SaaS Cloud Services Agreement – Operative Provisions

1. Purpose

This SaaS - Cloud Services Agreement sets out the terms and conditions applicable to the provision by **Spearhead Software Pty Ltd** ABN 48 002 345 271 of the Services, and the Customer's access to and use of the Services.

(a) This SaaS - Cloud Services Agreement incorporates and includes:

(i) the Proposal document preceding these Terms, including order form;

(ii) these operative provisions; and

(iii) any schedule, annex or other document incorporated by reference into this agreement,

(collectively referred to as the **Agreement**).

(b) The documents specified in clause 1(a) constitute the entire agreement between the parties in relation to the subject matter of this Agreement. If there are any inconsistencies or conflicts arising between those documents, the document appearing higher in the list set out in clause 1(a) will prevail to the extent of the inconsistency or conflict. This Agreement replaces and supersedes any prior agreements or understandings between Supplier and Customer with respect to Customer's access to and use of the Services. The terms of any Customer purchase order, contract or other terms document has no force or effect at any time.

2. Scope of Services

(a) Customer acknowledges and agrees that its access to and use of the Services will be limited to those items specified in the Proposal as may be amended by any proposal or quotation issued by Supplier from time to time.

(b) Supplier may agree, from time to time, to amend the scope of Services specified in the Proposal in accordance with this clause.

(c) Where the Customer wishes to and proposes a change to the scope of the Services (**Change**), it must provide reasonable written prior notice to Supplier of the Change, and Supplier will determine, acting reasonably, whether it can accept the Change, and any upwards adjustment to the Fees and/or timings for delivery that may apply, having regard to its ordinary pricing and delivery timings for the Services. Supplier will notify the Customer of the impact of the Change, if accepted, and once agreed by Customer, the Change will be implemented by Supplier. Nothing in this provision obliges Supplier to agree or accept any Change proposed by the Customer. The parties' obligations under this Agreement in respect of the receipt and delivery of the Services continue, notwithstanding any Change.

(d) Notwithstanding any other provision of this Agreement, Supplier reserves the right to, and may, update the Services (including any specification for the Services) to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of third-party content. Any Supplier updates or changes of this kind to the Services will be notified (on the Supplier's website or otherwise by Supplier to the Customer) and will not materially reduce the level of performance, functionality, security or availability of the Services for the Customer during the Term.

3. Term

(a) This Agreement commences on the Commencement Date and continues for the period specified below:

(i) if an Initial Term is specified in the Proposal, the Agreement continues until the later of the expiry of:

(A) the Initial Term; and

(B) any Further Term(s); and

(ii) on expiry of the Initial Term (and if no Further Term is specified), or if there is no Initial Term specified in the Proposal, the Agreement will continue (to the maximum extent permitted by law) on an ongoing, month-to-month, basis on the same terms and conditions as set out in this Agreement,

in each case, unless and until earlier terminated by either party in accordance with these terms (the **Term**).

(b) In furtherance of the above, each party acknowledges and agrees that:

(i) neither party has any obligation to agree to a Further Term;

(ii) any party electing not to renew for the Further Terms will not incur any early termination fee, penalty or disadvantage solely as a result of exercising that right; and

(iii) Supplier reserves the right acting reasonably, as a condition of its agreement to any Further Term (and to the maximum extent permitted by law), to notify the Customer within thirty (30) days before the end of the then current Term and require the Customer to pre-pay upfront a percentage (or all) of the Fees which would become due and payable in relation to the Further Term.

(c) Each of the Supplier and Customer acknowledge and agree that:

(i) the automatic renewal mechanism set out under this clause 3 (Term) is reasonably necessary to protect the legitimate commercial interests of both parties, including business continuity and service planning certainty;

(ii) the length of the Further Term and the notice period are reasonable in the circumstances of the relationship and the nature of the services under this Agreement; and

(iii) the clause does not create a significant imbalance in either party's rights or obligations.

4. Software & Documentation

4.1 Grant of Licence

(a) Subject to Customer complying with its obligations under this Agreement, including payment of the Fees due and payable in accordance with this Agreement, Supplier grants to Customer, and Customer accepts, a non-transferable, non-exclusive limited licence for the Term to access and use (and permit its Authorised Users to access and use) the Services (including the Software and the Documentation) in the Region solely for the Customer's internal business operations. The Customer remains responsible at all times for its Authorised Users' compliance with this Agreement.

(b) As between the parties (and except as expressly provided otherwise in this Agreement):

(i) Supplier (or its licensors) retains title to and ownership of, including all Intellectual Property Rights in and to, the Services (including the Software and the Documentation) and any derivative works of any of them; and

(ii) Customer (or its licensors) retains title to and ownership of, including all Intellectual Property Rights in and to, the Customer Content (as defined).

(c) Customer grants Supplier the right to host, use, process, display and transmit Customer Content to provide the Services pursuant to and in accordance with this Agreement. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Content, and for obtaining all rights related to Customer Content required by Supplier to perform the Services.

(d) Notwithstanding any other provision of this Agreement, nothing in this Agreement:

(i) assigns any right, title or interest to any Intellectual Property Rights in or to the Services, including Software or the Documentation, to Customer; or

(ii) permits Customer or any Authorised User to (and Customer may not cause or permit others to) modify, make derivative works of , reverse-engineer, decompile, translate, disassemble, download, republish, copy, commercialise or make available to any third party, in any way, any element of the Services, including the Software or Documentation (or data structures or similar materials produced by programs), or access or use the Services to build or support, directly or indirectly, products or services competitive to Supplier, in each case except to the extent expressly permitted by non-excludable statutory rights.

4.2 Provision of Services

The Customer acknowledges and agrees that (to the maximum extent permitted by law):

(a) the Services are provided on an "as is' and 'as available" basis, without warranty of any kind, whether express or implied;

(b) Supplier does not guarantee that the Services (including the Software and Documentation) is suitable for or meets any of the Customer's specific needs or purposes;

(c) the Services and any Customer Data may be hosted, managed, supported and/or processed by Supplier or by any of its appointed third parties (including any cloud-based or automation provider engaged by Supplier, or by other automated means);

(d) without limiting clause 2(d) above, Supplier may, from time to time, update or provide a new release of the Software during the Term, in which case:

(i) Customer acknowledges and agrees the Software may be unavailable for a reasonable period of time without liability to Customer, for the purpose of Supplier implementing any such update or new release of the Software;

(ii) where the update or new release is a material change:

(A) Supplier will use all reasonable endeavours to provide Customer with at least 30 days notice of the change; and

(B) where the change causes a material detriment to the functionality of the Software, Customer has a right to issue a termination notice to Supplier to terminate this Agreement in full on written notice to Supplier within 30 days of the earlier of, receipt of notice from Supplier or otherwise becoming aware of the change and its impact; and

4.3 Maintenance & Availability

(a) Although Supplier will use commercially reasonable efforts to ensure the Software is available 24 hours a day, seven days per week, from time to time,the Software may be unavailable for a number of reasons, including for scheduled maintenance from 6pm on any Business Day to 4am on the following Business Day (in the Time Zone Location). The Supplier will use reasonable endeavours to provide notice to the Customer of any scheduled maintenance (except emergency maintenance). and the Customer agrees to use reasonable efforts to comply with any maintenance requirements notified by the Supplier.

(b) Without limiting subclause (a), the Software may also become unavailable from time to time for scheduled Changes, emergency maintenance, urgent measures to manage network performance, or as a result of events beyond Supplier's reasonable control (Force Majeure), including:

(i) failure or default by any of Supplier's third party software or service providers;

(ii) abnormal usage volumes;

(iii) inaction of the Customer, any breach of this Agreement by Customer or the negligence of Customer or its Personnel; and/or

(iv) issues with Customer equipment, or failure of Internet communications.

(c) For the avoidance of all doubt, the service levels set out in this Agreement do not apply in respect of any downtime of the Software that is caused by factors under subclause (b) above.

(d) In all cases (save for emergency maintenance), the Supplier will use commercially reasonable efforts to

notify Customer promptly and to overcome such circumstances or mitigate their effects (where it is feasible and capable of doing so), and resume full operation as soon as reasonably practical.

4.4 Authorised Users

(a) Subject always to the terms and conditions of this Agreement, Customer may authorise its Authorised Users to access and use the Software and the Documentation (or part thereof).

(b) Customer:

(i) is responsible for the access to and use of the Software and the Documentation by its Authorised Users, including their compliance with this Agreement;

(ii) will be liable for all acts and omissions of its Authorised Users as if they were Customer's own acts and omissions; and

(iii) must not use the same Authorised User logins for the Software in multiple time zones;

4.5 Cyber Security

Customer acknowledges and agrees that:

(a) Supplier is not in the business of providing cyber security related services;

(b) while Supplier will take reasonable steps to ensure that the Software and Customer Data remains secure (including in the performance of any applicable Services), no organisation is immune from Cyber Breaches, regardless of any provided services or third party components (including those recommended or provided by Supplier, or forming part of the Services); and

(c) Supplier makes no representations, and gives no warranties in respect of the Software being capable of (or any applicable Services being effective in) protecting Customer from, or preventing, Cyber Breaches or eliminating the risk of Cyber Breaches.

4.6 Back-ups

Unless otherwise agreed by the parties in writing, Customer acknowledges and agrees that:

(a) in its provision of the Services, where expressly included in the Proposal, the Supplier may, but is not obliged to, create and maintain backups of any Customer Data that is required to enable Supplier to provide the Services, in the manner and form that Supplier deems reasonably necessary, so as to ensure Supplier is capable of providing the Services;

(b) where (a) applies, in the event of any loss of or damage to any Customer Data (including as a result of a Cyber Breach), the Supplier will attempt to restore the affected Customer Data from the last available backup. To the maximum extent permitted by law, this is the Supplier's only obligation and the Customer's sole remedy, for any such loss or damage; and

(c) in all other cases Customer is solely responsible for f for creating and maintaining back-up copies of all its systems, Customer Data and Customer Content, including before, during, and after delivery of any data migrations performed as part of these Services. The Supplier is not responsible for any losses resulting from the Customer's failure to back up Customer Content, and any failure of Customer to do so may affect Supplier's ability to perform its obligations under this Agreement.

5. Supplier Obligations and Exclusions

5.1 Supplier Obligations

Supplier will:

(a) provide the Services:

(i) with the skill and care that would be reasonably expect of a competent service provider;

(ii) provide the Services using appropriately skilled Personnel and in a timely and professional manner; and

(iii) in the manner contemplated by the Proposal;

(b) provide the Training at the times reasonably agreed between the parties and at the Training Location; and

(c) ensure that, whenever it or its Personnel are on Customer's premises or using Customer's equipment or facilities in connection with the Services, it and its Personnel comply with Customer's:

(i) reasonable policies, procedures and rules notified to Supplier prior to access to those premises, equipment or facilities; and

(ii) reasonable directions in relation to occupational health and safety, smoking in the workplace, IT and premises security.

5.2 Exclusions from Supplier Obligations

Supplier is not:

(a) required to provide Customer with any hardware or third party software licences, other than any licences to use third party components forming part of the Software; or

(b) liable to Customer where Customer's Environment does not comply with Supplier's minimum system requirements to make use of the Software, and is not capable of making use of the Software.

6. Customer Obligations

6.1 General Obligations

Customer must (and must ensure that each of its Authorised Users will):

(a) do all things necessary to enable Supplier to perform its obligations under this Agreement;

(b) maintain the Environment, including implementing all reasonable security measures to protect all systems, platforms and data in the Environment, including upon migration to the Software, in order for the Customer to obtain full access and use of the Software;

(c) notwithstanding clause 4.6 above, keep and maintain a separate back up copy of all Customer Data uploaded or entered by it into the Software;

(d) co-operate with Supplier in relation to, and take all reasonable steps to facilitate and provision all information and assistance as reasonably requested and required by the Supplier from time

to time to enable the provision of the Services by Supplier;

(e) comply with all reasonable directions in relation to the Software and the Documentation (including in relation to their use) issued by Supplier;

(f) ensure its relevant Personnel attend and fully participate in the Training at the times reasonably agreed between the parties, including as applicable, at the Training Location;

(g) notify Supplier immediately if it becomes aware of, suspects or forms a reasonable belief that there has been (or there is likely to be) any unauthorised access to, disclosure of, damage or loss, or use of the Software, the Documentation or the Customer Data at any time, and provide full details to the Supplier immediately once known; and

6.2 Acceptable Use

Customer must (and must ensure that each of its Authorised Users will), in respect of the Services, Software and Documentation:

(a) only access and use the Services, Software and Documentation in the Region;

(b) only access or use each for its own internal business use;

(c) not use any of them except as expressly permitted by this Agreement;

(d) comply with all Relevant Laws and Legal Requirements in relation to its access to and use;

(e) not access or use any of them in a manner which could interfere with the Services, Software or Documentation, or the provision of the Services, Software or Documentation by Supplier to other customers;

(f) not engage in conduct or activities which attempt to manipulate or bypass any limitations or security measures on the Software;

(g) not use the Software in a manner, nor permit the transmission, inputting or storage of any data in a manner, that infringes any third party rights;

(h) not use the Software to input, store, or transmit any objectionable, defamatory, obscene, harassing, threatening, misleading or unlawful data or material;

(i) take all reasonable precautions to keep access to the Software and Documentation (including login information and passwords) secure and protected at all times from misuse or any form of unauthorised access or use;

(j) promptly notify Supplier in writing of any known or suspected security issue in relation to the Software or Documentation, including unauthorised access by any person to the Software or Documentation, or to any login information or password;

(k) not do (or omit to do) anything that may jeopardise the security of the Software or access to the Software or Documentation;

(l) not transfer, assign, grant a security interest in, or otherwise deal with its rights in relation to the Software or Documentation contrary to the terms of this Agreement;

(m) promptly notify Supplier in writing of any allegation or claim of which Customer becomes aware that the Software or Documentation, or the use of the Software or Documentation, infringes the Intellectual Property Rights of any person and make no admission in relation to the allegation or claim without Supplier's prior written consent;

(n) promptly notify Supplier in writing of any known or suspected infringement of the Intellectual Property Rights in the Software or Documentation by any third party;

(o) not allow more than the Permitted Number of Users to use the Software or Documentation simultaneously;

(p) not allow any other person who is not an Authorised User to access or use the Software or Documentation;

(q) not resell, sub-license, resupply, provide a bureau service using, communicate or otherwise make available to a third party the Software or the Documentation (except as may be expressly permitted by this Agreement);

(r) not (and not authorise, encourage or assist any other person to) copy, reproduce, translate, decompile, reverse-engineer, reverse assemble, reverse compile, modify, vary or otherwise deal with the whole or any part of the Software or the Documentation except as may be expressly permitted by this Agreement (or non-excludable statutory rights) or with the prior written consent of Supplier and in accordance with such conditions as Supplier may in its absolute discretion impose;

(s) not merge all or any part of the Software or Documentation with software or documentation not provided by Supplier without the prior written consent of Supplier and in accordance with such conditions as Supplier may in its absolute discretion impose;

(t) commercialise the Software or Documentation for profit or otherwise provide the System to third parties as a “bureau service” or on a white label basis; and/or

(u) not challenge the validity or ownership of the Intellectual Property Rights in the Software or the Documentation by Supplier or its licensors.

6.3 Changes to Permitted Number of Users

The parties may agree in writing to:

(a) increase the Permitted Number of Users, which will be conditional upon payment of additional charges to the Supplier, as notified to the Customer in writing; or

(b) decrease the Permitted Number of Users. Any decrease will take effect ninety (90) days after such agreement in writing is reached, unless a different period is agreed in writing.

6.4 Customer Data

(a) The Software will allow Customer to enter and manage Customer Data. Customer is solely responsible for the content of the Customer Data, and warrants that it:

(i) has obtained all rights and consent to enter and manage the Customer Data via the Software; and

(ii) will take all appropriate data security measures in relation to the Customer Data.

(b) The Customer acknowledges and agrees that Content will be migrated as-is, in its current state, and Supplier is not responsible for modifying, configuring, or applying additional protections, encryption settings, or other security measures or controls to such Content.

(c) Customer grants Supplier a non-exclusive, irrevocable, non-transferrable, licence to use the Customer Data (including any Intellectual Property Rights in the Customer Data):

(i) during the Term for the purpose of providing the Services; and

(ii) on a perpetual basis, for Supplier's business analytics and Service improvement purposes, subject to the Customer Data being used in a de-identified and aggregated format.

7. Privacy

7.1 Personal Information

(a) If the performance of rights and obligations under this Agreement involves the handling of any Personal Information, then each party must:

(i) comply with all applicable provisions of the Privacy Laws as it applies to it in the provision or receipt of the Services;

(ii) comply with all reasonable requests or directions of the other party in connection with an obligation of the other party under the Privacy Laws where a party is capable of doing so;

(iii) take reasonable steps, including technical and organisational measures, to protect Personal Information from and against misuse, loss and unauthorised access or disclosure;

(iv) use the Personal Information only for the purposes of performing its obligations under this Agreement;

(v) not transfer Personal Information forming part of Customer Data outside of New Zealand or Australia or allow persons outside of New Zealand or Australia (both as applicable) to have access to that Personal Information, unless:

(A) the other party has consented in writing to such transfer or access (and in the case of Supplier, Customer has authorised such access or migrated the Personal Information to Supplier as part of the Services);

(B) the disclosure is necessary to comply with applicable law or any mandatory order from a regulatory body or authority to do so; or

(C) in the case of Supplier, the use or disclosure is to one of the jurisdictions listed in Supplier's privacy policy https://spearhead.com.au/about-us/privacy-policy (as amended from time to time); and

(vi) without undue delay, notify the other party if it becomes aware of a breach of any data breach or breach of applicable Privacy Laws in connection with this Agreement provided that Supplier is under no obligation to notify Customer of any unsuccessful security incident, being one that results in no unauthorised access to Customer Data or to any of Supplier's Software, equipment or facilities storing Customer Data (if so stored), which could include, without limitation, pings and other broadcast attacks on firewalls, unsuccessful log-on attempts, denial of service attacks or similar incidents.

(b) Without limiting clause 7.1, Customer acknowledges and agrees that Supplier will process Personal Information forming part of Customer Data in accordance with Supplier's privacy policy https://spearhead.com.au/about-us/privacy-policy and privacy collection notice [insert link as each are amended from time to time.

7.2 Customer Obligations

The Customer is responsible for ensuring that all necessary and appropriate notices are provided, and consents are obtained, as applicable, from any individuals whose personal information form part of Customer Data. Supplier is not responsible nor liable in any way for any failure of the Customer to obtain all such consents and/or provide such notices where required in order for the Supplier to handle Customer Data in its provision of the Services under this Agreement.

7.3 Cyber Breach

Each party will provide the other party with reasonable assistance, support and co-operation when requested in connection with the resolution of any Cyber Breach.

8. Payments

8.1 Licence Fee

(a) Supplier will invoice Customer for the Licence Fee in accordance with the Licence Fee Schedule.

(b) Supplier may increase the Licence Fee once per year after the expiration of 12 months from the Commencement Date on giving ninety (90) days' written notice to Customer.

(c) Any annual increase of the Licence Fee shall not be greater than the increase in the CPI plus 2%, plus any additional increase that is reasonable to take into account additional costs incurred by Supplier that cannot reasonably be avoided (for example compliance costs in relation to a new Legal Requirement).

8.2 Expenses

Supplier may invoice Customer for all pre-approved travelling expenses (including travel, accommodation and meals) reasonably incurred by Supplier's Personnel providing Training or other Services under this Agreement. Supplier will invoice these charges to Customer at cost.

8.3 Training Fee

(a) Supplier will invoice Customer for the Training Fee promptly after delivering each relevant Training session.

(b) If Customer cancels a Training session:

(i) within 48 hours before the scheduled session, Customer must pay Supplier the full Training Fee for that session.

(ii) between seven (7) days and 48 hours before the scheduled session, Customer must pay Supplier half of the Training Fee for that session.

The parties agree that these payments are genuine pre-estimates of the loss Supplier will suffer if a Training session is cancelled at short notice.

(c) Supplier will invoice Customer for the relevant amount under this clause 8.3(c) promptly after receiving notice from Customer cancelling the relevant Training session. Supplier may also charge Customer, and Customer must pay, for all committed travelling expenses (including travel, accommodation and meals) reasonably incurred by Supplier's Personnel in relation to the cancelled Training session that cannot be recovered by Supplier and all cancellation fees (and the like) in connection with cancelling any such expenses where Supplier is reasonably able to cancel them.

8.4 Means and timing of payment

Customer must pay the amount of any invoice properly rendered under this Agreement by electronic funds transfer into Supplier's nominated bank account in accordance with the Payment Terms or any other terms specifically stated in this Agreement.

8.5 Interest on overdue amounts

Supplier may charge default interest at the rate provided for by section 2 of the *Penalty Interest Rates Act 1983* (Vic) as amended (or any equivalent legislation applicable in Australia or New Zealand,), on any overdue amounts from the date the payment was due until the date of payment in full.

8.6 Recovery costs

Customer must reimburse Supplier for any expenses, costs or disbursements incurred by Supplier in recovering any unpaid amounts from Customer, including debt collection agency fees and legal costs (on a full indemnity basis). Supplier may invoice Customer for such amounts as they are incurred.

8.7 GST

(a) Terms defined in the GST Act have the same meaning when used in this clause unless expressly stated otherwise.

(b) Except where this Agreement specifies otherwise, an amount payable by a party under this Agreement in respect of a taxable supply by the other party represents the value of the supply (**Supply Amount**). The recipient of the supply must, in addition to the Supply Amount and at the same time, pay to the supplier the amount of GST imposed by the GST Act payable in respect of the supply. For the avoidance of doubt, the GST amount payable under this clause will be calculated by multiplying the Supply Amount by the prevailing GST rate.

(c) If at any time an adjustment is made between the supplier or any other payer of GST and the relevant taxing authority on account of GST on any supply made or other matter or thing done under or in connection with this Agreement by the supplier, a corresponding adjustment must be made as between the supplier and the recipient and any payment required to give effect to the adjustment must be made. The supplier must provide to the recipient an adjustment note relating to the adjustment within seven days.

(d) Each party warrants to the other party that if legally required, it is registered for GST at the time of entering this Agreement and will promptly notify the other party if it ceases to be so registered.

8.8 Material Breach

To avoid doubt, a failure by Customer to pay any amount payable to Supplier in accordance with this clause 8, and this Agreement, will be deemed a material breach of this Agreement.

9. Intellectual Property Rights

9.1 Ownership

As between the parties:

(a) all Intellectual Property Rights in the Software and the Documentation including any modifications to them are owned by Supplier; and

(b) all Intellectual Property Rights in Customer Data including any modifications to it made by or on behalf of Customer are owned by Customer.

9.2 Customer's rights and obligations

Customer:

(a) must follow all reasonable instructions given by Supplier from time to time with regard to the use of trade marks owned by Supplier and any indications of ownership of Intellectual Property Rights in the Software and Documentation; and

(b) must not copy, alter, modify or reproduce the Software or Documentation (or any materials related to Training) by any means or in any form without Supplier's prior written approval, unless specifically permitted by this Agreement or by statute.

9.3 Customer's Licence to Supplier

(a) Customer grants to Supplier a non-exclusive, royalty-free, worldwide licence to use Customer's Trade Marks (and any other relevant materials containing Customer's Intellectual Property Rights) during the Term for the purposes of providing and promoting Supplier and the Services.

(b) Customer represents and warrants it has the rights necessary to grant Supplier the licences under clause 9.3(a).

(c) Customer warrants that the use of Customer Data and Customer Trade Marks by Supplier in accordance with this Agreement will not infringe any third party's rights (including Intellectual Property Rights) or any Privacy Laws.

(d) Supplier agrees that:

(i) it will use Customer Trade Marks in such manner and form (if any) as Customer may reasonably specify in writing from time to time;

(ii) the Customer Trade Marks are and will remain the property of Customer or its successors or assigns; and

(iii) its use of Customer Trade Marks under this Agreement, and any goodwill resulting from that use, will accrue solely for Customer's benefit.

9.4 Feedback

In the event that Customer or any of its Authorised Users provides Supplier with any feedback, suggestion or comment regarding the Software or the Documentation, Customer grants (and must ensure any of its relevant Authorised Users grants) to Supplier a worldwide, irrevocable, perpetual, sub-licensable, transferable, royalty-free licence to use any such feedback, suggestion or comment (including any Intellectual Property Rights in it) for any purpose without any obligation or compensation to Customer or any of its Authorised Users.

10. Confidentiality

10.1 Confidential Information

The parties acknowledge that one may provide the other with Confidential Information for the purposes of this Agreement. Each party agrees to take reasonable steps to keep the other's Confidential Information secure from unauthorised disclosure.

10.2 Use of Confidential Information

A party will not, without the prior written approval of the other party, disclose, copy or use the other party's Confidential Information, other than to:

(a) the extent required to exercise its rights or perform its obligations under this Agreement;

(b) its Personnel as necessary for the purposes of the party exercising its rights or performing its obligations under this Agreement;

(c) comply with any Legal Requirements; or

(d) obtain professional advice in relation to matters arising under or in connection with this Agreement.

10.3 Compliance by Personnel

Each party must procure compliance by each of its Personnel to whom the other party's Confidential Information is disclosed, with the obligations under this clause 10 as if this clause 10 applied directly to them.

10.4 Return of Confidential Information

(a) Upon termination or expiry of this Agreement, each party must (at that party's option) promptly either return or to the extent practical, destroy or otherwise make permanently unavailable the other party's Confidential Information in its possession or control.

(b) To the extent Supplier holds any Customer Data, Supplier will continue to hold it for up to ninety (90) days after expiry of the Term, during which period Supplier will provide a copy of it, or otherwise make it available, to Customer upon request, subject to Customer paying a reasonable fee for doing so.

(c) Each party must, upon written request by the other party, promptly certify in writing to that other party that it has complied with its obligations under this clause 10.4.

10.5 Survival

The provisions of this clause 10 will survive the termination or expiry of this Agreement.

11. Warranties

11.1 General

Each party warrants that:

(a) it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on that party;

(b) it will comply with the Relevant Laws in the performance of its obligations under the Agreement; and

(c) all information it provides to the other party is true and correct to the best of its knowledge, information and belief.

11.2 Disclaimer

Supplier does not provide any assurance or warrant that:

(a) the operation of the Software will be uninterrupted, always accessible, free from harmful components, accurate or error-free;

(b) the information and content provided on the Software or Documentation will be complete, accurate or current;

(c) Supplier will correct all errors in the Software or the Documentation; or

(d) the Software or the Documentation will be fit for any particular purpose, including for Customer's business purposes (even if made known by the Customer to Supplier).

12. Indemnities

12.1 Supplier's Indemnity

(a) Subject always to subclause (d) below and Clause 13.5 (Liability), Supplier will indemnify, defend, and hold Customer harmless from and against any Claim by any third party that the Software or Documentation infringes any third party's Intellectual Property Rights (**IP Claim**).

(b) If in Supplier's reasonable judgment any such IP Claim materially interferes with Customer's use of the Software or Services, Supplier will, in its reasonable discretion:

(i) substitute functionally equivalent non-infringing software or documentation in place of the infringing Software or Documentation;

(ii) modify the Software or Documentation to make it non-infringing; or

(iii) obtain for Customer, at Supplier's expense, the right to continue using the infringing Software or Documentation.

(c) If Supplier cannot achieve any of the remedies in the preceding clause on a reasonable commercial basis, Supplier may, by written notice, require Customer to cease using the Software (or the relevant functionality) and refund a pro-rata portion of the Licence Fee for any period of time in which Customer was unable to use the Software or Documentation (or the relevant functionality).

(d) Supplier will have no indemnity obligation under this clause 12.1 for claims of infringement resulting or alleged to result from:

(i) any combination, operation, or use of the Services with any program or equipment not supplied by Supplier or not specified in this Agreement for such purpose;

(ii) Supplier's use of Customer Data in accordance with this Agreement; or

(iii) the use of the Software in a manner other than for its intended purposes, or contrary to this Agreement or Supplier's lawful directions.

(e) To the extent permitted by law, remedies set out in this clause 12.1 provide Customer's sole and exclusive remedy in relation to any IP Claim.

12.2 Customer's Indemnity

To the maximum extent permitted by law, Customer defends, indemnifies and holds harmless Supplier, its Personnel and its Related Bodies Corporate from and against any and all Claims or Loss arising out of or in connection with :

(a) Customer's breach of this Agreement;

(b) use of the Services other than in the manner contemplated by this Agreement;

(c) Customer's breach of any third party right (including Intellectual Property Rights or privacy rights)

(d) failure of Customer to comply with any law in connection with Customer's access to and/or use of the Services and Software; and

(e) any claim arising in relation to Customer Data,

except to the extent any such Claim or Loss arises directly from the fraud, gross negligence or wilful misconduct of Supplier or is a Claim or Loss for which Supplier expressly indemnifies Customer under this Agreement.

12.3 General

The defence and indemnification obligations provided for in this clause 12 are conditional upon:

(a) the indemnified party providing the indemnifying party timely notice of any claim or cause of action upon which the indemnified party intends to base a claim of indemnification;

(b) the indemnified party providing reasonable assistance and cooperation to enable the indemnifying party to defend the action or claim; and

(c) the indemnified party allowing the indemnifying party to control the defence and all related settlement negotiations, provided that the indemnifying party may not settle any claim that results in the indemnified party's liability and the indemnifying party will be required to consult in good faith with the indemnified party during any settlement discussions.

13. Liability

13.1 Consumer Rights

Nothing in this Agreement restricts, excludes or modifies any consumer rights under any statute including the Australian *Competition and Consumer Act 2010* (Cth) and (for applicable New Zealand Customers) New Zealand Consumer Laws where to do so would breach those laws.

For New Zealand Customers: the parties acknowledge and agree that they are both "in trade" and that the provisions of the New Zealand Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the New Zealand Fair Trading Act 1986 do not apply to this Agreement.

13.2 Exclusion of liability

Notwithstanding any other provision of this Agreement, to the maximum extent permitted by law, Supplier will not be responsible for, and will have no liability to Customer (or any Authorised User) in respect of, any of the following:

(a) any incompatibility of the Software or the Documentation with Customer's business processes or uses (and Supplier has no obligation to adapt the Software or assist Customer to adapt its business processes to allow Customer to use the Software effectively);

(b) any incompatibility between the Software and the Environment;

(c) any act or omission of Supplier or its Personnel, where such act or omission is specifically required by a direction to Supplier or its Personnel from a Regulatory Body purporting to exercise its functions or powers;

(d) any Harmful Code introduced into the Software or Environment directly by the Supplier;

(e) a Cyber Breach, unless caused directly by Supplier or Supplier's Personnel;

(f) use of the Software or Documentation in combination with materials or services not supplied to Customer by Supplier;

(g) operation or use of the Software other than in accordance with the Documentation and other recommended operating procedures;

(h) any unavailability or interruption of the Software; or

(i) the information made available on, or generated by, the Software not being accurate, complete or current (and Customer must ensure it reviews all such information for accuracy, completeness or currency before relying on it).

13.3 Consequential Loss

To the full extent permitted by law, neither party is liable to the other party for any Consequential Loss arising out of or in connection with this Agreement.

13.4 Conditions, warranties and representations excluded

Except for conditions, warranties and representations expressly stated in this Agreement, to the extent permitted by law each party excludes all conditions, warranties and representations under or in connection with this Agreement and agrees that it does not rely on any representation by the other party that is not expressly stated in this Agreement.

13.5 Limitation of liability

(a) Subject always to Clause 13.2 (Supplier Exclusion of Liability) and Clause 13.5 (b) and without prejudice to Clause 13.3 (Consequential Loss) , each party's total aggregate liability in respect of all Claims or Losses arising under or in connection with this Agreement (whether arising under contract, tort (including in negligence) or otherwise, but not including Customer's liability to pay any fee

or charge to Supplier under this Agreement) will not exceed the total fees payable by Customer to Supplier under this Agreement in the 12 months immediately preceding the date of the relevant Claim(s) or Loss(es).

(b) Each party's liability under or in connection with this Agreement will be reduced by the extent, if any, to which the other party or its Personnel contributed to the relevant Loss.

(c) Each party must take reasonable steps to mitigate any Loss it suffers as a result of a breach by the other party of this Agreement or the negligence of the other party or the other party's Personnel.

(d) To the extent permitted by law, a party's liability for breach of any condition, warranty or guarantee imposed by statute that cannot be excluded and the other party's sole and exclusive remedy in relation to such breach will be limited to (at the first party's election):

(i) in the case of goods:

(A) replacement or repair of the goods or supplying the equivalent goods again; or

(B) paying the cost of replacing or repairing the goods or of acquiring equivalent goods; and

(ii) in the case of services:

(A) supplying the services again; or

(B) paying the cost of having the services supplied again.

14. Insurance

(a) Each party must effect and maintain at its own expense the following insurance policies until the termination or expiry of this Agreement and for at least three years after that:

(i) in the case of Supplier: professional indemnity insurance with a policy value of not less than $10,000,000; and

(ii) in the case of each party: public liability insurance with a policy value of not less than $10,000,000.

(b) Upon request, each party will promptly provide to the other party a copy of the certificate of currency for each of its insurance policies specified in clause 14(a).

(c) This clause 14 will survive the termination or expiry of this Agreement.

15. Suspension and Termination

15.1 Suspension

Without limiting Supplier's rights in respect of any breach of this Agreement, Supplier may suspend Customer's or any of its Authorised Users' access to the Services without liability to Customer, where:

(a) Customer breaches any material obligation in this Agreement; and

(b) Customer does not remedy that breach to Supplier's reasonable satisfaction within five (5) Business Days of receiving written notice of the breach from Supplier,

until the breach is remedied to Supplier's reasonable satisfaction.

15.2 Termination for cause

Without limiting the generality of any other clause in this Agreement, a party may terminate this Agreement by written notice to the other party if the other party:

(a) breaches a material term of this Agreement and does not remedy the breach within 14 days of receiving a notice of the breach, or

(b) breaches a material term of this Agreement that is not capable of remedy; or

(c) becomes, threatens or resolves to become or is in jeopardy of becoming insolvent or subject to any bankruptcy, receivership, external administration or other form of insolvency administration, or makes a composition or arrangement with its creditors, and fails to make any payment when due under this Agreement, unless termination in such circumstance is not permitted under the Relevant Laws;

(d) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or

(e) ceases or threatens to cease conducting its business in the normal manner.

15.3 Termination for convenience

(a) Where the Term is proceeding on a month-to-month basis:

(i) either party may terminate this Agreement without cause on 30 days' written notice to the other party; and

(ii) such termination will be effective at the end of the calendar month in which that 30 day period expires.

(b) Either party may terminate this Agreement during the Initial Term or Further Term without cause by 90 days prior written notice to the other party.

15.4 Consequences of termination

(a) Upon termination or expiry of this Agreement, Customer must promptly, at Supplier's option, either return or destroy the Confidential Information, Software and Documentation in Customer's possession or control, and all copies thereof. Customer must promptly certify in writing to Supplier that it has complied with its obligations under this clause 15.4.

(b) Where Customer terminates this Agreement under clause 15.3(b), Customer must pay the Supplier:

(i) Exit Fee; and

(ii) any reasonable costs or expenses (including any pre-paid subscriptions, purchases and licences) incurred directly under this Agreement by Supplier as a result of such early termination that the Supplier cannot otherwise recover.

(c) Termination or expiry of this Agreement will not prejudice any rights of either party which have arisen on or before the date of termination or expiry.

16. Dispute Resolution

16.1 First Step

A party must use its best efforts and enter into good faith negotiations with the other party to resolve any dispute under or in connection with this Agreement before taking any further action.

16.2 Escalation

If the parties have been unable to resolve the dispute through the negotiations specified in clause 16.1 within twenty (20) Business Days, then the parties' representatives will meet with a view to resolving the dispute.

16.3 Mediation

If the process in clause 16.2 fails to resolve the dispute to each of the parties' reasonable satisfaction, the parties will appoint a mutually agreed third party mediator to mediate the dispute, the costs of which will be shared equally between the parties.

16.4 Expert Determination

(a) If the parties cannot agree on the identity of a mediator within seven days after either party notifies the other party that the dispute is to be referred for mediation, an Expert will be nominated at the request of either party, by the President for the time being (or their nominee) of the Law Institute of Victoria (or if that organisation ceases to exist or fails to nominate an Expert within a reasonable period, a similar and independent organisation nominated by the party).

(b) The determination of the Expert will be final and binding on the parties except in the case of manifest error.

(c) The Expert will be free to decide the determination procedure to be adopted and the parties will execute all documents that the Expert reasonably requests that they execute in order to implement that procedure.

(d) The Expert will act as an expert and not as an arbitrator.

16.5 Confidential and Without Prejudice

All negotiations connected with dispute resolution under this clause 16 must be conducted in strict confidence, and are without prejudice to the rights of the parties in any further legal proceedings.

16.6 Costs

Each party must pay its own costs in relation to complying with this clause 16 except for the costs and expenses of any Expert which will be borne by the parties equally.

16.7 Interlocutory Relief

Nothing in this clause 16 restricts or prevents a party from applying for urgent interlocutory relief.

17. Relationship

The parties are independent contractors. Nothing in this Agreement will create the relationship of partnership, joint venturers, principal and agent, trustees and beneficiary or employer and employee between the parties, and it is the express intention of the parties that any such relationships are denied.

18. General provisions

18.1 Special Conditions

The Special Conditions (if any) form part of this Agreement. If there are any inconsistencies between the terms of this Agreement and the Special Conditions, the Special Conditions will prevail to the extent of the inconsistency.

18.2 Force Majeure

(a) Neither party will be responsible for a failure to perform any obligation under this Agreement (except an obligation to pay money) to the extent that it is caused by a Force Majeure Event, provided that such party has:

(i) taken all reasonable steps to prevent and avoid the effects of the Force Majeure Event;

(ii) taken all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable; and

(iii) on becoming aware of the Force Majeure Event, promptly informed the other party of the Force Majeure Event.

(b) In the event that the Force Majeure Event continues for more than thirty (30) days starting on the day the impact of the Force Majeure Event starts, the unaffected party may terminate this Agreement by not less than ten (10) days' notice in writing to the affected party.

18.3 Assignment

Customer must not assign any right or liability under this Agreement without the prior written consent of Supplier. Supplier may assign its rights or liabilities under this Agreement, or novate this Agreement, to a Related Body Corporate that has the resources and expertise to fully perform this Agreement and Customer must take all steps, including executing all documents, reasonably requested by Supplier for this purpose.

18.4 Sub-contracting

(a) Supplier may subcontract any part of the Services or any of its obligations under this Agreement without the Customer's prior written consent.

(b) Supplier will be liable for such subcontractors' acts and omissions in relation to this Agreement, and such appointment does not relieve Supplier from any of its obligations under this Agreement.

18.5 Notices

(a) Any notice may be served by delivery in person, by email or by post to the address of the recipient specified in the Proposal or most recently notified by the recipient to the sender.

(b) A notice is taken to have been given:

(i) in the case of being hand delivered, on the date on which it is delivered;

(ii) in the case of being sent by post, on the fifth (ninth if sent to an address in another country) Business Day after the date of posting; or

(iii) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

18.6 Governing law and jurisdiction

This Agreement is governed by the laws of Victoria, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in that state.

18.7 Amendments

Any amendment to this Agreement has no force or effect, unless effected by an agreement executed by the parties.

18.8 Third parties

This Agreement confers rights only upon a person expressed to be a party, and not upon any other person.

18.9 Further assurances

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

18.10 Counterparts

This Agreement may be executed in any number of counterparts, including electronically, all of which taken together are deemed to constitute one and the same document.

18.11 Continuing performance

(a) The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.

(b) Any indemnity under this Agreement:

(i) constitutes a liability separate and independent from any other liability under this Agreement or any other agreement; and

(ii) survives and continues after performance of this Agreement.

18.12 Waiver

(a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by the waiving party.

(b) Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by a party does not preclude any other or further exercise of that or any other right by that party.

18.13 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

18.14 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

18.15 Survival

Clauses 1, 6.4, 7, 9, 10, 11, 12, 13, 16, 17, 18 and any term of this Agreement that is expressed to survive, or by its nature survives, the termination or expiry of this Agreement will survive and continue in effect following termination or expiry of this Agreement.

18.16 Publicity

Notwithstanding clause 10, Supplier may announce the relationship set forth in this Agreement in a list of clients, press release, or similar public announcement without approval by Customer.

18.17 Party acting as trustee

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Agreement:

(a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;

(b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and

(c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

19. Definitions and interpretation

19.1 Definitions

In this Agreement unless the context otherwise requires:

Agreement has the meaning specified in clause 1(a).

Authorised User means Personnel of Customer whom Customer invites and/or permits to access and use the Software or the Documentation.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the Time Zone Location.

Business Hours means 8.30am to 5.30pm (in the Time Zone Location) on a Business Day.

Changes means any upgrades, maintenance, additions or removals of any features and functionality, redesign, improvements, or any other alterations to the Software.

Claim means any claim, action, proceeding or investigation of any nature or kind and includes the allegation of a claim.

Commencement Date means the date specified in the Proposal.

Confidential Information means, in relation to a party (for the purposes of this definition, the **Discloser**):

(a) information relating to or used by the Discloser, including know-how, trade secrets, ideas, marketing strategies and operational information;

(b) information concerning the current or proposed business affairs (including financial information, products, services, pricing, Intellectual Property Rights, customers and suppliers) or property of the Discloser; and

(c) other information which is disclosed, communicated or imparted by or on behalf of the Discloser in circumstances importing an obligation of confidence or which a reasonable person would have realised was of a confidential nature,

and the Confidential Information of Supplier includes this Agreement, the Documentation and the source code, object code, and details of the functionality of the Software, but Confidential Information excludes information which is:

(a) or becomes publicly known other than by breach of this Agreement or any other obligation of confidentiality; or

(b) developed or known independently by the receiving party without reliance on any of the Discloser's Confidential Information.

Consequential Loss includes special, incidental, punitive, exemplary, indirect or consequential Losses, as well as business interruption losses, loss of revenue, anticipated savings, profits, goodwill, reputation, interest or business opportunity, costs of procurement or substitution of goods, technology or services, and loss of information or data (including the costs of recovering or reconstructing any lost or corrupted data).

CPI means the "All groups CPI weighted average of eight capital cities" as published by the Australian Bureau of Statistics (or similar figure if that figure is not published).

Customer Data means any and all data and information to which Supplier is provided access to by or on behalf the Customer or its Authorised Users for the purposes of its delivery of the Services, or otherwise in connection with this Agreement .

Customer Trade Marks means the brands, logos and trademarks used by Customer to brand and promote itself and its products and services.

Cyber Breach means any incident in respect of the Environment or the Customer Data that results in:

(a) an eligible data breach (within the meaning of the *Privacy Act 1988* (Cth)) or a privacy breach (within the meaning of the *Privacy Act 2020* (NZ));

(b) Customer Data having been misused, interfered with, corrupted or subject to unauthorised access, modification, or disclosure;

(c) unauthorised access to Customer Data, or the storage device or computer network in which such information is stored;

(d) Customer Data or the storage or computing device on which such information is stored being lost or misplaced; or

(e) any part of the Customer Data becoming corrupted, not accessible, incorrectly modified or deleted, as a result of any loss, unauthorised disclosure or unauthorised access.

Proposal means the document included in this Agreement.

Documentation means the manuals, documentation, instructions and training material associated with, or contained in, the Software and includes any update or amendment of such material provided by Supplier to Customer from time to time or made by Customer as may be permitted by this Agreement and any copy of the Documentation that Customer is permitted to make under this Agreement.

Environment means Customer's hosting and processing environment, including all hardware, software, storage space, power, Internet connectivity and other components to be used in conjunction with the Software.

Exit Fee means the fee or fees described as such in the Proposal.

Expert means a person who is duly qualified or generally recognised as an expert in the substance of the dispute to be resolved by the Expert.

Force Majeure Event means an event or circumstance whose occurrence and effects could not have been prevented or overcome, such as earthquakes, war, natural disasters, fire, flood, storm, riots, civil commotion, industrial disputes, malicious damage, failure of any utility service or transport network, viruses, denial of service attacks, other acts or omissions or service outages by third parties (including any Internet service provider) or breakdown of plant or equipment.

Further Term means the further term stated in the Proposal.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or *Goods and Services Tax Act 1985* (NZ) (as applicable) (**GST Act**) or an Act of the Parliament of the Commonwealth of Australia or New Zealand (as applicable) substantially in the form of, or which has a similar effect to, the GST Act.

Initial Term means the initial term stated in the Proposal.

Intellectual Property Rights means any intellectual property rights subsisting anywhere in the world, including:

(a) rights in relation to copyright (registered or unregistered), inventions (including patents, innovation patents and utility models), confidential information, technical information and know-how, registered and unregistered designs, registered and unregistered trade marks, and circuit layout rights, topography rights and rights in databases;

(b) any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may at any time subsist;

(c) any application and the right to apply for registration for any of the above; and

(d) any right of action against any party in connection with any of the above.

IP Claim has the meaning specified in clause 12.1.

Legal Requirements means any present and future obligation arising under laws, statutes, regulations, by-laws, codes, orders, ordinances, proclamations and decrees (provided such orders, ordinances, proclamations and decrees are legally binding).

Licence Fee means any fee or fees described as such in the Proposal.

Licence Fee Schedule means the schedule for invoicing of the Licence Fee, as specified in the Proposal.

Location means the location stated in the Proposal.

Loss means any loss, damage, liability, cost (including all legal and other professional costs), charge, expense, outgoing, fine or payment of any nature or kind.

New Zealand Consumer Laws means the *Consumer Guarantees Act 1993* (NZ) and the *Fair Trading Act 1986* (NZ), as amended or replaced from time to time.

Payment Terms means the timing of payments applicable to any Supplier invoices, as specified in the Proposal.

Permitted Number of Users means the permitted number of users stated in the Proposal.

Personal Information has the meaning given to that term in the Privacy Laws.

Personnel means the directors, officers, employees, contractors and subcontractors of the relevant party.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy Act 2020* (NZ), and any other laws or legally-binding codes of practice, guidelines or standards issued by regulators or authorities that apply to the collection, handling, disclosure and use of Personal Information by the parties.

Regulatory Body means any government or any governmental, semi-governmental, or judicial entity or authority, any self-regulatory organisation established or recognised under any statute or any stock exchange.

Related Body Corporate has the same meaning as in the *Corporations Act 2001* (Cth).

Relevant Laws means all laws and legally-binding codes of practice, guidelines or standards issued by relevant regulators or authorities or industry bodies including the Privacy Laws, the *Competition and Consumer Act 2010* (Cth), and the New Zealand Consumer Laws.

Service Fee means any fee or fees as described as such in the Proposal.

Services means any services to be provided by Supplier under this Agreement, including the Software, Documentation and Training, as varied from time to time by written agreement of the parties.

Software means the software specified in the Proposal, including any specific software modules specified there, plus any other software agreed in writing by the parties to form part of the Software, and includes any replacement to, modification of, customisation of or addition to the Software supplied by Supplier under this Agreement or made by Customer as may be permitted by this Agreement and any copy of the Software that Customer is permitted to make under this Agreement.

Special Conditions means the additional terms set out in the Proposal.

Term has the meaning given in clause 3.

Time Zone Location means the time zone location that may be referenced in the Proposal.

Training means the training set out in the Proposal, and any other training agreed in writing by the parties.

Training Fee means any fee or fees described as such in the Proposal.

Training Location means the location for the delivery of Training set out in the Proposal or otherwise agreed in writing by the parties.

19.2 Interpretation – General

In this Agreement unless the context otherwise requires:

(a) clause and subclause headings are for reference purposes only;

(b) the singular includes the plural and vice versa;

(c) words denoting any gender include all genders;

(d) reference to a person includes any other entity recognised by law and vice versa;

(e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;

(f) any reference to a party to this Agreement includes its successors and permitted assigns;

(g) any reference to any agreement or document includes that agreement or document as amended at any time;

(h) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it;

(i) the expression "at any time" includes reference to past, present and future time and the performance of any action from time to time;

(j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

(k) when a thing is required to be done or money required to be paid under this Agreement on a day which is not a Business Day (or on a Business Day, but not within Business Hours), the thing must be done and the money paid on the immediately following Business Day;

(l) reference to "$" or "dollars" means Australian dollars, unless otherwise specified in the Proposal; and

(m) reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.