

Healthsoft Terms and Conditions

Recitals

- A. The Customer wishes to purchase from Supplier, and the Supplier wishes to sell to the Customer, a subscription to Supplier's Software and Software Services.
- B. The Customer has filled out a Quote, which specifies whether the Customer also wishes to purchase or lease from Supplier certain Hardware, as well as purchase a subscription to Supplier's Hardware Services and/or Hosting Services.
- C. The Parties wish to record the terms of their agreement to writing, as contained in this Agreement.

Operative Part

The Parties agree as follows:

1. Definitions

Additional Terms means the additional terms (including any document reference therein) specified in the applicable Quote.

Affiliates include any entity that directly or indirectly controls, is controlled by, is under common control with or is otherwise in the same group of entities as Supplier.

Agreement means those documents set out in clause 3.1 and any other documents expressly stated as being included.

AI-Generated Materials has the meaning given to that term at clause 10.2(b).

Business Day means a day other than a day falling on a weekend or proclaimed public holiday in the Jurisdiction.

Cancellation Fee means a fee payable by the Customer to Supplier for the repayment of costs reasonably incurred in the supply of Software or Software Services, or where applicable, Hardware or Hardware Services, by Supplier to the Customer where the Customer has terminated for convenience during the Term.

Claim means, any claim made (whether in the form of an action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action, or right of set-off of any kind) under or in connection with this Agreement its subject matter, however it arises whether:

- (a) it is present, unascertained, immediate, future, or contingent;
- (b) it is based in contract (including under any warranty or indemnity or any other breach, actual or anticipatory), tort, equity, in restitution, negligence or any other tort, strict liability, under statute, or otherwise at all; or
- (c) it involves a third-party or a Party to this Agreement.

CPI Increase means the percentage difference in the All Groups Consumer Price Index Weighted Average of Eight Capital Cities published quarterly by the Australian Bureau of Statistics or, if that index is no longer published, an index which the President for the time being of Chartered Accountants Australia and New Zealand ABN 50 084 642 571 nominates as being most equivalent to the CPI.

Customer means the Customer identified in the Quote.

Customer Data mean any data that is inputted or generated by or on behalf of end users by using the Software, excluding Usage Data.

Customer Input means suggestions, Enhancement or feature requests, recommendations or other feedback provided in any form (including Usage Data) by the Customer, its employees, contractors, and agents relating to the operation or functionality of the Software.

Default has the meaning given in clause 8.4.

Documentation means hard-copy or electronically reproducible technical and/or user documents associated with the use of the Software, or where applicable, Hardware, and provided by Supplier or otherwise agreed in writing between the Parties.

Enhancements mean changes or improvements to the Software that extend beyond the original scope or specifications as set out in the Documentation, excluding Updates.

Fair Use Policy means Supplier's Fair Use Policy published on the Supplier's website, including as updated as notified to the Customer from time to time.

Fees mean the applicable fees payable under the Agreement, as specified in the Quote or as otherwise notified to the Customer in writing prior to the time of order for the Software and Software Services, or Hardware and Hardware Services (where applicable).

Force Majeure Event means any circumstance not within a Party's reasonable control, including: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iii) nuclear, chemical or biological contamination or sonic boom; (iv) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, or quota or prohibition, restrictions on movement; (v) collapse of buildings, fire, explosion or accident; and (vi) any labour or trade dispute, strikes, industrial action or lockouts (other than, in each case, by the Party seeking to rely on this clause, or its Affiliates).

GUI means the graphical user interface of the Software.

GST Act means the *A New Tax System (Goods and Services Tax) Act 2000* (Cth) for Australian Customers or Goods and Services Tax Act 1985 for New Zealand customers.

Hardware means any and all hardware, including server racks, physical interfaces, computer accessories, decorative accessories, and any other physical goods sold or licensed by Supplier to the Customer, as specified in the Quote.

Hardware Services mean services to be provided by Supplier to the Customer in relation to the Hardware, and particularly means implementation, maintenance, training services, or consulting services relating to the Hardware.

Hardware Terms mean the terms and conditions regarding Hardware as published on the Supplier's website, including as updated as notified to the Customer from time to time.

Hosting Services mean the hosting of Software on Supplier-owned or Supplier-controlled Hardware or cloud-based services for the purpose of allowing the Customer to use the Software without the use of Customer's own Hardware.

IP Rights mean all intellectual property rights throughout the world (existing before the date of the Agreement and arising as part of this agreement), including any copyright, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name or any other proprietary right, and any right of registration of such rights.

Implementation Activities mean any activities required to implement, install, or otherwise setup the Software with the Customer's existing infrastructure.

Jurisdiction means the jurisdiction specified in the Quote, or if none is specified means Queensland, Australia.

Law means any and all applicable laws as adjudicated by a court in the Jurisdiction.

Late Payment Fee means an additional fee on any unpaid balances owed under the Fees from the due date until paid (whether before or after judgment) equal to the lesser of 3% (accrued monthly), or the maximum amount allowable at Law.

Licence Allocation means the quantity or extent of a license to the Software or particular modules, as specified in the Quote (if any). The Quote may specify that the license is measured by number of Permitted Users, number of Workstations or limited to specific the Customer Sites.

Minimum System Requirements mean the minimum system requirements set forth in the Quote, Documentation, and any further requirements provided by Supplier.

New Software Feature means any Enhancement, feature, or module for the Software that Supplier may or may not market or license (at Supplier's sole and absolute discretion) to Customer for additional fees, separately from Updates.

Operating System means the low-level software that controls the operation of a computer, and includes any third-party software required to be installed to properly support the operation of the Software.

Opt-Out Period means for the purpose of clause, 16.2 and 20.16, a 90-day notice period.

Party means a party to this Agreement being the Customer or the Supplier as applicable.

Payment Processing Terms mean the Payment Processing Terms as provided in Schedule B.

Permitted Users mean the Customer's Representatives, subject to the limitations of the Licence Allocation specified in the Quote.

Policies means the policies provided or made available by the Supplier (including through its website), which apply to the Customer's use of the Software, Hardware or Services, and includes the Fair Use Policy.

Quote means the applicable form titled "Order" or "Quote" as provided by Supplier to the Customer.

Services mean the Software Services or the Hardware Services as applicable.

Software Services mean services to be provided by Supplier to the Customer in relation to the Software, particularly the Technical Support, Training Activities, Implementation Activities, Hosting Services, documentation management and ongoing maintenance services as specified in the Quote.

Software means Supplier's software listed in the Quote (including any Third Party Material) licenced by Supplier to the Customer; modules or add-ons specified in the Quote, and any Updates made to the digital software, modules or add-ons.

Standard Terms means the Supplier's standards terms and conditions as set out in this document.

Renewal Term means the period identified as the Renewal Term in the Quote or if none is specified, means 12 months.

Representatives mean staff, personnel, and advisors, and includes the employees, contractors, subcontractors, consultants, and in the sole case of Supplier, Affiliates.

Standard Rates mean Supplier's payment rates at the time of the relevant incident, request, or charge available on request or otherwise made available by the Supplier to the Customer.

Supplier means the entity named as the Supplier in the applicable Quote.

Technical Support means any support services required to assist with the Customer's ongoing use of the Software or Hardware (where applicable).

Term means the duration of the Agreement as described at clause 15.

Third-Party Materials mean any hardware or software which is developed by a third-party and not Supplier but may be provided by Supplier in support of the Software or Hardware (where applicable).

Training Activities mean any activity required to train the Customer's Permitted Users on the appropriate use of the Software.

Training Prerequisites has the meaning given in clause 5.5.

Taxes mean any applicable government taxes applicable to the use or supply of the Software or Software Services, or where applicable, of the Hardware or Hardware Services, and includes the Goods and Services Tax in Australia.

Updates mean the latest modifications or improvements to the Software, including corrections of bugs, issues or errors, which relate to the operating performance but do not change the basic functionality of the Software. Updates do not include New Software Features.

Usage Data means de-identified aggregated data generated by the Customer's (including its Permitted Users') installation, use of, or interaction with the Software.

2. Interpretation

- 2.1. Unless the context otherwise requires, words in the singular will include the plural, and in the plural will include the singular.
- 2.2. No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it.
- 2.3. A reference to a statute or statutory provision will include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 2.4. Any words following the terms "including", "include", "in particular", "such as", or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase, or term preceding those terms.
- 2.5. Any words following the term "means" will be construed as exhaustive and will limit the sense of the words, description, definition, phrase, or term preceding those terms.

3. Acceptance & Precedence

- 3.1. This Agreement is comprised of the Quote including the Documentation; the Fair Use Policy and the Payment Processing Terms, Additional Terms (if any), the Standard Terms, and the Hardware Terms (if applicable).
- 3.2. To the extent there is any conflict between the documents listed in clause 3.1, unless expressly agreed between the parties in writing, the Additional Terms, then the remaining provisions in the Quote will prevail, followed by the Standard Terms and if applicable, the Hardware Terms (if applicable).
- 3.3. Except as provided in clause in clause 3.1, any additional or different terms or conditions, order, document or any materials are not binding on the Parties and do not form part of this Agreement unless the Parties agree in writing that such terms or conditions, order, document or materials are incorporated into the Agreement as Additional Terms.

4. Hardware

If the Customer is purchasing, leasing, or financing Hardware from the Supplier, the Hardware Terms will apply.

5. Services

- 5.1. If indicated on the Quote, Supplier will provide the Software Services or Hardware Services, where applicable, for the Customer.
- 5.2. Unless stated otherwise in the Quote or Additional Terms, the Services will be performed during business hours on Business Days at a time agreed between the Parties (a **Service Appointment**). If the Customer needs to reschedule a confirmed Service Appointment, Supplier will make commercially reasonable efforts to accommodate the Customer's request.
- 5.3. Supplier's Representatives responsible for Training Activities will have experience in the application area designed for installation at the Customer's site.
- 5.4. If the Customer cancels a scheduled and confirmed Service Appointment within 15 Business Days prior to the scheduled time, the Customer will be liable to pay for any of Supplier's reasonably incurred losses (including, without limitation any airline penalties).
- 5.5. If the Parties agree that Training Activities will be provided at the Customer's site, the Customer will satisfy the following prerequisites:
 - (a) provide and have properly prepared and set up an adequate training room or space; and
 - (b) at least 1 week prior to scheduled training, have the necessary prior hardware with the Minimum System Requirements loaded with the Operating System, and the Software, with it all being adequately tested to a working state on-site,(the **Training Prerequisites**).
- 5.6. The Customer agrees that, if the Training Prerequisites are not satisfied or setup prior to the scheduled Training Activities, the Supplier:
 - (a) may charge the Customer a penalty fee in an amount equal to 25% of the total Fees paid or payable for the relevant Training Activity; and
 - (b) will not be in breach of this Agreement, or otherwise be responsible for failing to perform its obligations in respect of the relevant Training Activities due to Customer's failure to satisfy or setup the Training Prerequisites.
- 5.7. Unless otherwise specified in the Quote, all Training Activities or Software or Hardware maintenance will be completed within 6 months of the Customer's receipt of the Software or Hardware (where applicable).

- 5.8. Upon the Customer's written request, Supplier will provide further Services to:
- (a) train additional Permitted Users on the features, operation, and use of the Software; or
 - (b) provide software or hardware maintenance or other Software Services;
- at Supplier's Standard Rates.

6. Grant of Licence

6.1. Permitted Use

- (a) Supplier grants to the Customer a limited, non-exclusive, non-transferrable licence to use the Software for its own internal business operations (the **Purpose**) during the Term, subject to this Agreement. The Customer must use and must ensure all Permitted Users use the Software strictly for the Purpose and in accordance with the Licence Allocation, relevant Documentation and Policies. The Customer is responsible for Permitted Users' use of the Software and compliance.
- (b) The Customer acknowledges that the Software may require activation by way of an activation key on initial installation and from time to time based on certain events, including, without limitation, Updates, and changes to hardware on which the Software is installed. The activation keys and internal controls in the Software do not necessarily restrict usage to the Licence Allocation, and thus further controls may be required on the Customer's behalf to ensure compliance.

6.2. Ownership of IP Rights

- (a) Supplier retains all title and IP Rights in and to the Software, the Documentation, and all Enhancements, and the Customer is granted right to access and use the Software during the Term. No sale or other transfer of title, ownership, or any other proprietary interest of any kind to the Software or Documentation is contemplated by this Agreement.
- (b) Unless indicated otherwise in the Quote, the Customer agrees that Supplier may use the Customer's trademark, logo, and trade name within Supplier's promotional and marketing materials during and for a reasonable period after the Term ends.

6.3. Customer Input

- (a) The Customer and its Representatives and Permitted Users may, at any time and whether directly or indirectly, provide Customer Input in any form. The Customer is not required to provide Customer Input, however the Customer acknowledges that usage of the Software may result in Usage Data or other data capturing processes which obtain Customer Input without further action by the Customer.
- (b) The Customer grants to the Supplier a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual licence to use or modify the Customer Input in any way and for any purpose, including but not limited to create or revise New Software Features, Updates, Hardware (if applicable), or Documentation. Supplier is not required to use or make the Customer Input an Update.

7. Supplier's Responsibilities

7.1. Interfaces

- (a) Software interfaces to third-party vendor systems may be available, as indicated in the Documentation (**Interfaces**). To the extent that Interfaces are available, Supplier will install them as agreed between the Parties on the Quote.
- (b) The Customer must:
 - (i) act as liaison between Supplier and any third-party vendors with which the Software will interface; and
 - (ii) have its third-party vendor available at the time Supplier is scheduled to install the Interface in order to assist with the installation, as required by Supplier.
- (c) Interfaces may be subject to separate licensing requirements and the Customer has the sole obligation to obtain, any and all such licenses.

7.2. New Software Feature Requests

This Agreement does not include any programming services for New Software Features or Enhancements.

7.3. Technical Support

- (a) This clause 7.3 applies if the Quote specifies that the Supplier will provide Technical Support.
- (b) Supplier will provide Technical Support subject to the following conditions:
 - (i) the Customer (including Permitted Users) uses the Software only in accordance with this Agreement;
 - (ii) provision of adequate (in Supplier's sole opinion) Implementation Activities and Training Activities by Supplier's employees;

- (iii) the Software, and the equipment on which it operates, is operated in accordance with the Documentation;
- (iv) the equipment on which the Software operates meets Minimum System Requirements and is in good operating condition;
- (v) the Customer:
 - A has paid all undisputed invoices for Fees that are due and payable;
 - B has not modified or altered the Software;
 - C has not authorised independent interfacing of third-party components to the Software, or relevant database, particularly components that write to the database, without the express prior written consent of Supplier;
 - D implements all Updates on a timely basis and no later than 90 days subsequent to the availability of the Updates;
 - E obtains, maintains, and updates, as required, third-party programs and such other software as necessary for the proper operation of the Software; and
 - F provides reasonable access to its systems, in accordance with the Documentation, to enable Supplier to provide the Software Support by way of telecommunications, internet, or other remote access to the server environment in which the Software resides or such other method reasonably acceptable to Supplier.
- (c) All time and materials reasonably expended by Supplier resulting from the Customer's breach of such conditions will be billed to the Customer at Supplier's Standard Rates.
- (d) Technical Support provided pursuant to this clause 7.3 relates to the Software and the Updates only. Should the problems that arise be the result of the malfunction of Customer-owned hardware (which is not subject to the Hardware Services, where applicable), Supplier will advise the Customer to have the hardware and/or network repaired. If the Supplier provides any support resulting from hardware and/or network problems (at its sole discretion), such support will be billed to the Customer at the Standard Rates.

7.4. Hosting Services

- (a) This clause 7.4 applies if the Supplier delivers the Software via Hosting Services.
- (b) Where applicable, Supplier may suspend Hosting Services without liability if:
 - (i) Supplier reasonably believes, at their sole discretion, that the Software or Hosting Services are being used in violation of this Agreement or at Law;
 - (ii) the Customer fails to cooperate with any reasonable investigation by Supplier of any suspected violation of the Fair Use Policy;
 - (iii) an actual or suspected cyber incident such as a denial-of-service attack on Supplier's servers or other event requires Supplier to suspend the Hosting Services for network protection purposes or to protect its other customers; or
 - (iv) Supplier is required by Law or requested to do so by a law enforcement or government agency.

(Suspension Event)

- (c) In the event of a Suspension Event, Supplier will give the Customer written notice at least 48 hours before the suspension, unless:
 - (i) law enforcement or a government agency directs or applicable Law requires otherwise; or
 - (ii) suspension on shorter or contemporaneous notice is required to protect the Customer or other customers from an imminent and significant risk.
- (d) Supplier will, within a reasonable timeframe, restore access to the Hosting Services once the Suspension Event has been cured.

8. Customer's Responsibilities

8.1. Fees & Payment Terms

- (a) The Customer agrees to pay Supplier all Fees in accordance with the Quote and this Agreement. The provisions of the Payment Processing Terms relevant to the Customer's nominated payment method (as specified in the Quote), apply to the Customer's payment of the Fees.
- (b) Unless otherwise indicated on the Quote:
 - (i) all invoices are due within 30 days of receipt;
 - (ii) all amounts are Local Currency ; and
 - (iii) all amounts are exclusive of Taxes.

- (c) The Customer may be required to pay Supplier a deposit of the total price of the Fees (the **Deposit**) upon execution of the Agreement. The total amount of the Deposit is specified in the Quote and will be refundable strictly in respect of any Hardware Services or Implementation Activities, where the Agreement is validly terminated prior to the supply of any Hardware Services or Implementation Activities minus any reasonable costs incurred by Supplier in respect of such supply.
- (d) Except where the context suggests otherwise, terms used in this clause 8 but not defined in this Agreement have the meaning given to those terms by the GST Act.
- (e) Licence fees may be subject to an annual CPI Increase.
- (f) In addition to any annual increases set out in clause (e)8.1(e) the Supplier may also vary the Fees at any time upon giving the Customer thirty (30) days' notice. If the Customer does not agree to the proposed variation of Fees, the Customer may terminate the Agreement by giving written notice to the Supplier before the expiry of the notice period. If the Customer does not terminate the Agreement in accordance with this clause 8.1(e), the Customer is deemed to have accepted the Fees as varied, and the Fees as varied take effect from the date of expiry of the notice period.
- (g) If applicable, Implementation Activities Fees must be paid prior to commencement. Software Fees are payable quarterly in advance starting on the 1st of the month following the date of installation of the Software at each Customer Site (as identified in the Quote) continuing for the remainder of this Agreement. All invoices are payable within 30 days of the invoice date.
- (h) The Fees for the Software Services:
 - (i) will be calculated on the basis of time spent, and materials incurred, and charged then-current hourly rate; and
 - (ii) will require a minimum 2-hour charge.
- (i) The Customer is responsible for reasonable travel costs specified in the Quote or otherwise incurred where required or requested by the Customer for Services where pre-approved by the Customer. This includes costs for transport, meals, accommodation, visas, vaccinations, and telecommunications (for international travel).

8.2. Changes to Licence Allocation

If the Customer wishes to change its Licence Allocation, the Customer must give written notice of 10 Business Days. The new Licence Allocation will be invoiced from the date of the effective change.

8.3. Invoice Disputes

- (a) Any invoice disputes must be initiated by the Customer in good faith and in writing. The Customer has 30 days from the date of the applicable invoice (**Invoice Period**) to initiate an invoice dispute (**Invoice Dispute**) by providing written notice to Supplier setting out the details of the disputed amount and reasonable evidence supporting the dispute (**Invoice Dispute Notice**). If the Customer does not lodge an Invoice Dispute Notice within the Invoice Period, the invoice will be deemed to be accepted by the Customer and will be due and payable in full.
- (b) Despite an Invoice Dispute Notice by the Customer, the undisputed amounts on the disputed invoice will remain due and payable. Supplier and the Customer agree to use reasonable efforts to resolve any Invoice Dispute within 10 Business Days after Supplier's receipt of the Invoice Dispute Notice. If the Invoice Dispute remains, the Parties will follow the dispute resolution mechanism in clause 19.
- (c) If it is determined that Supplier properly charged any amount disputed and withheld by the Customer, Supplier may charge a Late Payment Fee on the disputed, withheld amount.

8.4. Payment Default

- (a) If the Customer fails to pay any undisputed invoiced amount when due (**Default**), the Customer will be liable to pay, the Late Payment Fee. Supplier may suspend, interrupt, or cancel the Customer's use, in part or wholly, of the Software, cease providing Updates and/or suspend delivery of Software Services to the Customer for any period (other than the Invoice Period) during which any Fees remain unpaid for 14 days after Supplier provides advanced written notice of such unpaid Fees to the Customer. In such event, Supplier will not be held liable for any loss or damage caused by the suspension and will not be precluded from exercising any additional remedies that might be available to it under this Agreement or at Law.
- (b) In the event of Default that continues for a period of over 45 days, the Customer will indemnify Supplier from and against all reasonable costs and disbursements incurred by Supplier in pursuing the debt including legal costs of a solicitor and Supplier's collection agency costs.

8.5. GST

- (a) Unless otherwise stated, all amounts payable, or consideration to be provided under or in connection with this Agreement are exclusive of GST.

- (b) If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount (an **additional amount**) is payable by the party providing consideration for the supply (the **recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the supply (in this clause 8.5 only, the Supplier) in accordance with the GST Law.
- (c) The additional amount payable under paragraph 8.5(b) is payable at the same time and in the same manner as the consideration for the supply, and the Supplier must provide the recipient with a tax invoice immediately after the time of payment of the additional amount if a tax invoice has not already been provided under this agreement.
- (d) A party making a supply under this Agreement must provide a tax invoice, adjustment note or other required form to the recipient of the Supply as required by the GST Law.
- (e) If for any reason (including the occurrence of an adjustment event) the amount of GST payable on a supply (taking into account any decreasing or increasing adjustments in relation to the Supply) varies from the additional amount payable by the recipient under paragraph 8.5(b):
 - (i) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the supplier in accordance with the GST law; and
 - (iii) the supplier must notify the recipient of the refund, credit or further amount within 10 Business Days after becoming aware of the variation to the amount of GST payable. If there is an adjustment event in relation to the Supply, the requirement for the supplier to notify the recipient will be satisfied by the supplier issuing to the recipient an adjustment note within 10 Business Days after becoming aware of the occurrence of the adjustment event.
- (f) if either party is entitled under this Agreement to be paid, reimbursed or indemnified by the other party for a loss, cost or expense, the payment, reimbursement or indemnity payment will be reduced by an amount equal to any input tax credit which may be claimed by the party entitled to be paid, reimbursed or indemnified (or by its representative member if that party is in a GST group) in respect of that loss, cost or expense.

8.6. Capitalised terms in this clause not defined in this Agreement take the meaning prescribed in the GST Law.

8.7. Implementation Contact

- (a) The Customer will appoint a Permitted User to be the main contact for Supplier's Representatives in connection with any Implementation Activities (**Implementation Contact**). If the Implementation Activities affect multiple areas of the Customer's operations, then the Customer will also appoint a team comprised of management level staff from those operational areas involved in the installation to act as its Implementation Contact.
- (b) The Implementation Contact will be responsible for the coordination and execution of the installation. The Implementation Contact must:
 - (i) be familiar with and involved in the Customer's daily operations;
 - (ii) have authority to make decisions in relation to any policies and procedures which may be involved in the implementation of the Software;
 - (iii) ensure that the Minimum System Requirements set forth in the Quote, Documentation and Supplier's additional requirements (if any) have been met or exceeded;
 - (iv) Serve as liaison with other third-party vendors who are involved in the installation process; and
 - (v) be present during all phases of the installation and training process to ensure the attendance of staff at scheduled training sessions.
- (c) If the Customer does not meet the Minimum System Requirements, Supplier reserves the right to terminate this Agreement pursuant to clause 16.1(a)(ii).

8.8. Data Integrity

- (a) The Customer will be responsible for all Customer Data entry and will remain responsible for the integrity of such data. Supplier will not have any liability for any Customer Data, including data Supplier's Representatives may enter in an effort to assist the Customer or any errors made in such efforts to assist the Customer. Supplier reserves the right to refuse to do data entry and the Customer agrees that the Customer is solely responsible for providing sufficient staff to perform any data entry required for the installation of the Software. If Supplier is responsible for migration of Customer Data (as set out in the Quote), this clause will apply once the migration is complete.
- (b) The Customer bears full responsibility for:
 - (i) the content of any Customer Data that is maintained in the Software;

- (ii) the selection and implementation of controls in its access and use of the Software;
- (iii) the security of Customer Data;
- (iv) configuration data associated with the implementation of the Software; and
- (v) procuring all necessary rights, authorisations, consents, permissions and other requirements to enable the Supplier to use the Customer Data in accordance with this Agreement.

9. Audits

- 9.1. During the Term and for a period of 1 year thereafter, the Customer will permit the Supplier (or an independent representative engaged by Supplier), upon 30 days prior written notice, to audit (each an **Audit**) the deployment of the Software to the extent reasonably necessary to verify the Customer's compliance with the Licence Allocation, at such times during the Customer's regular business hours as Supplier may reasonably request. Supplier may exercise its right to Audit no more frequently than once annually during the Term, unless the Supplier becomes aware of an issue, in which case the Supplier may conduct an ad hoc Audit.
- 9.2. If an Audit indicates that there are more users of the Software than Permitted Users, the Customer will be invoiced the discrepancy and the Fees going forward will be updated.
- 9.3. The Customer acknowledges that the Licence Allocation reflects their unique usage requirements and Supplier is not capable of, nor responsible for, informing the Customer of an alternate Licence Allocation which may or may not better suit their needs.
- 9.4. If there is an underpayment of more than 3% of amounts otherwise payable, then the Customer must also reimburse Supplier for Supplier's reasonable and customary Audit expenses.

10. AI-Generated and Third-Party Materials

10.1. AI-Generated Materials

- (a) For the purpose of this clause 10.1:
 - (i) **AI** means generative artificial intelligence processes, including machine learning, processes involving neural networks and/or deep-learning, and other statistical processes designed to generate new content.
 - (ii) **AI Training** means processes designed to improve upon the effectiveness or quality of AI outputs using AI-Generated Materials, Customer Data, user input, human-based feedback, and other systems of governance, and includes reinforcement learning, training, finetuning, and other approaches to optimising AI learning rates.

10.2. Third-Party AI Solutions

- (a) Many of the AI features within the Software are powered by third-party AI solutions. The Customer agrees that Supplier has no control over the quality or performance of such third-party AI solutions, and the data submitted to those AI features may be stored, transmitted, and processed by such third-party service providers. The Customer agrees that Supplier has no involvement in the processes or practices that such third-party vendors use when handling any Customer Data. Supplier makes no assurances and disclaims all liability and responsibility regarding: (a) the quality, accuracy and/or performance of any such third-party AI solutions; and/or (b) the ability of the providers of such third-party AI solutions to adequately and successfully protect the privacy and/or confidentiality of any Customer Data.
- (b) The Software may utilise materials generated either directly or indirectly through the use of AI (**AI-Generated Materials**). The parties acknowledge the ever-changing nature of, and regulation around, AI and agree that the Supplier cannot guarantee ownership or adequately licenced rights over the IP Rights pertaining to AI-Generated Materials.
- (c) Notwithstanding any other provision in this Agreement, the Supplier makes no guarantee, warranty or representation in respect of the AI-Generated Materials or any AI Training conducted by the Supplier, including (without limitation) that the AI-Generated Materials will not infringe any third-party IP Rights, that the Supplier's AI Training will improve the AI-Generated Materials or any other AI outputs in any manner, nor any guarantees, warranties or representations regarding the reliability, accuracy or fitness for purpose of the AI-Generated Materials.
- (d) The Customer hereby indemnifies and holds harmless Supplier and its Representatives against all claims, losses, damages, liabilities, judgments, fees, and expenses arising out of or in connection with any claim relating to:
 - (i) the use or ownership of AI-Generated Materials embodied in the Customer Data or Customer Input; and
 - (ii) any AI-Generated Materials created or derived from Customer Data or developed through the Customer's use of the Software.
- (e) The Customer is prohibited from inputting into any AI feature within the Software any confidential, proprietary, or sensitive information. Without limiting the foregoing, the Customer must not at any time input any sensitive personal information regulated by applicable privacy, data protection, or data security laws, including (without limitation) any protected health information, non-public personal information, consumer health information, information that could be used to access an email or other account,

social security or equivalent national identity numbers, payment card information, biometric data or identifiers, information relating to race or ethnicity, sexual orientation, religious or philosophical beliefs, or any other information that could lead to a material risk of harm to an individual if improperly disclosed. The Customer, not Supplier, shall be solely responsible for any liability arising from the Customer's breach of this clause.

- (f) All AI-Generated Materials are and shall remain the exclusive property of Supplier. The Customer must not reproduce, modify, adapt, create derivative works from, or distribute any AI-Generated Materials, in whole or in part, without the prior express written consent of Supplier. The Customer agrees to use AI-Generated Materials solely for the purposes of its use of the Software in accordance with this Agreement.
- (g) The AI features within the Software and all AI-Generated Materials constitute Confidential Information of Supplier. The Customer must not disclose AI-Generated Materials to any third party, or permit any third party to access any AI features within the Software, without the prior express written consent of Supplier.
- (h) The AI features within the Software are not a substitute for professional advice, including (without limitation) legal, medical, financial, technical, or other professional advice. The Customer must not rely solely on AI-Generated Materials when making decisions that would ordinarily require professional expertise.
- (i) The Customer acknowledges that Supplier may perform AI Training on Customer Data, AI-Generated Materials, and other feedback materials. The Customer may opt-out of AI Training on the Quote, in which case Supplier will not involve any Customer Data in its AI Training processes.
- (j) In the event of any liability arising from Supplier's direct or indirect use of AI, AI Training, or AI-Generated Materials, Customer's sole and exclusive remedy, where reasonably possible and commercially practicable:
 - (i) in the case of goods: will be the cost of providing the Customer with a comparable replacement of the goods without the AI functionality; and
 - (ii) in the case of services: will be to render the services again without the use of AI.
- (k) This clause 10.1 will take precedence over anything else contained in this Agreement.

10.3. Third-Party Materials

- (a) This clause 10.3 applies to the extent the Supplier provides Third-Party Materials to the Customer under this Agreement.
- (b) Supplier represents and warrants that it has the authority to provide or sell Third-Party Materials (which are, where applicable, provided or sold subject to this Agreement).
- (c) The Customer acknowledges that Supplier is not the manufacturer and therefore acknowledges that Supplier makes no warranties, conditions, representations or guarantees, express or implied, concerning the Third-Party Materials, as applicable.
- (d) Supplier assigns to the Customer the manufacturer's warranties, if any, applicable to the Third-Party Materials. Supplier makes no representations regarding the validity or enforceability of any such manufacturer's warranty.

11. General Warranties

11.1. Each Party represents, warrants, and undertakes that:

- (a) it has full power, capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
- (b) this Agreement is a bespoke agreement between the Parties, and the Party has been afforded every opportunity to seek external legal advice in relation to this Agreement, and has either requested and subsequently resolved every change to the Agreement necessary to reflect their best interests, or has decided to proceed on the basis that the Agreement is suitable as-is for their own purposes;
- (c) it has, and will continue to have, all the necessary consents, permissions, licences, and rights to enter into and perform its obligations under this Agreement; and
- (d) once executed, this Agreement constitutes legal, valid, and binding obligations, and is enforceable in accordance with its terms.

12. Supplier Disclaimers

12.1. The Parties agree it is the Customer's responsibility to determine whether the Software is suitable for their requirements.

12.2. The Customer acknowledges and agrees that Supplier does not warrant or guarantee that:

- (a) the Software will be continuous or fault-free, and while Supplier will make reasonable commercial efforts to restore any disrupted Services, Supplier will not be liable to compensate the Customer for any disruption to the Customer's business;

- (b) the Software will be free of viruses, errors, bugs, malware, adware, spyware, or other adverse material (**Adverse Material**), or that any such Adverse Material will be able to be corrected. The Customer is solely responsible for all costs and expenses associated with any rectification, repair, or damages caused by such Adverse Material;
 - (c) the Software Services will safeguard the Customer's privacy, security, authenticity, or non-corruption of data;
 - (d) the Customer's use of the Software or Hardware (where applicable) provided by Supplier will lead to savings or increased revenue for the Customer; or
 - (e) the accuracy or usefulness of any comparative or benchmarking information made available to the Customer and the Customer acknowledges that such information reflects:
 - (i) the inputs from other customers which Supplier cannot control; and
 - (ii) the sample size which depends on the number of customers providing the information.
- 12.3. Except for the warranties provided in this Agreement and to the maximum extent permitted at Law, Supplier does not make any representation or warranty, express or implied, statutory or otherwise, regarding the Software, products, or services, including merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement, or results to be derived from the use of or integration with any other products or services provided under this Agreement, or that the operation of any software, products, or services will be secure, uninterrupted, or error-free.
- 12.4. Nothing in this Agreement excludes, restricts, or modifies any right or remedy, any guarantee, representation, warranty, condition, or other term, implied or expressed by any applicable law which cannot lawfully be excluded or limited (**Non-Excludable Provision**).
- 12.5. If the Customer's remedy for a breach of the Non-Excludable Provision can be limited at Law, the liability of Supplier for a breach of the Non-Excludable Provision is limited to one or more of the following, at Supplier's sole discretion:
- (a) regarding goods: the replacement of the goods; the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or
 - (b) regarding services: the supplying of the services again; or the payment of the cost of having the services supplied again.
- 12.6. Without limitation, Supplier will have no liability to the Customer or any third-party arising out of the Customer's failure to back-up the Software and Customer Data.

13. Indemnity

- 13.1. Supplier will indemnify the Customer from any direct loss suffered by the Customer as a direct result of a claim by a third-party based on the Customer's use of the Software, within the scope of this Agreement, that infringes the third-party's IP Rights (**Third-Party Claim**). In order for the Customer to claim on the indemnity, the Customer must notify Supplier within 10 Business Days of becoming aware of a Third-Party Claim.
- 13.2. In the event of a Third-Party Claim, or if Supplier believes that a Third-Party Claim is likely to be made, then Supplier will at its expense:
- (a) procure the right for Customer to continue using the Software; or
 - (b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software.
- 13.3. If the Supplier notifies the Customer in writing that neither of the above are commercially practical, either Party may terminate this Agreement upon 5 Business Days written notice to the other.
- 13.4. If the Agreement is terminated under clause 13.2, Supplier's sole and exclusive liability and the sole and exclusive remedy of the Customer will be for Supplier to refund the Fees paid by Customer for the Term, less a prorated amount for Customer's use of the Software prior to the date the Third-Party Claim arose.
- 13.5. Supplier has no obligation to defend the Customer or to pay any costs or legal fees for any action, Claim, or settlement that arises from:
- (a) the Customer's use of a version of the Software that was not, at the time the Claim arose, the current, unaltered version of the Software as provided by Supplier, including if Customer had failed to install Updates containing modifications which would make the Software non-infringing;
 - (b) Customer's combination, operation, integration, or interfacing of the Software with third-party products or services not expressly approved by Supplier, other than Third-Party Materials with which the Software was intended to operate as specified in the Documentation, if such Claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not Supplier has advised the Customer that such use would likely result in a Third-Party Claim);
 - (c) the Customer's use of the Software in a manner other than as authorised by this Agreement or the Documentation;
 - (d) Supplier's compliance with the instructions, designs, plans, or specifications furnished by or on behalf of the Customer;
 - (e) modifications to the Software by any person other than Supplier's Representatives; or

- (f) the Customer's failure to accept any procured right to continue using the Software.

14. Limitation of liability

- 14.1. Subject to clause 12.5, 13.4 and clause 14.2, and except for liability which cannot be limited at Law, Supplier's entire liability under this Agreement or in any way related to this Agreement (including under an indemnity) will be limited to direct damages in an amount equal to the Fees paid by the Customer to Supplier during the 12-month period immediately preceding the first event giving rise to the Claim or if a Claim arises in the first 12 months and no Fees have been paid, the limitation amount will be the total Fees set out in the Quote;
- 14.2. Neither Party will be liable for:
- (a) any special, punitive, indirect, incidental, or consequential damages arising from or related to this Agreement or in any way related to the Software and/or Services (where applicable); or
 - (b) any loss of revenue, profits, goodwill or data, or data use (including as a result of Adverse Material), business interruption, failure to realise an expected saving, corruption of data, or Claims against them by any third-party,
- even if the Parties are advised, or may reasonably supposed to have been aware, of the possibility of such damages in advance.
- 14.3. Such limitations in this clause 14 will apply regardless of whether the Claim arises based on contract, tort, negligence, or otherwise.
- 14.4. The Customer acknowledges that Supplier has relied on the Customer's representation that there is a valid and enforceable limit of liability.

15. Term

- 15.1. This Agreement will commence on execution of the Quote (**Commencement Date**) and will continue terminated in accordance with clause 16 (**Term**).
- 15.2. If for any reason the Customer requests the Supplier to continue providing Services after expiry of the Term and the Parties have not entered into a new agreement, the terms and conditions of this Agreement will apply in respect of such Services, subject to any variations as may be agreed between the Parties in writing.

16. Termination

16.1. Termination for Cause

- (a) Subject to clause 13.2, this Agreement may be terminated:
 - (i) immediately by notice if Party breaches a Material Term;
 - (ii) within 15 Business Days after written notice by a Party of a breach of any other term, provided the other Party fails to cure it or the breach is incapable of remedy;
 - (iii) immediately by notice if a Party becomes insolvent, a receiver, administrator, controller, or a liquidator is appointed, a Party assigns any of its property for the benefit of creditors or any class of them, or any proceedings have been commenced by or against a Party under any bankruptcy, insolvency, or similar laws; or
 - (iv) immediately by notice if a Party ostensibly ceases to carry on business.
- (b) If the Agreement is terminated under clause 16.1 the Supplier will be entitled to recover all Fees payable up to the date of the termination.
- (c) In this clause 16.1, **Material Term** includes any of clause 5, 6, 8.1, 10, 11, 12, 14, 17 or 18.

16.2. Termination without Cause

- (a) Either Party may terminate this Agreement without cause by giving a number of days' written notice equal to the Opt-Out Period.
- (b) If Supplier terminates for convenience, Supplier will refund to Customer any unused pre-paid Fees.
- (c) The Customer acknowledges that the Software is sold on the basis that a portion of the cost of Implementation Activities and Training Activities is spread over the Term and therefore, if the Customer terminates for convenience pursuant to clause 16.2, Supplier will incur material expenses. As such, any pre-paid Fees will be refunded less the Cancellation Fee, which the Customer acknowledges constitutes a fair and reasonable recoupment of the discount offered to the Customer for the pre-payment. Supplier will not otherwise be liable for any loss or damage whatsoever arising from the termination.

16.3. Effect of Termination

Upon termination or expiry of the Agreement:

- (a) any and all amounts owed to Supplier pursuant to this Agreement will be immediately due and payable;

- (b) all Licence Allocation license rights granted to the Customer will be immediately revoked and terminated as at the date the termination takes effect (taking into account any termination notice periods);
- (c) Clauses 3, 6.2, 6.3, 12, 13, 14, 17, 19, and 20 will survive termination and continue in full force and effect in accordance with their terms; and
- (d) within 10 days following termination, the Customer will:
 - (i) cease using and will securely return to Supplier all copies of the Software and Documentation and confirm as such to Supplier in writing by the Implementation Contact or another duly authorised officer as agreed to in writing by Supplier;
 - (ii) where applicable, cease using any Hardware in accordance with the Hardware Terms; and
 - (iii) remove any logos or trademarks of Supplier from the Customer's promotional or marketing material.

17. Confidentiality

17.1. Confidential Information:

- (a) means confidential information that is disclosed:
 - (i) by a Party to this agreement (the **Discloser**) or on the Discloser's behalf by its Representatives;
 - (ii) to the other Party to this Agreement (the **Receiver**) or its Representatives, and
- (b) includes (but is not limited to):
 - (i) the Fees;
 - (ii) any technical, operational, or financial information;
 - (iii) any know-how, trade secrets, ideas or strategies of a Party;
 - (iv) source code, unpublished API information, proprietary software tools, business processes, software testing and verification methods;
 - (v) a Party's business affairs (including products, services and customers);
 - (vi) any information which, by its nature or by the circumstances of its disclosure, is or could reasonably expected to be regarded as confidential; and
 - (vii) the provision Software and Software Services, and Hardware and Hardware Services (if applicable),
- (c) but excludes information that:
 - (i) is or becomes generally available to the public other than through the fault of the Receiver;
 - (ii) was within the Receiver's possession prior to its being furnished to the Receiver by or on behalf of the Discloser;
 - (iii) is independently developed by the Receiver or its Representatives without the use of any Confidential Information; or
 - (iv) is disclosed with the prior written consent of the Discloser.

17.2. The Parties will hold each other's Confidential Information in confidence and will not make each other's Confidential Information available in any form to any third-party for any purpose other than to the extent necessary to comply with its obligations under this Agreement. Each Party must treat the Confidential Information of the other Party with the same degree of care as it would treat its own confidential information of a like nature, and in no case less than a commercially reasonable degree of care.

17.3. The Customer may only disclose the Confidential Information to its Permitted Users, and Supplier may only disclose the Confidential Information to its Representatives.

17.4. It is not a breach if Confidential Information is disclosed as a result of a judicial or administrative process, provided that the Party served with such process promptly notifies, to the extent legally permissible, the other Party and provides reasonable assistance so that the other Party may seek, at its own cost and expense, a protective order against public disclosure.

17.5. The Parties must each implement and enforce policies and contractual obligations with its Representatives to ensure its Representatives protect the Confidential Information.

17.6. The Parties recognise and agree that monetary damages are an inadequate remedy for breach of the obligations in this clause 17, and that any breach would result in irreparable harm to the non-breaching Party. In the event of such a breach, the non-breaching Party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

18. Privacy

18.1. To the extent that the provisions of any privacy laws, regulations, or other applicable regulatory instruments enacted at the time, , which relate to the collection, disclosure, use or processing of Personal Information, personally identifiable data, or privacy, including those relevant to the Jurisdiction (**Privacy Laws**) apply to Personal Information handled in accordance with this Agreement, then the provisions of this Agreement are subject to the provisions of the Privacy Laws.

- 18.2. Personal Information means information which can reasonably identify an individual, or any other definition as given at Law.
- 18.3. The Customer represents and warrants that:
- (a) it will do all that is necessary in order to fully comply with all applicable Privacy Laws in relation to this Agreement including providing relevant notices to its customers and obtaining necessary rights and consents for collection, use, and disclosure of Personal Information from its customers;
 - (b) it has taken reasonable steps to ensure that the Personal Information it uses or discloses to the Supplier under this Agreement is up-to-date, complete and relevant having regard to the nature of the services; and
 - (c) any and all data communicated to the Supplier in relation to performance of this Agreement has been collected or obtained in full compliance with this Agreement and the Privacy Laws in relation to the collection, storage, and use of Personal Information.
- 18.4. The Customer will assist Supplier as reasonably required to resolve any allegation or claim brought by a third party involving a breach of the Privacy Laws or otherwise an interference with the privacy of an individual.
- 18.5. The Customer authorises Supplier and its Representatives:
- (a) to collect, retain, and use any information about the Customer (including any Customer Data), whether collected by Supplier from the Customer directly (including through the Customer's use of Software) or obtained by Supplier from any other source for the purposes of:
 - (i) assessing the Customer's creditworthiness;
 - (ii) maintaining a database containing Customer's Inputs to the Software, which may be accessed by Customer in using the Software;
 - (iii) making improvements to the Software;
 - (iv) marketing products and services to Customer; and
 - (v) collating it with other information to enable Supplier to provide, at its discretion, industry comparative and benchmarking information to any of its customers (including the Customer);
 - (b) to disclose information about the Customer (including any Customer Data), whether collected by Supplier from the Customer directly (including through the Customer's use of Software) or obtained by Supplier from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a Default by the Customer; and
 - (c) to disclose de-identified forms of the Customer Data to any of the Supplier's third-party service providers for its internal business purposes.

19. Dispute Resolution

- 19.1. A Party claiming that a dispute or disagreement has arisen out of, or in connection with, this Agreement (a **Dispute**) will give written notice to the other Party providing particulars of the Dispute and designating which of its authorised officers has authority to settle the Dispute (the **Dispute Notice**).
- 19.2. The Parties will meet at a location or arrange a telephone conference as agreed between the Parties in writing within 10 Business Days of receipt of the Dispute Notice in good faith to seek to resolve the dispute amicably.
- 19.3. If the Dispute has not been resolved within 20 Business Days of receipt of the Dispute Notice, either Party may refer the dispute to mediation by way of notice to the other Party. A mediation will be administrated by a mediator agreed between the Parties or if not agreed, recommended and accredited by Resolution Institute in accordance with Resolution Institute's professional mediation rules or an equivalent professional mediator in any jurisdiction outside of Australia (**Mediator**). The Parties must jointly pay the costs of the Mediator.
- 19.4. If the Dispute has not been resolved within 30 days of the exhaustion of the dispute resolution process set out in Clause 19.3 and one or more Parties have made best reasonable efforts to resolve the Dispute, either Party may commence litigation.
- 19.5. Notwithstanding clause 17.6, if the process in this clause 19 is not followed, a Party may use this clause as evidence of a bar to litigation.

20. General

- 20.1. **Assignment.** Neither Party may novate or assign the Agreement (or any of its rights or obligations), whether by operation of Law or otherwise, without the other Party's prior written consent (which is not to be unreasonably withheld). The Customer agrees to sign any transfer documentation required by Supplier as a condition of any change in ownership of the business where the Software is utilised. Any purported assignment in violation of this clause 20.1 will be void and of no effect.
- 20.2. **Export Compliance.** The Software, Hardware (if applicable), and related Services may be subject to export laws and regulations. Each Party represents that it is not named on any United States (US), European Union (EU), United Nations (UN), or Australian (AU) government-

issued denied-party list. The Customer must not permit access or use of the Software or Hardware (if applicable) in a US-embargoed country, EU-embargoed country, or UN-embargoed country, AU-embargoed country, or in violation of any other applicable embargo, export law, or regulation.

- 20.3. **Anti-Corruption.** The Customer warrants it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Supplier's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If the Customer learns of any violation of the above restriction, the Customer will use reasonable efforts to promptly notify Supplier.
- 20.4. **Modern Slavery.** Both Parties will comply with all applicable laws, statutes, regulations legally binding codes and sanctions relating to any modern slavery in the Jurisdiction (**Modern Slavery Laws**) and comply with any reasonable written request received from the other Party for the purposes of any annual reporting requirements under the Modern Slavery Laws.
- 20.5. **Bullying & Harassment.** Supplier supports the rights of all people to work in an environment free from bullying. The Parties are expected to adhere to acceptable conduct at all times by respecting the rights and feelings of others and by refraining from any behaviour that might be harmful to others.
- 20.6. **Severability.** If any provision of this Agreement is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, all remaining provisions of the Agreement will be and remain in full force and effect.
- 20.7. **Waiver.** No delay by either Party in enforcing any of the terms or conditions of this Agreement will affect or restrict such Party's rights and powers arising under this Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing.
- 20.8. **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all proposals, oral and written, and all previous negotiations and communications between the Parties and their representatives with respect to the subject matter of this Agreement. The Agreement will prevail over terms of any Customer-issued purchase order, request for tender, technical specification, or other design requirements, which will have no force or effect, even if Supplier accepts or does not otherwise reject them. Each Party acknowledges that, in entering into the Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a Party to this Agreement or not) other than as expressly set out in the Agreement.
- 20.9. **Counterparts.** The Agreement may be executed in counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument.
- 20.10. **Digital Signatures.** If any signature is delivered by email delivery of a Portable Document Format (PDF), or by using a web-based e-signature platform such as DocuSign (**E-Signature**), such signature will create a valid and binding obligation on the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such PDF signature page or E-Signature was an original signed document in hard-copy.
- 20.11. **Non-Solicitation.** During the Term and for a period of 1 year following the termination of this Agreement, each Party agrees not to solicit, recruit, or employ any employee of the other Party without the prior written consent of the Chief Executive Officer, President or Director of the other Party. For the purposes of this clause the term "employee," includes any person with such status at any time during the 6 months preceding any solicitation in question. This clause does not apply to the following forms of solicitation:
- (a) a Party using general bona fide solicitations directed at the public or industry participation in publications or internet resources not specifically targeted at employees of the other Party, or employing any person who responds to such solicitations;
 - (b) using search firms, or hiring any persons solicited by such search firms, so long as such firms are not advised by a Party to solicit employees of the other Party; or
 - (c) soliciting any person who has left the employment of the other Party prior to the date of this Agreement.
- 20.12. **Subcontractors.** Supplier may license or subcontract all or any part of its rights and obligations without the Customer's consent. Supplier will continue to remain liable for the performance of its rights and obligations by any licensee or subcontractor.
- 20.13. **Independent Contractor.** The relationship of the Parties established by this Agreement is that of independent contractors. This Agreement does not establish an employment, agency, joint venture or partnership relationship between the Parties. Nothing in this Agreement will be construed to permit either Party to bind the other or to enter into obligations on behalf of the other Party.
- 20.14. **Notices.** All notices under this Agreement must be in writing and will be deemed to have been given upon:
- (a) personal delivery;
 - (b) the third Business Day after being sent by pre-paid recorded post; or
 - (c) the next Business Day after being sent by email (as recorded on the device from which the email was sent) unless the sender receives an automated message that the email has not been delivered, in which case delivery will not have been effected.

Notices must be sent to the address of each Party as specified in the Quote. Each Party may modify its elected recipient of notices by providing notice pursuant to this Agreement.

- 20.15. **Force Majeure.** Neither Party will be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event provided that the Party affected by such failure or delay gives the other Party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time. If the Force Majeure Event continues to cause such failure or delay for a period of more than 45 days, either Party may terminate the Agreement immediately by providing the other Party written notice.
- 20.16. **Modification.** Supplier reserves the right to review this Agreement at any time. If, after such review, there is to be any change to this Agreement, then that change will take effect from the date on which Supplier notifies the Customer of such change by giving 90 days' prior written notice. If the Customer does not agree to any amendment or update of the new Agreement, which materially a Party's rights and obligations under the Agreement, the functionality of the Software or scope of the Services, then the Customer may terminate the Agreement without further charge by giving the Supplier written notice at any time before the end of the 90-day notice period referred to in this clause.
- 20.17. **Governing Law.** This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter will be governed in the Jurisdiction. The parties submit to the exclusive jurisdiction of the Jurisdiction and any appellate Courts.

Schedule A. Fair Use Policy

This policy applies to the use of Supplier's Software. Any material or conduct that in Supplier's reasonable judgment violates this policy in any manner may result in suspension or termination of the Licence or removal of a Permitted User's account.

1. Permitted Users may not use the services to publish content or engage in activity that is illegal under applicable law, that is harmful to others, or that would subject Supplier to liability, including, without limitation, in connection with any of the following, each of which is prohibited under this policy:

- a) phishing or engaging in identity theft;
- b) distributing computer viruses, worms, Trojan horses, or other malicious code;
- c) distributing pornography or adult related content or offering any escort services;
- d) promoting or facilitating violence or terrorist activities; and
- e) infringing the intellectual property or other proprietary rights of others.

2. Customer will not and will ensure that Permitted Users do not directly or indirectly:

- a) reproduce, modify, change the data structures, adapt or create derivative works of any part of the Software;
- b) rent, lease, distribute, sell, sublicense, transfer, or provide access to the Software to a third-party;
- c) provide the Software for the benefit of any third-party, except Permitted Users;
- d) use any non-Supplier sanctioned applications which utilise artificially intelligent learning language models (such as ChatGPT or Bard) in connect with the Software or Supplier's Confidential Information (including for the purposes of improving the performance of the Services or supply of the Goods);
- e) incorporate the Software into a product or service it provides to a third-party;
- f) interfere with any license key mechanism in the Software or otherwise circumvent mechanisms in the Software intended to limit its use;
- g) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Software, except

to the extent expressly permitted by applicable law (and then only upon advance notice to Supplier);

- h) remove or obscure any proprietary or other notices contained in the Software;
- i) use the Software for competitive analysis or to build competitive products;
- j) publicly disseminate information regarding the performance of the Software;
- k) encourage or assist any third-party to do any of the foregoing;
- l) make the Software available in any form to any person other than Customer's employees, agents and contractors whose job performance requires such access; and
- m) allow access to the Software by any service bureau (subject to clause 17.4 of the Agreement), third-party outsourcer, a competitor of Supplier, or other similar third-party service provider unless Supplier consents to such access in writing.

3. Customer must use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software.

4. The Customer must ensure that any passwords used to access the Software are strong, unique, and comply with any password requirements notified by the Supplier from time to time.

5. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of all testing, archival, back-up or other copies of the Software made by Customer.

6. The Customer may make a reasonable number of copies of the Software for testing, archival and/or back-up purposes, to be used only when the primary copies of the Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of all testing, archival, back-up or other copies of the Software made by the Customer.

7. If applicable, if the Customer's use of text messages or emails exceeds Supplier's estimated averages in any month (with Supplier acting reasonably), then Supplier may ask the Customer to moderate its usage. Supplier reserves the right, on 5 days further notice, to charge for the excessive use according to the current price list or to remove the service from the Customer's account.

Schedule B. Payment Processing Terms

Option A – Credit Card Payment

1. In respect of the payment obligations under this Agreement, If the Customer uses a credit card to pay the Fees or any other amounts, the Customer:
 - a) warrants that it is authorised to use the credit card to meet its payment obligations;
 - b) authorises Supplier to debit amounts against the credit card in respect of the Fee and other amounts payable; and
 - c) acknowledges that a credit card surcharge will apply (as set out in the Quote, or otherwise 1.2% of the total transaction).
 - d) the Customer acknowledges that, where it provides credit card information online, Supplier does not collect payment information itself. Instead, the Customer will be redirected to the Customer's payment processor's website, which collects the payment information directly.
2. Payment will be processed by credit card unless the Customer and Supplier agree to process the payment by or another payment method.
3. Where the Customer provides credit card details over the phone, Supplier will collect the payment information directly from the person providing the details and will transfer those details to the Customer's payment processor. After receiving confirmation of the payment from the payment processor, Supplier may retain this payment information in a secure location in accordance with Supplier's internal record retention policies.
4. Supplier may debit the Fees or any other amount under this Agreement against the credit card on or after the date that is stated on the invoice. If no time is stated, then the credit card will be debited on or after the date of the invoice.
5. Where a credit card transaction is declined for any reason (for example, because there are insufficient funds or the credit card has been suspended or cancelled) or the Customer withdraws Supplier's authorisation to use a particular credit card, then the Customer must immediately provide Supplier with details of an alternative credit card which can be used to meet the Customer's obligations under this Agreement.
6. Where the Customer does not have an alternative credit card, the Customer must immediately pay the relevant amount using direct debit or an alternative method of payment agreed by Supplier.

Option B – Direct Debit

1. Payment will be processed by direct debit unless the Customer and Supplier agree to process the payment by another payment method.
2. Customer's bank account details will be provided to the Customer's payment processor. After receiving confirmation of the payment from the payment processor, Supplier will retain this payment information in a secure location in accordance with Supplier's internal record retention policies.
3. Supplier may debit the Fees or any other amount under this Agreement on or after the date that is stated on the invoice. If no time is stated, then the Fees will be debited on or after the date of the invoice.
4. Where a direct debit transaction is declined for any reason (for example, because there are insufficient funds or the bank account has been suspended or cancelled) or the Customer withdraws Supplier's authorisation to use a particular bank account, then the Customer must immediately provide Supplier with details of an alternative bank account which can be used to meet the Customer's obligations under this Agreement.
5. Where the Customer does not have an alternative bank account, the Customer must immediately pay the relevant amount using an alternative method of payment agreed by Supplier.

6. The Customer may defer or alter a debit payment by giving Supplier at least 14 days written notice before the next debit day.
7. The Customer may stop a debit payment, or cancel a direct debit request, by giving Supplier at least 14 days written notice before the next debit day. The Customer can also cancel a direct debit request by contacting the Customer's own financial institution directly.
8. Supplier may vary the terms of the direct debit request by giving the Customer at least 14 days written notice. If the Customer does not agree to the Supplier's proposed variation, then at the Supplier's option:
 - a) the varied terms will not apply to the Customer; or
 - b) the Customer may select an alternative payment method.
9. It is the Customer's responsibility to ensure there are sufficient cleared funds available in its account so that the debit payment can be processed in accordance with the direct debit request. If there aren't sufficient clear funds available in the Customer account, the Customer:
 - a) may be charged a fee and/or interest by the Customer's financial institution;
 - b) may also incur fees that are payable to Supplier; and
 - c) must arrange for the payment to be made by another method.
10. If the debit day falls on a day that isn't a business day, Supplier may debit the Customer's account on the following Business Day. (The Customer can ask their financial institution if they're unsure which day their account will be debited.)
11. If the Customer believes there's been an error in debiting their account, the Customer should notify Supplier in writing as soon as possible. The Customer can also contact their financial institution. If Supplier concludes that there's been an error, it will let the Customer know and arrange for the Customer's financial institution to adjust their account (including interest and charges) accordingly. If Supplier concludes that there hasn't been an error, it will let the Customer know the reasons and any evidence for this finding.

Option C – Payments (where software is bundled with payments)

If the Customer is subscribed to any payment packages at the commencement of the Services, the Fees payable will be the bundled fees agreed in the Quote. If a payment package is cancelled terminated or expires for a Customer, the Customer will be required to pay the then current Fees for the Software.

Option D – Payments via Invoice

If the parties have agreed that Supplier will provide an Invoice to the Customer which will be paid in accordance with clause 8.

Schedule C. Hardware Terms**1. Supply of Hardware**

The Supplier will deliver the Hardware to the Customer on the delivery date and at the location agreed by the parties in writing.

2. Defects

2.1. The Customer will, within 7 days after the Customer takes possession of the Hardware at the Customer's address or at Supplier's address (as notified by the Supplier in writing) (**Hardware Supply**), notify Supplier of any alleged defect, shortage in quantity, damage, or failure of the Hardware to comply with the Documentation. The Customer will afford Supplier the opportunity to inspect the Hardware within a reasonable time following Hardware Supply if the Customer believes the Hardware is defective in any way.

2.2. If the Customer fails to comply with these provisions, the Hardware will be presumed to be free from any defect or damage.

2.3. For any Hardware the Supplier determines is defective (after inspection of such Hardware under clause 2.1) Supplier's liability is limited to either replacing the Hardware or repairing the Hardware, at Supplier's discretion.

2.4. The following applies to the extent that Schedule 2 of the Competition and Consumer Act 2010 (Cth) (ACL) applies to the Supplier's supply of the Hardware to the Customer, the following applies:

- a) The Supplier's goods come with guarantees that cannot be excluded under the ACL.
- b) The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage.
- c) The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

3. Returns

3.1. Except to the extent where required at Law, returns will only be accepted provided that:

- a) the Client has complied with the provisions of this schedule;
- b) the Seller has agreed in writing to accept the return of the Hardware;
- c) the Hardware is returned at the Customer's cost within 7 days of the date of Hardware Supply;
- d) the Seller will not be obligated to accept back Hardware which has not been stored or used in a proper manner; and
- e) the Hardware is returned in the condition in which it was delivered and with all Documentation, packaging material, brochures, and instruction material, in as new condition as is reasonably possible in the circumstances.

3.2. Supplier may (in its discretion, to the extent that such a discretion is permissible at Law) accept the return of Hardware for credit, but this may incur a handling charge of up to 5% of the value of the returned Hardware plus any freight charges.

4. Security Interests

4.1. In this clause 4, "security interest", "security agreement", "financing statement", "financing change statement", "verification statement", "attached", "attachment", "perfected" and all related terms have the meanings given them by the *Personal Property and Securities Act 2009* (Cth) (**PPSA**).

4.2. Until such time as payment of all Fees payable under this Agreement are received in full (whether by lease or sale) the

Customer grants to Supplier a purchase money security interest (as defined in the PPSA) (PMSI) in all Hardware supplied during the Term. The Customer agrees that the PMSI has attached to all Hardware supplied by the Supplier during the Term.

4.3. A copy of this Agreement may be filed, or Supplier may apply for any registration, or give any notification, in connection with the security interest, with, to, or on appropriate authorities or registers in the Jurisdiction at any time before or after execution by the Customer, including a financing statement in order to perfect and/or register Supplier's security interest in the Hardware. The Customer agrees to execute and deliver any additional document or instrument and provide all other assistance as Supplier may reasonably request from time to time to establish, perfect, register, give effect to and/or enforce Supplier's security interest in the Hardware.

4.4. Supplier will not, unless any requirement or obligation cannot be lawfully excluded, be obliged to comply with any requirement or obligation of any law in connection with the security interest, including, without limitation, giving to Customer any notice of any form or making any disclosure.

4.5. Customer acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the Law. The Customer will:

- a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- b) indemnify, and upon demand reimburse, Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Hardware charged thereby;
- c) not register a financing change statement or a change demand without the prior written consent of Supplier;
- d) immediately advise Supplier of any material change in its business practices of selling the Hardware which would result in a change in the nature of proceeds derived from such sales;
- e) until title in the Hardware passes to the Customer (if at all), keep all Hardware free of any charge, lien or security interest (except as created or granted under the Agreement) and must not deal with the Hardware in a way that will or may prejudice the Supplier's rights under the Agreement or the PPSA except where expressly permitted under the Agreement;
- f) immediately notify Supplier of any proposed changes to the Customer's details, including (but not limited to) changes of address, entity or business name and/or contact details; and
- g) not disclose to any third party any information of the kind referred to in section 275(1) of the PPSA.

4.6. In the event of any default in payment of the full amount payable in respect of any of the Hardware when due, the Supplier may, in addition to any other rights and remedies to which the Supplier may be entitled, retake possession of any Hardware and re-sell or re-supply such Hardware on the Supplier's own account without liability to the Retailer. The Customer grants the Supplier the right to enter upon any of the Customer's premises, or any premises where the Hardware is stored, to take possession of any Hardware, the title to which has not passed from the Supplier to the Customer.

4.7. Supplier is not obliged to give the Customer any notice or provide copies of any documents under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. The Customer consents to the waiver of the requirement for notice or copies of any documents under this clause.

4.8. The Parties agree that the following provisions of the PPSA do not apply to or in relation to the security interest granted by the Agreement to the extent the PPSA permits to contract out of or waive such provisions: section 95 (notice of removal of accession) to the extent that it requires the Supplier as secured party to give a notice to the Customer as grantor; section 117 (obligations secured by land and personal property); section 118 (enforcing securities in accordance with land law); section 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal) to the extent that it requires the Supplier as secured party to give a notice to the Customer as grantor; section 132(3)(d) (secured party to give statement of account); section 132(4) (statement of account if no disposal); section 135 (notice of retention of collateral); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

4.9. If the Jurisdiction is New Zealand:

- a) Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the Personal Properties Securities Act 1999 (NZ) (PPSA) will apply to these Terms.
- b) The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- c) Unless otherwise agreed to in writing by Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

5. Not Covered by Hardware Maintenance

5.1. Supplier is under no obligation to provide Hardware Services in respect of any Hardware modified by the Customer or a third Party without Supplier's express prior written approval.

5.2. To the full extent permitted by Law, Supplier will not be responsible for and the Hardware Services will not cover the repair of damage or furnishing parts required as a result of, causes other than ordinary wear and tear or the Supplier's delivery of the Hardware to the Customer's nominated address, including:

- a) neglect;
- b) misuse (including faulty repair or maintenance by unauthorized Parties);
- c) accidents;
- d) vandalism;
- e) failure of electrical power;
- f) air conditioning;
- g) humidity control; or
- h) Force Majeure Events.

5.3. The Customer agrees that Supplier will not be responsible for the installation specifications (including cabling, power, space, etc.), or the installation, operation, maintenance, or technical support of the Hardware unless expressly agreed in writing between Supplier and the Customer.

6. Hardware Sale

6.1. The Customer may purchase Hardware at the Fees indicated in the Quote (the Hardware Order).

6.2. The Customer will be responsible for all delivery costs associated with the Hardware Order. Payment by the Customer of delivery costs will be due and payable upon its receipt of Supplier's invoice.

6.3. Delivery of the Hardware to a third-party nominated by the Customer is deemed to be Hardware Supply for the purposes of this Agreement.

6.4. Upon Hardware Supply, all risk for the Hardware will pass to the Customer.

7. Title to the Products

7.1. The Customer and Supplier agree that:

- a) ownership of the Hardware will not pass until:
 - A the Customer has paid the Fees for the Hardware; and
 - B the Customer has met all other obligations due by the Customer to Supplier in respect of the Agreement;
- b) receipt by Supplier of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared, or recognised and until then Supplier's ownership or rights in respect of the Hardware will continue;
- c) until such time as ownership of the Hardware passes from Supplier to the Customer, Supplier may give notice in writing to the Customer to return the Hardware or copies of it to Supplier. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Hardware will cease; and
- d) if the Customer fails to return the Goods to Supplier, then Supplier or Supplier's Representatives may, on reasonable notice, enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Hardware is situated, and take possession of the Hardware and/or any copies of the Hardware.