failure or interruption;
- (iii) any disruption or interference with the Client's business in connection with a breakdown or and at any other time in connection with the Services including while Services are being carried out;
- (iv) any delay, failure or error in the provision of the Services due to any circumstance outside the Service Provider's reasonable control, including without limitations, failure of any communications network or system, electronic power surges, overloads, failures or blackouts, including but not limited to any failure in internet, telephone or data connectivity;

except to the extent that such costs, expenses, loss, liability or damage is caused by the Service Provider's wilful or negligent act or omission.

- (b) The Service Provider will make reasonable endeavours to resolve internet or other communications network or system connectivity issues which may impact its ability to perform the Services but will not in any circumstance be liable to the Client for any costs, expenses, loss, liability or damage of any kind, arising from or in connection with such issues and the Service Level Agreement will not apply to any work done pursuant to this clause 12.2(b), except to the extent caused or contributed to by the Service Provider's wilful or negligent act or omission.
- (c) To the fullest extent permitted by law, the Service Provider excludes all liability for loss including without limitation the loss or corruption of the Equipment or Client's Data, and any other commercial or economic loss of any kind arising from this Agreement or the provision of any of the Services by the Service Provider except to the extent that such liability is a result of the Service Provider's wilful or negligent acts or omissions.
- (d) To the fullest extent permitted by law, the Service Provider excludes all liability for indirect and consequential loss including without limitation loss of profit or anticipated profit, loss of reputation, loss of goodwill or loss of business opportunity, whether arising in contract, tort (including for negligence), under statute or on any other basis in law, arising from this Agreement whatsoever.
- (e) To the fullest extent permitted by law, where the Service Provider is liable for any defect or omission in connection with the performance of the Services, the Service Provider's liability to the Client is limited to either:
 - (i) re-supply of the Services by the Service Provider; or
 - (ii) payment of the cost of having another provider re-supply the Services
- (f) In all cases and to the fullest extent permitted by law, the maximum of the Service Provider's liability to the Client under this Agreement is the total sum of Fees actually paid by the Client under this Agreement up to the date of the Client's claim.

12.3 Client Acknowledgement

The Client acknowledges and agrees that the Client:

- (a) does not rely upon any prior statement, undertaking or representation made or given by or behalf of the Service Provider which is not set out in this Agreement; and
- (b) is fully aware of the contents of this Agreement and all documents referred to herein and has had the opportunity to obtain independent legal advice on its terms and the terms of all other related documents prior to entering into the Agreement.

13. Termination

Termination for Default

Without limiting any other provision of this Agreement, either Party may terminate this Agreement immediately by notice in writing if the other Party:

- (a) is in breach of any term of this Agreement and any such breach is not remedied within 30 days of receiving notice from the terminating Party of the need to remedy, including but not limited to the obligation to pay the Fees;
- (b) becomes, threatens or resolves to become subject to any form of insolvency under the *Corporations Act 2001 (Cth)*, including where a trustee in bankruptcy, administrator, liquidator (including provisional liquidator), receiver and/or manager is appointed in respect of the Party;
- (c) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) being a natural person, dies; or
- (e) being a corporation, is deregistered or wound up.

13.2 Suspension of Services

Without limiting any other Right of the Service Provider, where the Client is in breach of this Agreement, including by failing to make a payment on time, the Service Provider may, at its option, suspend the provision of the Services until the breach has been remedied and if the suspension continues for 30 days or more, thereafter immediately terminate this Agreement by notice to the Client. The Supplier will not be liable for any loss or damage suffered by the Client, directly or indirectly, as a result or in any way in connection with or associated to the Goods and/or Services being suspended pursuant to this clause.

13.3 Termination Payment

- (a) Where the Service Provider terminates this Agreement pursuant to clause 12.1 or 12.2, the Client must pay to the Service Provider a sum equal to the amount calculated in accordance with the following formula:

$$\text{Termination Payment} = (A \div 12) \times B$$

Where:

- A = the aggregate of the Fees paid by the Client for the 12 month period preceding the month in which the termination notice is given, or if a 12 month period has not yet elapsed since the Commencement Date, the aggregate of the Fees that the Service Provider reasonably believes would have been received over a 12 month period from the Commencement Date; and
 - B = the number of months or part thereof from the date of termination to the end of the Term current at the time termination occurs.
- (b) The Client acknowledges and agrees that the Termination Payment is a genuine pre-estimate of the loss that the Service Provider will suffer if this Agreement is terminated before the expiry date of the then current Term.
 - (c) Payment of the Termination Payment is without prejudice to the Service Provider's Right to claim:

- (i) all Fees payable in respect of the period prior to the date of termination; and
- (ii) any other damages which may be suffered by the Service Provider as a result of the Client's breach, including without limitation pursuant to clause 10 and 11.

13.4 Termination by Service Provider

- (a) Without limiting any other provision of this Agreement and unless expressly stated otherwise in the Proposal:
 - (i) where this Agreement provides for an automatic renewal of the term of this Agreement, the Service Provider may give the client no less than 90 days written notice that this Agreement shall not renew and in such case this Agreement will end on expiry of the then term of this Agreement; and
 - (ii) the Service Provider may terminate this Agreement at any time and for any reason by no less than 6 months written notice to the Client.
- (b) The Service Provider is not liable to the Client for any loss or damage caused by the Service Provider's termination under this clause, and the Client remains liable to the Service Provider for all monies due to the Service Provider under this Agreement up to and including the date this Agreement ends and in connection with any breach of this Agreement by the Client (if applicable).

13.5 Consequences of Termination

On termination of this Agreement, whether due to expiry or termination for any reason:

- (a) both Parties will return all property in their possession belonging to the other Party, including all Confidential Information and in the case of the Service Provider, all Client Data except as contained in back-up systems of the Party which cannot be readily accessed and which the relevant Party undertakes to delete when reasonably possible;
- (b) the Client must pay to the Service Provider any amounts owing for Services performed up to the date of termination and any other monies owing to the Service Provider under this Agreement (including the Termination Payment if applicable) within 30 days of the date of termination; and
- (c) where the Service Provider has undertaken any Project Work then, subject to the agreed terms for the performance of such Project Work, the Client must, at the direction of the Service Provider (in its sole discretion):
 - (i) pay to the Service Provider all amounts owing for any Project Work or equipment supplied as at the date of termination;
 - (ii) return to the Service Provider any and all equipment provided as part of the Project Work that has not been paid for by the Client at the date of termination and the Client will be responsible for all costs associated with the removal of equipment or systems; and
 - (iii) anything else agreed by the Parties to be undertaken on termination of the Project Work assignment.

- (d) Subject to any outstanding claims by or payments owing to the Service Provider, including circumstances where the Client is in breach of this Agreement, the Service Provider shall refund to the Client any moneys paid in advance for Services to be performed following termination of this Agreement.

13.6 Post Termination Support Period

- (a) The Client may request the Service Provider to provide such transitional assistance in the nature of information and facilitation of transfer to another service provider as the Client may require for a period of up to 90 days after termination of this Agreement or such longer period as may be agreed by the Service Provider, provided that assistance by the Service Provider under this clause in circumstances where the Agreement has been terminated by the Service Provider will be at the Service Provider's discretion.
- (b) Except as otherwise agreed by the Parties, the Services of the Service Provider under clause 13.6 will be performed on the same terms and conditions of this Agreement in so far as applicable and paid at the same rate applicable to the Services requested and the time spent by the Service Provider, or where no comparable rate exists, at the base hourly rate of charge of the Service Provider.

14. Sub-contractors

14.1 Sub-contracting of Services

- (a) The Service Provider may sub-contract or otherwise arrange for another person to perform any part of this Agreement or to discharge any of its Obligations under any part of this Agreement without the prior written consent of the Client.
- (b) In the event the Service Provider sub-contracts pursuant to subclause 12.1, the Service Provider shall not be relieved of any of its liabilities or Obligations under this Agreement and the Service Provider shall be liable to the Client for the acts, defaults and neglects of any sub-contractor or any employee or agent of the sub-contractor as if they were the acts, defaults or neglects of the Service Provider or the employees or agents of the Service Provider.
- (c) The Service Provider shall be responsible for ensuring the suitability of all sub-contractors and for ensuring that the work performed by the sub-contractors meets the requirements of this Agreement.

15. Force Majeure

15.1 Definition

In this clause 15, and **Event of Force Majeure** means the occurrence of an event or circumstances beyond the reasonable control of the Party affected by it including (without limitation):

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act of a government or a Governmental Agency;
- (d) an act of God; or

(e) a storm, tempest, fire, flood, earthquake or other natural calamity,
and **Force Majeure** shall have a similar meaning.

15.2 Effect of Force Majeure event

- (a) Neither Party shall be liable for any delay or failure to perform its Obligations pursuant to this Agreement if such delay is due to Force Majeure.
- (b) If a delay or failure of a Party to perform its Obligations is caused or anticipated due to Force Majeure, the performance of that Party's Obligations will be suspended.
- (c) If a delay or failure by a Party to perform its Obligations due to Force Majeure exceeds 60 days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

15.3 Consequences of Termination

- (a) Termination under sub-clause 15.2(c) is without prejudice to the rights of each Party:
 - (i) to be paid any money owing up to and including the date of termination;
 - (ii) in relation to a breach which occurred before termination;
 - (iii) to require compliance with the provisions of clause 13.4 and any provisions of this Agreement which are expressed or intended to survive expiry or termination of this Agreement;

but is otherwise without penalty to either Party.

16. Dispute Resolution

16.1 No proceedings

A Party must not commence court proceedings, save for proceedings seeking interlocutory relief, in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with the provisions of this clause.

16.2 Notification of Dispute

A Party claiming that a Dispute has arisen must notify each other Party to the Dispute by providing details of the Dispute.

16.3 Best efforts to resolve Dispute

During the 5 day period after a notice is given under clause 15.2, or such longer period as is unanimously agreed in writing by the Parties to the Dispute (**Initial Period**), each Party to the Dispute (**Disputant**) must use its best efforts and negotiate in good faith to resolve the Dispute.

16.4 Referral to Mediator

If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred, at the request of any Disputant, to an independent Mediator

agreed between the Parties, or by the President for the time being of the Law Society of Queensland, in the absence of agreement no later than 2 days after the end of the Initial Period, and:

- (a) the Disputants must act in the utmost good faith and co-operate with the Mediator and the other Disputants in a genuine attempt to resolve the Dispute within 10 days after it is referred to the Mediator;
- (b) the cost of the Mediator will be borne equally by the Parties to this Agreement; and
- (c) The Parties of the mediation will bear their own costs of attending.

16.5 Breach of this clause

If, in relation to a Dispute, a Disputant breaches any provision of clauses 15.1 to 15.4, each other Disputant need not comply with clauses 15.1 to 15.4 in relation to that Dispute.

16.6 General Obligation to Co-Operate

The Parties agree that:

- (a) they have a general Obligation to co-operate to achieve the objectives of the Agreement; and
- (b) in the event of a breakdown of their relationship, they will use their best endeavours to resolve their differences and will proceed to mediation prior to having recourse to litigation or terminating the Agreement.

17. General Provisions

17.1 Variations

No variation of this Agreement nor consent to a departure by a Party from a provision, shall be of effect unless it is in writing, signed by the Parties or (in the case of a waiver) by the Party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

17.2 Waiver

The non-exercise of or delay in exercising a Right of a Party shall not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by notice, signed by the Party to be bound by the waiver.

17.3 Assignment

- (a) The Service Provider may assign all of its Rights and/or Obligations under this Agreement at any time to any person who acquires the Service Provider's business or undertakes in writing to perform the obligations of the Service Provider under this Agreement without needing the consent of the Client. The Service Provider must give written notice to the Client of an assignment under this clause as soon as reasonably practicable after the assignment is effected.
- (b) The Client may not assign any of its Rights and/or Obligations under this Agreement to any person without first obtaining the written consent of the Service Provider, which shall not be unreasonably refused if:

- (i) the consent is requested in connection with a sale of the Client's business to the assignee;
- (ii) the Client is up to date with all payments under this Agreement and is not otherwise in breach of this Agreement; and
- (iii) the assignee enters into a deed with the Service Provider on such terms reasonably required by the Service Provider agreeing to be bound by the terms of this Agreement going forward.

17.4 Notices

- (a) Any Notice or other communication in connection with this Agreement must be in writing addressed to the Notice Address of each Party and each Party consents to receive communications via email for the purpose of the Electronic Transactions (Queensland) Act 2001.
- (b) A Notice or other communication under this Agreement will be deemed to be received, unless evidence of earlier receipt exists:
 - (i) in the case of a posted letter, on the third day after posting;
 - (ii) in the case of personal delivery, on the date of delivery; and
 - (iii) in the case of email transmission, at the time recorded on a read receipt transmission report from the email account from which the email was sent, stipulating the time at which the email was read or otherwise displayed on the recipient's screen;

provided that a notice or communication given on a day which is not a Business Day or after 4:00pm on a Business Day will be deemed given on the next following Business Day.

- (c) For the avoidance of doubt, this clause 17.4 does not limit the way in which a notice may be given as permitted by law.

17.5 Further assurances

Each Party to this Agreement shall do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by notice from another Party to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the Rights of the other Parties to this Agreement.

17.6 Liability of Parties

If a Party consists of more than one person:

- (a) an Obligation of those Parties is a joint Obligation of all of them and a several Obligation of each of them;
- (b) a Right given to those Parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by those Parties is made by each of them.

17.7 Relationship

The Service Provider is an independent contractor of the Client and is not a partner, agent, employee or joint venturer of the Client in the conduct of the Client's business nor does it have the authority to bind the Client by contract or otherwise.

17.8 Execution

- (a) This Agreement may be signed or executed in a number of counterparts, including by email transmission and digital execution, with the same effect as if the signatures to or execution of each counterpart were on the same instrument and in original form.
- (b) Each person signing this Agreement as authorised representative, attorney, trustee or agent for a Party warrants that he or she is duly authorised to enter into this Agreement on behalf of the relevant Party.

17.9 Severability

This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

17.10 Survival

- (a) Subject to any provision to the contrary, this Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not endure to the benefit of any other persons.
- (b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

17.11 Jurisdiction

- (a) This Agreement is governed by and construed in accordance with the laws of the State of Queensland, Australia.
- (b) Actions, suits or proceedings relating in any way to this Agreement or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in the Brisbane Central Business District. Each Party irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such action, suit or proceeding.

Customer acknowledgement:

Signed:

Customer name:

Date:/...../.....