

## **SOFTWARE USER LICENCE**

### **1. PRIORITY OF DOCUMENTS**

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) General Terms;
- (b) Schedules, the Project Plan and Statements of Work;
- (c) any attachments to the Schedules or Statements of Work; and
- (d) documents incorporated by reference in this Agreement.

### **2. TERM OF AGREEMENT**

#### **2.1 Initial Term**

This Agreement begins on the Commencement Date and continues for the duration of the Initial Term, as extended under clause 2.2, unless terminated in accordance with clause 23.

#### **2.2 Extension of Term**

On completion of the Initial Term, and on each Renewal Date, the Term is automatically renewed for a further period of 1 year unless written notice of termination has been given by one party to the other at least two months prior to the relevant Renewal Date.

### **3. SOFTWARE SUBSCRIPTION SERVICES AND IMPLEMENTATION AND MIGRATION SERVICES**

#### **3.1 Right to Access**

- (a) the Supplier grants to the Customer during the Term a non-exclusive, non-transferable, worldwide right to access and use the Software Subscription Service and allow its Authorised Users to access and use the Software Subscription Service solely for the lawful operation of the Customer's business and in accordance with this Agreement. The licence granted under this clause is for an unlimited number of Authorised Users unless otherwise specified in the Order Form.
- (b) The Supplier grants to the Customer a non-exclusive, non-sublicensable, non-transferable licence to prepare, reproduce, print, download, and use a reasonable number of copies of the Documentation as may be necessary or useful for any use of the Services.
- (c) The Supplier must supply the Services:
  - (i) with due skill and care;
  - (ii) in accordance with relevant industry standards, practice and guidelines;
  - (iii) in accordance with all applicable Laws;

- (iv) in accordance with any reasonable directions given by the Customer from time to time;
- (v) so as to meet the milestones and other project plan requirements specified in a Project Plan, Statement of Work and elsewhere in this Agreement; and
- (vi) otherwise in accordance with the provisions of this Agreement.

### 3.2 Obligations of the Supplier

The Supplier agrees to:

- (a) provide access to the Software Subscription Service in accordance with the Order Form;
- (b) provide the Services so as to meet the Service Levels;
- (c) make available to the Customer all updates, bug fixes, enhancements (excluding Customer site specific enhancements and legislative changes that are covered under a Statement of Work), new releases, New Versions, and other improvements to the Software Subscription Services, that the Supplier provides to its other customers (and the Supplier acknowledges that these changes may be subject to acceptance testing);
- (d) comply with any of the Customer's reasonable requests for information relating to this Agreement, including after termination or expiry of this Agreement; and
- (e) use appropriate and up-to-date malicious code and virus detection software to prevent Harmful Code being introduced to the Customer's Environment.

### 3.3 Terms of Use

- (a) The Customer agrees it will:
  - (i) ensure that its Authorised Users comply with this Agreement; and
  - (ii) be liable for the acts and omissions of its Authorised Users as if they were the Customer's acts or omissions.
- (b) In using the Software Subscription Service, the Customer must comply with and ensure that the Authorised Users comply with Acceptable Use Policy.
- (c) In order to access and use the Software Subscription Service, Authorised Users will require profiles to be created, as well as user names and passwords (**Login Credentials**). The Supplier will issue the Customer with system administration access that will allow the Customer to create Authorised User profiles and the Authorised Users to then create user names and passwords.
- (d) The Customer is responsible for ensuring that Authorised Users take all reasonable steps to safeguard their Login Credentials. Unless the Customer advises the Supplier that any Login Credentials have been compromised, the Supplier may assume that any person accessing or using the Software Subscription Service using those Login Credentials are

the Customer's Authorised Users. The Customer must also require that each of its Authorised Users only uses the Login Credentials that have been allocated to or created by them, and that no other person uses such Login Credentials.

- (e) If the Customer becomes aware or has reason to suspect that there has been any unauthorised use of any Login Credentials, the Customer must notify the Supplier immediately.
- (f) the Supplier may suspend access to the Software Subscription Service where it reasonably believes there has been unauthorised use of the Software Subscription Service by any of the Customer's Authorised Users or through any Login Credentials, but the Supplier must only suspend the account(s) whose Login Credentials have been used for unauthorised use of the Software Subscription Services. Where the Supplier does so, the Supplier will notify the Customer prior to the suspension occurring or, if that is not possible because the Supplier needs to suspend access to address an actual or imminent security risk, as soon as practicable after the suspension, and the parties will work together to resolve the matter. Nothing in this paragraph (f) limits any other rights or remedies the Supplier may have in such circumstances.
- (g) The Customer Environment must comply with the Technical Specifications.

#### **4. CUSTOMER CONTENT**

- (a) The Customer and its Authorised Users may upload Customer Content to the Software Subscription Service. The Customer must ensure that the Customer Content:
  - (i) does not infringe the intellectual property or other rights of another person or third party;
  - (ii) is not defamatory, offensive, abusive, pornographic, profane or otherwise unlawful, including material that racially or religiously vilifies, incites violence or hatred, or is likely to insult or humiliate others based on race, religion, ethnicity, gender, age, sexual orientation or any physical or mental disability;
  - (iii) does not breach any Law;
  - (iv) is not false, misleading or deceptive;
  - (v) does not harm, abuse, harass, stalk, threaten any person;
  - (vi) does not reflect negatively on the Supplier, including our goodwill, name and reputation; and
  - (vii) does not otherwise result in civil or criminal liability for the Supplier.
- (b) The Customer:
  - (i) at all times retains ownership of the Customer Content;
  - (ii) grants to the Supplier a non-exclusive, worldwide, royalty-free, licence (including a right to sub-licence to our subcontractors) for the Term to use, copy and modify the Customer Content as

required by the Supplier but only for the purpose of providing the Services and complying with the Supplier's obligations under this Agreement;

- (iii) warrants that the Customer has the right to grant the licence referred to in sub-clause (ii) above;
  - (iv) will undertake back-ups of all Customer Content uploaded to the Software Subscription Service on a regular basis; and
  - (v) must use appropriate and up-to-date malicious code and virus detection software to prevent Customer Content which contains Harmful Code being uploaded to the Software Subscription Service.
- (c) The Customer agrees to indemnify and hold the Supplier (including any of the Supplier's directors, officers, employees and contractors) harmless from any claim made by any third party that the Supplier's processing of Customer Content in accordance with this Agreement infringes that party's Intellectual Property Rights, provided such claim does not arise from any use, copying or modification of the Customer Content not permitted under paragraph (b) above.
- (d) The Supplier may review the Customer Content and with the written agreement of the Customer may modify or remove any of the Customer Content where it reasonably believes it violates these terms of use.
- (e) The Supplier will adhere to standard industry practice and procedures to prevent data loss, including the back-up procedures set out in the Security Policy.
- (f) Whenever requested by the Customer, the Supplier must restore Customer Content to the latest backup.

## **5. SUPPORT SERVICES**

The Supplier will provide the Support Services for the Term in return for the payment of the Support Fees.

## **6. CONSULTANCY SERVICES**

- (a) If the Customer engages the Supplier to provide Consultancy Services, the Supplier will, within 10 Business Days of the Customer's request, prepare a draft Statement of Work setting out the scope and proposed fees of the Consultancy Services.
- (b) The Supplier must supply the Consultancy Services:
- (i) with due skill and care;
  - (ii) in accordance with relevant industry standards, practice and guidelines;
  - (iii) in accordance with all applicable Laws;
  - (iv) in accordance with any reasonable directions given by the Customer from time to time;

- (v) so as to meet the milestones and other project plan requirements specified in the Statement of Work; and
  - (vi) otherwise in accordance with the provisions of this Agreement.
- (c) Access to Customer's premises
- The Customer must cooperate with the Supplier by providing access to its premises and facilities as reasonably necessary to enable the Supplier to provide the Consultancy Services.
- (d) Conduct at Customer's premises or while accessing the Customer's Environment
- The Supplier must, if using or accessing the Customer's premises or facilities or the Customer's Environment, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities or relating to the Customer's Environment specifically drawn to the attention of the Supplier.

## **7. WARRANTIES**

### **7.1 Supplier Warranties**

The Supplier represents and warrants that:

- (a) it has the right to enter into this Agreement;
- (b) it has the right to provide the Software Subscription Service;
- (c) the Software Subscription Service will operate substantially as described in the Documentation;
- (d) if and to the extent ownership of a Deliverable is to pass to the Customer, the Deliverable will be free from any charge or encumbrance;
- (e) all Services, Deliverables and other material provided to the Customer as part of or in connection with the Services and use or exploitation of that material by the Customer, and Customer's and its Authorised Users' access to and use of the Services, will not:
  - (i) result in a breach of any applicable law;
  - (ii) infringe any person's rights (including Intellectual Property Rights); or
  - (iii) constitute a misuse of any person's confidential information;
- (f) unless the Customer expressly agrees, the Software, Software Subscription Service and all Deliverables do not and will not incorporate any Third Party Software for which the Customer would have to:
  - (i) pay additional amounts (either as an increase in the Service Charges, as a separate charge, or directly to the relevant licensor); and/or
  - (ii) accept separate licence terms (such as the licensor's standard end user licence agreement), in order to use the Services or relevant Third Party Software; and

- (g) it is not aware of any current, pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved or that may have a materially adverse effect on its ability to perform its obligations in accordance with this Agreement, however, to the maximum extent permitted by law, the Supplier does not warrant, represent or guarantee that:
  - (i) without limiting the Supplier's obligation to provide Support Services, the Software Subscription Service will be continuously available or free of any fault or harmful code; or
  - (ii) the Services, including any Deliverables the Customer obtains by using and accessing the Services, are suitable for the Customer's purpose or business.

## **7.2 Disclosure**

- (a) The Supplier repeats the warranties in clause 7.1 each time it enters into a Statement of Work.
- (b) The Supplier must immediately notify Customer if any of the warranties in clause 7.1 is or becomes, or is likely to become, inaccurate or untrue.

## **7.3 Exclusion of implied warranties**

To the maximum extent permitted by law, all implied guarantees, warranties, representations and other terms and conditions of any kind in relation to this Agreement not contained in this Agreement are expressly excluded. If any guarantee, warranty, term or condition is implied or imposed in relation to this Agreement under any applicable legislation and cannot be excluded (a **Non-Excludable Provision**), and the Supplier is able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then, without limiting the Customer's contractual remedies or remedies available at law (other than the statutory remedies for breach of the Non-Excludable Provision) the Supplier's liability for breach of the Non-Excludable Provision is limited to the resupply of the Services or the cost of having Services supplied.

## **8. VARYING THE SERVICES**

### **8.1 Variations**

No variation of this Agreement is effective unless it is in writing and signed by the parties. A waiver or consent given orally or by conduct does not constitute a variation.

### **8.2 Effective date of variation**

Any variation takes effect from the date on which the parties execute such a variation.

## **9. INTELLECTUAL PROPERTY RIGHTS**

### **9.1 Auxiliary Material**

This clause 9 does not affect the ownership of the Intellectual Property Rights in any Auxiliary Material.

## **9.2 The Supplier's ownership of Intellectual Property Rights in Contract Material**

- (a) All Intellectual Property Rights in the Contract Material vest in and remain the property of the Supplier.
- (b) The rights granted to the Customer under clause 3.1 do not include a right to exploit the Auxiliary Material, or the Contract Material for the Customer's commercial purposes.

## **9.3 Customer Content**

Customer owns all Intellectual Property Rights in the Customer Content and Customer Material.

## **10. PAYMENT**

### **10.1 Obligation to pay charges**

- (a) The Customer must pay to the Supplier the applicable Service Charges as set out in the relevant invoice in accordance with this clause 10. If the Customer disputes an invoice, it is not required to pay the disputed amount until the dispute is resolved, but must pay all other undisputed amounts. the Supplier may not suspend or restrict any Services while an invoice dispute is being resolved.
- (b) The Service Charges are the full amount payable for the Services and performance of the Supplier's other obligations under this Agreement and, unless agreed in accordance with clause 8 there are no other amounts payable by the Customer under this Agreement. If this Agreement requires the Supplier to provide a benefit or do an act, and no additional charges are stated, then this is to be performed as part of the Service Charges. Without limiting the foregoing, the Supplier may not charge additional amounts for the provision of functionality or software (including third party software provided as part of the Software Subscription Services) unless and until the Customer has agreed to pay those additional Service Charges in a Statement of Work or by way of a variation in accordance with clause 8.

### **10.2 Supplier to invoice**

The Supplier must provide a correctly rendered tax invoice to the Customer for the Service Charges. For Service Charges the invoice will include:

- (a) date the task was performed;
- (b) description of the tasks performed;
- (c) initials of the consultant who performed the task;
- (d) days / hours performed on the task; and
- (e) daily / hourly rate (which must be the Business Hours Rate unless otherwise agreed).

### 10.3 Payment Terms

- (a) Subject to clause 10.1(a), all Subscription Fees are to be paid within 30 days of the invoice date.
- (b) The Supplier will invoice the Customer for the milestone payments of the Implementation and Migration Services Fee as each corresponding milestone in the Statement of Work and Project Plan for the Implementation and Migration Services is accepted.
- (c) All other Service Charges (including Support Fees) will be invoiced at the end of each month in which the relevant Services are provided unless the parties have agreed in a Statement of Work that the Service Charges under that Statement of Work are to be paid by way of milestone payments, in which case those Service Charges will be invoiced on the date the Customer (acting reasonably) confirms the relevant milestone has been achieved (which may be following acceptance testing).

### 10.4 Late payment

Subject to clause 10.5, in the event the Customer does not make an undisputed payment at the time or within the period specified in clauses 10.3, as applicable, the Supplier may:

- (a) restrict or suspend access to the Software Subscription Service, if:
  - (i) the payment is more than 14 days overdue;
  - (ii) the Supplier has notified the Customer that the amount is overdue and if it does not make payment within 14 days of the date of the Supplier's notice, it will restrict or suspend access to the Software Subscription Service; and
  - (iii) within that period, the Customer does not either pay or dispute the invoice; and
- (b) charge interest which will accrue daily at a rate of 2% per annum above the official cash rate,

in each case, from the due date of payment until the invoice is paid.

### 10.5 Hosting Costs and Exchange rate fluctuations

In addition to any other permitted increases under this Agreement, the Supplier may adjust the Fees, annually on the contract Commencement Date, to reflect increases in the underlying cost to the Supplier of performing its obligations under this Agreement which are attributable to fluctuations in the exchange rate between the currencies in which the Supplier is required to pay its upstream suppliers and to increases in hosting charges imposed by the Supplier's hosting service provider.

### 10.6 Disputed invoices

- (a) If any invoice submitted by the Supplier is disputed by the Customer, the Customer will notify the Supplier of the reasons for disputing but will otherwise pay that part of the invoice which is not disputed (subject to the Supplier providing a new invoice for the undisputed portion and a credit



note for the original invoice). Any disputed amount will be resolved in accordance with clause 22.

- (b) the Supplier may not charge default interest on any disputed invoice.

## 10.7 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Supplier, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Customer to the Supplier under this Agreement.

## 10.8 Expenses

The Customer must reimburse the Supplier for reasonable expenses incurred by the Supplier in attending at the premises of the Customer to perform any of the Services, including airfares, travel time, accommodation and meals, at the rates set out in a Statement of Work.

## 10.9 Charges review

- (a) Software Subscription Fees

On each anniversary of the Commencement Date, the Supplier may by notice in writing at least 30 days prior to the relevant anniversary of the Commencement Date increase the Subscription Fees in line with increases in the Consumer Price Index (**CPI**).

- (b) Support Fees

On each anniversary of the Commencement Date, the Supplier may by notice in writing at least 30 days prior to the relevant anniversary of the Commencement Date increase the Support Fees in line with increases in CPI.

- (c) Business Hours & After-Hours Rates

Business Hours and After-Hours Rates are subject to review annually and may be revised by the Supplier by written notice at least 30 days before the relevant anniversary of the Commencement Date provided that any such increase must be reasonable.

- (d) The Supplier will not adjust its Service Charges due to increases in Third Party Software costs unless prior written consent is provided by the Customer.

- (e) CPI changes

The formula for determining the maximum adjustment to Service Charges that is linked to CPI is:

$$A = B + (B \times C)$$

Where:

A = the adjusted Service Charges

B = the Service Charges payable immediately before the relevant anniversary of the Commencement Date

C = the annual CPI inflation rate percentage most recently published before the relevant anniversary of the Commencement Date which indicates the change in annual CPI over the course of the preceding 12 months.

References to 'Service Charges' in the above formula are to be read as references to the relevant part of the Service Charges that is subject to review (as notified by the Supplier at least 30 days prior to the relevant anniversary of the Commencement Date).

## **11. GOODS AND SERVICES TAX**

### **11.1 Definitions**

Except where the contrary intention appears, expressions used in this clause have the meanings given them in the GST Act.

### **11.2 Liability to pay additional amount**

If the Supplier makes a taxable supply (**Supply**) to the Customer under this Agreement, then the Customer must also pay to the Supplier, on receipt of a valid tax invoice, an additional amount equal to any GST payable in connection with that Supply.

### **11.3 Tax invoice**

The Supplier's right to payment under clause 10 is subject to a valid tax invoice being delivered to the Customer to enable the Customer to claim input tax credits for the Supply.

### **11.4 Adjustment Event**

If an adjustment due to an adjustment event results in the GST being different from that paid to the Supplier under clause 11.2, then the Supplier:

- (a) must refund to the Customer any excess and issue a valid credit note for the difference; and
- (b) may recover from the Customer any shortfall upon issuing a further valid tax invoice (or debit note).

## **12. OTHER TAXES**

### **12.1 Taxes Payable**

All prices in this Agreement are exclusive of any withholding taxes payable and when a party making a payment becomes aware that withholding taxes are applicable, that party is required to deduct withholding taxes from a payment, pay that amount to the relevant governmental entity and pay an additional amount to the other party so as to ensure that the recipient of the payment receives the full monetary amount stipulated in this Agreement as if no such withholding tax had been required to be made.

### **12.2 Customer Responsibility**

Customer shall be responsible for the payment of any other taxes.

## 13. LIABILITY

### 13.1 Consequential Loss

Notwithstanding any other term of this Agreement, neither party will be liable to the other party, or to any third party claiming through the other party, for any indirect or consequential loss (being loss or which, although in the contemplation of the parties at the time they entered into this Agreement, is not loss or damage which arises naturally, that is, in the usual course of things, from the act or omission) arising under or in connection with this Agreement. Without limiting the generality of the foregoing, the Supplier specifically excludes all liability for loss of profits or savings.

### 13.2 Limitation

- (a) Subject to paragraph (b), to the extent permitted by law, either party's liability arising out of or in connection with this Agreement is limited, from time to time and in aggregate, to the total of all amounts payable by the Customer to the Supplier under this Agreement in the twelve months preceding the date the relevant claim arose (or, if the claim arises in the first year of the Term, to 12 times the amounts payable by the Customer in the month in which the event giving rise to the liability occurred).
- (b) To the maximum extent permitted by law:
  - (i) the Customer's sole and exclusive remedies for any failure to comply with a statutory guarantee in respect of the Services are limited, at the Supplier's option, to:
    - (A) the resupply of the Services; or
    - (B) the payment of the cost of having the Services resupplied;
  - (ii) nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred by applicable law which cannot lawfully be excluded, restricted or modified; and
  - (iii) this clause applies notwithstanding any other provision of this Agreement, but does not apply to liability arising from fraud, wilful misconduct, or any matter which cannot be limited or excluded under applicable law.

### 13.3 Contribution

The liability of a party (**Party A**) for any Losses incurred by another party (**Party B**) will be reduced proportionately to the extent that:

- (a) any negligent act or omission of Party B (or of its subcontractors or Personnel); or
- (b) any failure by Party B to comply with its obligations and responsibilities under this Agreement,

contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

## **14. INSURANCE**

### **14.1 Obligation to maintain insurance**

In connection with the provision of the Services, the Supplier must have and maintain for the Term, valid and enforceable insurance policies for:

- (a) public liability for AUD\$20,000,000;
- (b) either professional indemnity or errors and omissions for AUD\$20,000,000;
- (c) product liability AUD\$20,000,000;
- (d) workers' compensation as required by law; and
- (e) Cyber Insurance AUD\$5,000,000.

### **14.2 Certificates of currency**

The Supplier must, on request by the Customer, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has taken out the policies as required by this clause 14.

## **15. PRIVACY AND DATA**

- (a) Each party must comply with the Privacy Act, in the collection, use, storage and handling of any personal information obtained from the other party in connection with the Services.
- (b) In using the Services, the Customer must ensure that it is permitted to provide the Supplier with the personal information provided to the Supplier, and that it has made any disclosures or obtained any consents necessary under the Privacy Act.
- (c) Subject to the terms of this Agreement, the Supplier will establish and maintain appropriate, reasonable technical and organisational security measures in accordance with good industry practice and with the Privacy and Data Policy to keep the Customer Content secure.
- (d) With Customer approval the Supplier may use and disclose to its service providers anonymous data about your use of the Services for the purpose of helping us to improve the Services. Any such disclosure will not include details of the Customer's identity or its authorised users unless prior consent has been provided for such disclosure.
- (e) When the Customer exports any of the Customer Content that data will be exported in the form provided by the Customer and its Authorised Users, and such export will not include any data derived from the Customer Content nor information relating to the database schema used by the Supplier.

## **16. SECURITY**

- (a) The Customer acknowledges that the internet is an insecure public network which means there are risks that information sent to or from the Software Subscription Service may be intercepted, corrupted or modified by third parties. Accordingly, the Customer agrees that the Supplier will

not be liable for any unauthorised access to or loss of Customer Content unless the Supplier fails to take the steps specified in this Agreement.

- (b) Notwithstanding the foregoing, the Supplier will take reasonable steps to maintain the security and the integrity of the Software Subscription Service. Specifically, the Supplier will:
- (i) implement administrative, physical and technical safeguards to protect the Customer Content that are no less rigorous than accepted industry information security best practices in accordance with the Security Policy;
  - (ii) ensure that only those of our employees are granted access to the Customer Content and the Software Subscription Service, who are necessarily required to access in order to perform this Agreement. If needed on the request of the Customer, the Supplier will provide the list of names of such employees and if required by the Customer such employees will sign a non-disclosure and personal data protection agreement with the Customer.
  - (iii) as soon as the Supplier becomes aware that a Virus is contained in or affects the Software Subscription Service provided to the Customer and/or Customer site(s) and/or that any of the Customer Content and/or Customer site(s) have, may have been, or may be subject to unauthorized access, immediately notify the Customer and take all reasonable steps to remedy the problem, secure the Customer Content data and/or Customer site(s), remove the Virus, as applicable, and prevent the situation's reoccurrence;
  - (iv) use the most current and up-to-date release of relevant security and Virus detection software, with industry standard security practices and protection features;
  - (v) use best endeavours and no less than best industry practices and protection features to:
    - (A) prevent any Virus being contained in, or affecting the, Software Subscription Service used by the Customer to perform this Agreement and to prevent any unauthorized access to the Customer Content; and
    - (B) prevent any unauthorized access of, and/or Viruses being introduced into, the Customer's IT systems and/or site(s);
  - (vi) not store or allow the storage of Customer Content outside New Zealand or Amazon's Web Services' Sydney Availability Zone and not disclose or allow the disclosure of Customer Content to any person outside New Zealand or the Supplier's virtual environment hosted in Amazon's Web Services' Sydney Availability Zone, without Customer's prior written consent;
  - (vii) not sell, licence or otherwise deal with or commercially exploit any Customer Content without Customer's prior written consent and subject to any conditions specified by Customer;
  - (viii) provide to Customer on request a copy of any reports of penetration or other systems resiliency testing undertaken in respect of the Supplier's systems (and if no such tests have been

conducted, allow Customer to appoint a third party to perform such tests at Customer's cost, including the Supplier's Services Charges, and provide all reasonable access and assistance as required for those tests to be performed); and

- (ix) immediately notify the Customer in writing, and give the Customer full details, about any actual or suspected accidental or unauthorised access to or data breach involving, or temporary or permanent loss of access to, any Customer Content (a **Data Security Incident**) and co-operate with the Customer in any investigation or audit in respect of the Data Security Incident. the Supplier must not make any notifications or announcements in respect of a Data Security Incident unless it is required to do so by law and it has first given the Customer a reasonable opportunity to make the announcement or notification and taken account of the Customer's reasonable requests in respect of the form and content of the announcement or notification.
- (c) As used herein, "Virus" means any virus, 'trojan horse', worm, logic bomb, back door malware or similar item whose purpose or possible function is to disable a computer or network or adversely affect its performance and any other thing or device which may impair or otherwise adversely affect the operation of any computer or network, prevent or hinder access to any program or data, impair the operation of any program or the reliability of any data (whether by re-arranging within the computer or any storage medium or device, altering or erasing, the program or data in whole or part or otherwise).

## 17. ACCEPTANCE TESTS

### 17.1 The Supplier to perform its own testing

Prior to making any Services or Deliverables available to the Customer, the Supplier must thoroughly test the Services and Deliverables.

### 17.2 Conducting acceptance testing

- (a) Customer may conduct acceptance testing of any Tested Item to identify any Defects in the Tested Item or its configuration. If requested by Customer, the Supplier must assist in the conduct of acceptance tests and may charge Service Charges. Acceptance testing may be in any reasonable form Customer determines appropriate. The Customer may require any new version of or modification or update to a previously Accepted Tested Item to be resubmitted for acceptance testing.
- (b) If, following acceptance testing, Customer is satisfied that the relevant Tested Item does not contain any Defects, then Customer will notify the Supplier and that notified Tested Item will be **Accepted**.
- (c) If Customer (acting reasonably) does not accept the Tested Item, the Customer may, at its sole option and without prejudice to any other remedy or right available to it:
  - (i) reject the Tested Item in whole or in part;
  - (ii) require the Supplier to resupply, repair or replace the Tested Item at the Supplier's expense;

- (iii) accept the Tested Item subject to the Supplier agreeing to fix any Defect in the Tested Item within a time agreed by the parties.
- (d) If Customer exercises its right under clause 17.2(c)(ii) or 17.2(c)(iii), Customer may require the resupplied, repaired or replaced Tested Item to be resubmitted for acceptance testing, in which case clauses 17.2(a) to 17.2(c) will apply to those retested Tested Item.

## **18. BUSINESS CONTINUITY POLICY**

### **18.1 The Supplier's Business Continuity Policy**

The Supplier will provide a standard business continuity policy (**Business Continuity Policy**) to the Customer within 14 days of the Commencement Date.

### **18.2 Update and testing of the Supplier's Business Continuity Policy**

The Supplier must:

- (a) keep the Business Continuity Policy up-to-date (including where the Services change);
- (b) test the Business Continuity Policy promptly after its completion and at least once every six months during the Term, liaising and co-operating with the Customer over the extent and timing of those tests; and
- (c) the parties will agree a Statement of Work the testing set out in clause (b) above if requested by the Customer.

### **18.3 Disaster Recovery Event**

On the occurrence of a Disaster Recovery Event, the Supplier must immediately implement the Business Continuity Policy. the Supplier must continue to provide the Services in accordance with this Agreement (including to meet the relevant Service Levels) unless otherwise specified or allowed for in the Business Continuity Policy.

## **19. CONFIDENTIALITY**

### **19.1 Confidential Information not to be disclosed**

- (a) Subject to clause 19.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

### **19.2 Written undertakings**

- (a) A party may at any time require the other party to arrange for any other third party (other than where clause 19.3 applies) to give a written undertaking in the form of a deed reasonably acceptable to the other party and relating to the use and non-disclosure of the other party's Confidential Information.

- (b) If the other party receives a request under clause 19.2(a), it must promptly arrange for all such undertakings to be given.

### **19.3 Exceptions to obligations**

The obligations on the parties under this clause 19 will not be taken to have been breached to the extent that Confidential Information is:

- (a) disclosed by a party to its financial or legal advisors or to its employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) disclosed to a party's internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
- (c) authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed; or
- (d) in the public domain otherwise than due to a breach of this clause 19.

### **19.4 Obligations on disclosure**

Where a party discloses Confidential Information to another person pursuant to clauses 19.3(a) or 19.3(b), the disclosing party must:

- (a) notify the receiving person that the information is Confidential Information; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential.

### **19.5 Period of confidentiality**

The obligations under this clause 19 continue, notwithstanding the expiry or termination of this Agreement.

## **20. SUSTAINABLE SUPPLY CHAIN MANAGEMENT**

The Supplier warrants, represents and undertakes that:

- (a) the Supplier will:
  - (i) comply with all such laws and policies in relation to the Modern Slavery Act to the extent applicable to the Supplier;
  - (ii) implement processes to:
    - (A) review the risks of Modern Slavery practices in the Supplier's operations and supply chains; and
    - (B) intended to ensure the Supplier conducts its business in alignment with the principles and objectives of the Modern Slavery Act; and
  - (iii) notify the Customer upon becoming aware of any actual or suspected Modern Slavery in a supply chain which has a connection with this Agreement;



- (b) on the Customer's reasonable request, the Supplier will:
  - (i) confirm in writing that it has complied with its undertakings in this clause and provide any information reasonably requested by the Customer to evidence such compliance; and
  - (ii) complete periodical questionnaires or provide information relating to the sources of our products, materials and business practices as reasonably required from time to time;
- (c) as at the date of this Agreement neither the Supplier nor, to its actual knowledge, any Associated Person has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery.
- (d) For the purposes of this clause:
  - (i) "Modern Slavery" has the meaning given to that term in the Modern Slavery Act;
  - (ii) "Associated Person" means in relation to a party, any employees, officers, representatives, agents, contractors, sub-contractors or consultants or subsidiary undertakings which perform services for or on behalf of and/or supplies goods to that party.

## **21. UNFORESEEN EVENTS**

### **21.1 Occurrence of unforeseen event**

A party (**Affected Party**) is excused from performing its obligations under this Agreement to the extent it is prevented by unforeseeable circumstances beyond its reasonable control (other than lack of funds for any reason), including but not limited to acts of God, natural disasters, acts of war, riots and any strike, lockout and labour disputes. This clause does not limit the Supplier's obligations to comply with clause 18. The Customer is not required to pay for any Services that are not performed as a result of the circumstances described in this clause 21.1.

### **21.2 Notice of unforeseen event**

When the circumstances described in clause 21.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement and (without limiting clause 18) must provide the other party with a plan detailing how the Affected Party will minimise the impact of the event, and the workarounds the affected party has implemented and will implement to continue to perform the Agreement (and the Affected Party must comply with that plan for so long as it is affected by the event).

### **21.3 Termination for unforeseen event**

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 21.1 continues for a period of more than 30 consecutive days, the other party may terminate the Agreement immediately by giving the Affected Party written notice.

## **21.4 Consequences of termination**

If this Agreement is terminated under clause 21.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Supplier is the Affected Party, it will be entitled to payment for Services Accepted or work performed prior to the date of intervention of the circumstances described in clause 21.1.

## **22. DISPUTE RESOLUTION**

### **22.1 No arbitration or court proceedings**

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 22 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a Party has sought or obtained any urgent interlocutory relief that party must follow this clause 22.

### **22.2 Notification**

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

### **22.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 22.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

### **22.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 22.3, the President for the time being of the New Zealand Law Society or equivalent body will appoint a mediator.

### **22.5 Role of mediator and obligations of parties**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the parties agree in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 22.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

### **22.6 Confidentiality**

Any information or documents disclosed by a party under clause 22:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

## 22.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 22. The parties to the Dispute must equally pay the costs of any mediator.

## 22.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 22.1 to 22.5. Clauses 22.6 and 22.7 survive termination of the dispute resolution process.

## 22.9 Breach of this clause

If a party to a Dispute breaches clauses 22.1 to 22.8, the other party does not have to comply with those clauses in relation to the Dispute.

## 23. TERMINATION

### 23.1 Termination for default

- (a) Without limiting any other rights or remedies each party may have against the other arising out of or in connection with this Agreement, a party may terminate this Agreement (**Party A**) effective immediately by giving notice to the other party (**Party B**) if:
  - (i) Party B breaches a material provision of this Agreement where that breach is not capable of remedy;
  - (ii) Party B breaches any provision of this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
  - (iii) an event specified in clause 23.1(c) happens to Party B, except for the event specified in clause 23.1(c)(i); or
  - (iv) Party A has an express right to terminate specified elsewhere in this Agreement.
- (b) The Customer may terminate this Agreement immediately by written notice if the Supplier:
  - (i) suffers a Probity Event; or
  - (ii) notifies or indicates to the Customer that it will cease support of the Software Subscription Services.
- (c) Each party (**Party A**) must notify the other party (**Party B**) immediately if:
  - (i) Party A being a company, there is any change in the direct or indirect beneficial ownership or control of Party A;
  - (ii) Party A disposes of the whole or any material part of its assets, operations or business other than in the ordinary course of business;
  - (iii) Party A ceases to carry on business;
  - (iv) Party A ceases to be able to pay its debts as they become due;

- (v) Party A being a company enters into liquidation, becomes subject to any compromise or arrangement with its creditors or becomes subject to any form of insolvency administration in accordance with the Companies Act, as applicable to Party A;
  - (vi) Party A being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
  - (vii) where Party A is a partnership, any step is taken to dissolve that partnership.
- (d) Where the event specified in clause 23.1(c)(i) occurs to the Customer, the Supplier may terminate this Agreement by written notice made within 10 days of receiving notice from the Customer if, in its reasonable opinion, the change in the direct or indirect beneficial ownership or control of the Customer will adversely affect the Customer's ability to fulfil its obligations under this Agreement. Termination by the Supplier under this clause will be effective 30 days after the notice is issued.

## **23.2 After termination**

- (a) On termination of this Agreement the Supplier must:
- (i) stop work on the Services (other than any Transition Out Services the Supplier is required to provide);
  - (ii) deal with Customer Material as reasonably directed by the Customer;
  - (iii) return all the Customer's Confidential Information to the Customer;
  - (iv) provide the Customer data in an industry standard format (the Supplier may charge consultancy fees if data conversion is required); and
  - (v) perform the Transition Out Services requested by the Customer.
- (b) On termination of this Agreement the Customer must:
- (i) cease using the Software Subscription Service and Deliverables;
  - (ii) return all the Materials to the Supplier.
- (c) Termination of this Agreement does not operate to terminate any of the continuing obligations under this Agreement and they will remain in full force and effect and binding on the party concerned.

## **23.3 Termination does not affect accrued rights**

Termination of this Agreement does not affect any accrued rights or remedies of a party.

## **24. TRANSITION OUT SERVICES**

### **24.1 Transition Out**

- (a) The Customer may request the Supplier to prepare a transition out plan for the orderly transition of all or any part of the Services.

- (b) On termination of this Agreement, any Statement of Work or any Services, if requested by the Customer, the Supplier must:
  - (i) perform any reasonable services set out in the Transition Out Plan the Customer requests the Supplier to perform and any other services required to ensure the seamless transition from the relevant Services to goods or services of a similar nature delivered by the Customer itself or another person, including by assisting the Customer's Personnel and any incoming contractor; and
  - (ii) continue to provide the Services the Customer requests the Supplier to provide in accordance with this Agreement until expiration of any transition out period specified in the Transition Out Plan, or if no period is specified, until the earlier of six months and such time as the Customer advises the Supplier that it is no longer required to do so,(collectively, the "**Transition Out Services**").

## **24.2 Payment**

In consideration for the provision of the Transition Out Services, the Customer will pay the Supplier the fees set out in the Transition Out Plan, or if there is no Transition Out Plan or the Transition Out Plan does not set out the fees for the Transition Out Services, the Service Charges for the Services provided at the Business Hours Rates.

## **25. AUDIT**

The Supplier may at its own cost and no more than once per year audit the Customer's use of the Software Subscription Service by giving the Customer at least 10 days' notice. The Customer must provide reasonable assistance and information in relation to any audit. The Supplier must ensure that any audit is conducted in such a way so as to minimise any disruption to the Customer's operations. The Supplier will not require access to the Customer's premises or systems (other than the Services) as part of an audit.

## **26. GENERAL**

### **26.1 Service of notices**

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or email to the recipient's address for Notices as varied by any Notice given by the recipient to the sender.

### **26.2 Effective on receipt**

A Notice given in accordance with clause 26.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted

from a country other than the country in which the intended recipient is located);

- (c) if sent by email, when the sender's email generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

### **26.3 Approvals and consents**

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

### **26.4 Amazon Web Services Notice**

The Customer acknowledges and agrees that, in the course of providing the Customer with the Services, the Supplier may use third party web services from Amazon Web Services (AWS) and that, in doing so, the Supplier may receive credits from AWS in connection with the Services provided.

### **26.5 Assignment and novation**

The Supplier may assign this Agreement to a related company of the Supplier or to any purchaser of all or any part of the business of the Supplier. Except as provided in this clause no party may assign its rights or novate its rights and obligations under this Agreement except with the prior written consent of the other party.

### **26.6 Survival**

Clauses and any other clauses which, by their nature, survive termination or expiry, shall survive the termination of this Agreement.

### **26.7 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

### **26.8 Counterparts**

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

### **26.9 No merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **26.10 Entire agreement**

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

### 26.11 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

### 26.12 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

### 26.13 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

### 26.14 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

### 26.15 Governing law and jurisdiction

This Agreement is governed by the laws of the Territory, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Territory.

## 27. DEFINITIONS AND INTERPRETATION

### 27.1 Definitions

Capitalised terms in this agreement have the meaning given below or as otherwise defined in the Order Form.

**Acceptable Use Policy** means the acceptable use policy.

**Accepted** in respect of a Tested Item means it has been accepted in accordance with clause 17.2(b).

**After-Hours Rates** means the hourly rates chargeable for Services that are to be charged on time and materials rates and which are performed outside Business Hours, as set out in an applicable Statement of Work.

**Agreement** means this agreement between the Customer and Supplier, as amended from time to time and includes its schedules and any attachments.

**Amazon's Web Services' Sydney Availability Zone A** group of Datacentres owned by Amazon Web Services within the geographic area of Australia.

**Authorised Users** means the Customer's employees, and any other officer, agent, professional adviser, or nominated individual of the Customer, who has Login Credentials created by the Customer in accordance with clause 3.3(c).

**Auxiliary Material** means any Material, other than Contract Material, which is made available by a party for the purpose of this Agreement, on or following the Commencement Date, and includes:

- (a) Third Party Material;
- (b) error corrections or translations to that Material; or
- (c) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.

**Available** means the Software Subscription Service is available for access by the Customer and its Authorised Users over the internet and Availability has a corresponding meaning.

**Business Continuity Policy** means the policy provided by the Supplier to the Customer as amended by from time to time.

**Business Day** means a day other than a Saturday, Sunday or public holiday in the Territory.

**Business Hours** means from 8:00am to 5:00pm on a Business Day in the Territory.

**Business Hours Rates** means the hourly rates chargeable for Services that are to be charged on time and materials rates which are performed during Business Hours, as specified in the Order Form.

**Cash Rate** means depending on the Territory, either the cash rate published by the Reserve Bank of New Zealand or Reserve Bank of Australia.

**Commencement Date** means the date on which this Agreement commences, as specified in item [6] of the Order Form.

**Companies Act** means depending on the Territory, either the *Companies Act 1993* (NZ) or the *Corporations Act 2001* (Cth).

**Confidential Information** means information that is by its nature confidential but does not include information which is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligation, including the Customer Material.

**Consultancy Services** means the consultancy services to be provided by the Supplier, as specified in the relevant Statement of Work.

**Contract Material** means any Material created by the Supplier on or following the Commencement Date, for the purpose of or as a result of performing the Services.

**Customer** means the party specified in the Order Form.



**Customer's Environment** means the Customer's information technology environment (including networking infrastructure, hardware and software) whether owned by the Customer or provided by a third party.

**Customer Content** means data and other content uploaded to the Software Subscription Service by the Customer for the purposes of processing.

**Customer Material** means any Auxiliary Material provided to the Supplier by the Customer and includes Customer Content.

**Defect** means:

- (a) failure of the Software Subscription Services or any Tested Item to comply with any service descriptions, technical or functional requirements specified in this Agreement, including in any relevant Statement of Work;
- (b) failure of the Software Subscription Services or any Tested Item to comply with any service descriptions, technical or functional specifications provided or made available by the Supplier;
- (c) any part of the Software Subscription Services or any Tested Item that causes an error in the Customer's Environment, the Software Subscription Services or any Tested Item or otherwise causes a decrease in the performance of the Software Subscription Services, any Tested Item or the Customer's Environment;
- (d) any part of the Software Subscription Services or any Tested Item which causes the Software Subscription Services, any Tested Item or the Customer's Environment to do something it is not intended to do, or not do something it is intended to do;
- (e) failure of any Third Party Software integrations with the Software Subscription Services, except to the extent caused by a change in the Third Party Software; or
- (f) any other form of software bug, including the presence of Harmful Code.

**Deliverable** means any Material to be supplied by the Supplier as part of the Implementation and Migration Services or Consultancy Services, including any deliverables specified in the relevant Statement of Work.

**Disaster Recovery Event** means:

- (a) any event to described in clause 21 occurs where the Supplier is the Affected Party; and
- (b) any other event which impacts on the continuity of the Supplier's supply of the Services.

**Documentation** means any proposals, requests for tender or responses exchanged by the Parties prior to signing this Agreement.

**General Terms** means clauses 0 to 27 of the Agreement which set out the terms and conditions agreed by the parties.

**Go Live Date** means the date the Customer notifies the Supplier is the Go Live Date, which the parties anticipate being the date of deployment of the Software Subscription Services following Acceptance of the Software Subscription Services

and all Deliverables provided as part of the Implementation and Migration Services.

**GST** means goods and services tax within the meaning of the GST Act.

**GST Act** means either the *Goods and Services Tax Act 1985* (NZ) or the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Harmful Code** means any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of the Software.

**Implementation and Migration Services** means the implementation and migration services to be performed by the Supplier, as more fully described in the Statement of Work and in the Project Plan, including all user training.

**Initial Term** means the period of time from the Commencement Date.

**Intellectual Property Rights** means:

- (a) all present and future intellectual and industrial property rights throughout the world conferred by statute, common law or equity (whether or not such rights are registered or capable of being registered) in or in relation to:
  - (i) literary works, artistic works and any other works and subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the works and subject matter, subsist anywhere in the world;
  - (ii) trademarks, business and domain names,
  - (iii) inventions and designs, patents and inventions; and
  - (iv) rights to use and protect the confidentiality of any confidential information (including know-how, trade secrets, and technical data);
- (b) other results of intellectual activity in the industrial, commercial, scientific and fields any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all other proprietary rights or other rights of a similar nature to those referred to in paragraphs (a) and (b) resulting from intellectual activity in the industrial, commercial, scientific and artistic fields.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the Territory.

**Login Credentials** has the meaning given to it in clause 3.3(c).

**Losses** means liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).

**Material** means any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation

any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

**Modern Slavery Act** means depending on the Territory, either the *Modern Slavery Act 2018* (Cth) or the *Modern Slavery and Worker Exploitation Act 2026* (NZ).

**New Version** means any new version of the Software (or its constituent parts) which from time to time is publicly marketed and made available for purchase by the Supplier.

**Notice** means a notice, demand, consent, approval or communication issued under this Agreement.

**Order Form** means the order form signed by the parties setting out the products and services to be provided by the Supplier under this Agreement.

**Personnel** means in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Supplier, of a subcontractor.

**Privacy Act** means depending on the Territory, either the *Privacy Act 2020* (NZ) or the *Privacy Act 1988* (Cth).

**Privacy and Data Policy** means the policy made available by the Supplier to the Customer from time to time.

**Probity Event** means:

- (d) where any improper inducement, reward or benefit has been provided on behalf of the Supplier to any of the Customer's staff, suppliers or representatives to influence their actions in relation to the Supplier or this Agreement; or
- (e) where the Supplier commits any offence relating to fraud or dishonest acts, or where the Territory is New Zealand breaches the *Commerce Act 1986* (NZ) in relation to this Agreement, or the Supplier defrauds, or attempts or conspires to defraud, the Customer,

and includes any of these things done for or on behalf of the Supplier or anyone it is responsible for, including subcontractors.

**Problem** means a fault, failure or difficulty with the Software Subscription Service including any Defect.

**Project Plan** means the document prepared by the Supplier under a Statement of Work which sets out all the steps necessary to make the Software Subscription Services ready and available for the Customer's use in accordance with this Agreement.

**Renewal Date** means the date at which the Term is automatically extended in accordance with clause 2.2 the first of which will be the date one day following the expiry of the Initial Term, and subsequently, every annual anniversary of this date.

**Resolve** (including **Resolved**, **Resolution** and correlative capitalised terms) means that, as to any Problem, the Supplier has provided the Customer the

corresponding Defect correction such that the Problem no longer exists in respect of the affected Service and the Customer has confirmed such correction and its acceptance.

**Security Policy** means the policy provided by the Supplier as amended by from time to time.

**Service Charges** means:

- (a) the Subscription Fees;
- (b) the Implementation and Migration Services Fee;
- (c) Support Fees;
- (d) Approved Expenses; and
- (e) any other charges specified in an agreed Statement of Work.

**Services** means the services to be provided by the Supplier as specified in the Order Form, and includes the Software Subscription Service, the Support Services, the Implementation and Migration Services and any Consultancy Services, and includes all services falling within any general specification or services description under this Agreement that the Supplier would reasonably be expected to perform, whether or not further particularised, except to the extent any services are expressly provided as out-of-scope in this Agreement.

**Software** means the Supplier's enterprise software delivered 'as a service' via cloud infrastructure which comprises the modules in section 2 of the Order Form.

**Software Subscription Service** means the Software Subscription service to be provided by the Supplier under this Agreement, as specified in the Order Form.

**Statement of Work** means, in respect of any Consultancy Services engagement, the details of the Consultancy Services and the Deliverables to be provided.

**Support Services** means the support services to be provided by the Supplier under this Agreement, as set out in the Support Services and SLA Description.

**Technical Specifications** means the specifications for the Customer's Environment set out in a Statement of Work.

**Term** means the Initial Term plus any extension in accordance with clause 2.2.

**Tested Item** means the Software, the Software Subscription Service, any Deliverable, or any part of any of them, that the Customer requires to be submitted for acceptance testing.

**Third Party Material** means Auxiliary Material in which a third party holds Intellectual Property Rights.

**Third Party Software** means software the Intellectual Property Rights in which are owned by a third party.

**Transition Out Plan** means the plan which is developed under clause 24.

**Transition Out Services** has the meaning given in clause 24.1(b).

## 27.2 Interpretation

The following rules apply in interpreting this Agreement except where the context makes it clear that the rule is not intended to apply.

- (a) The singular includes the plural and vice versa and words of one gender include the other genders.
- (b) Where a word or phrase is defined, its other grammatical form has a corresponding meaning.
- (c) The headings to clauses or schedules are for ease of reference only and do not form part of this agreement or affect its interpretation.
- (d) 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.
- (e) Words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and other entities or groups recognised by law.
- (f) A reference to any legislation (including subordinate legislation) includes that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it.
- (g) A reference to any agreement or document is to that agreement or document (and where applicable, any of its provisions) as varied, amended, novated, supplemented or replaced from time to time except to the extent excluded or modified by this Agreement.
- (h) A reference to include or including means includes, without limitation or including without limitation, respectively.
- (i) If a day appointed or specified by this Agreement for the payment of any money or the doing of any act falls on a day which is not a Business Day, the day appointed or specified will be the next Business Day. This does not apply in respect of any maintenance or support services that are specified as requiring to be performed outside Business Hours.
- (j) A reference to dollars or \$ is to the relevant currency (AUD or NZD) of the Territory.
- (k) An obligation under this Agreement to do or not to do anything includes a further obligation not to permit or allow a breach of that obligation by any other person.
- (l) To the extent permitted by law all covenants and conditions prescribed or implied by law are excluded or modified when inconsistent with the terms of this Agreement.
- (m) A reference to clauses, schedules and annexures are references to clauses, schedules and annexures of this Agreement.

## ACCEPTABLE USE POLICY

This Acceptable Use Policy (**AUP**) governs your access to and use of the software-as-a-service offering and related websites, APIs, and support channels (collectively, the **Service**). This AUP is incorporated into, and forms part of, the agreement between (**Supplier, we, us**) and the customer entity accepting these terms (**Customer, you**). Capitalised terms not defined here have the meanings given in the agreement.

### 1. Scope and Responsibility

1.1 Who must comply. The Customer is responsible for ensuring compliance with this AUP by all users who access the Service under Customer's account, including employees, contractors, and authorised end users (**Users**).

1.2 Your systems. The Customer is responsible for obtaining and maintaining any equipment, devices, software, and connectivity needed to access the Service.

1.3 Supplier systems. This AUP applies to all use of the Service, including any API usage, integrations, and features that enable communications or content sharing.

### 2. General Standard of Use

2.1 You must use the Service only in compliance with your agreement with us, all applicable laws, regulations, and third-party rights.

2.2 You must not use (or allow others to use) the Service in a way that:

- compromises or is likely to compromise the security, availability, or integrity of the Service;
- interferes with other customers' use of the Service;
- imposes an unreasonable or disproportionate load on our infrastructure; or
- exposes the Supplier or others to liability.

### 3. Prohibited Uses

Without limiting section 2 above, you must not do any of the following:

#### 3.1 Security and Access Violations

- Access or use the Service without authorisation, including attempting to bypass or defeat access controls, authentication, or usage limits.
- Probe, scan, or test the vulnerability of the Service or any related system or network.
- Sell, rent, lease, license, sublicense, time share or otherwise transfer the Software Subscription Service to, or permit the use of or access to the Software Subscription Service by, any third party other than its Authorised Users.
- Introduce malicious code (including viruses, worms, Trojan horses, spyware, ransomware) or conduct denial-of-service attacks.
- Interfere with, disrupt, or degrade the Service, including by excessive requests, automated scraping, or abusive API calls.

#### 3.2 Unlawful, Harmful, or Infringing Activity

- Use the Service for unlawful, fraudulent, deceptive, or harmful activities.
- Infringe, misappropriate, or otherwise violate any intellectual property, privacy, confidentiality, or other rights of any person.
- Remove any copyright or proprietary notice from the Software Subscription Service.
- Upload, transmit, store, or distribute content that is defamatory, harassing, threatening, discriminatory, or otherwise unlawful.

### 3.3 Reverse Engineering and Competitive Use

- Reverse engineer, decompile, disassemble, or otherwise attempt to derive source code, underlying ideas, algorithms, structure, or trade secrets of the Service, except to the limited extent such restrictions are prohibited by law.
- Use the Service to build or enhance a competing product or service, benchmark for publication without permission, or access the Service for competitive analysis (unless expressly permitted in writing).

### 3.4 Sharing, Resale, and Account Misuse

- Share credentials, allow unauthorised Users to access the Service, or circumvent licensing/seat limits.
- Resell, rent, lease, timeshare, or provide the Service as a managed service or service bureau, unless the agreement expressly allows it.
- Use the Service to host, transmit, or store content for third parties in a way that makes the Customer a provider of the Service to those third parties (unless permitted).

## 4. Usage Limits, Fair Use, and Technical Controls

4.1 Limits. The Service may be subject to usage limits (e.g., rate limits, storage caps, concurrency, API call thresholds), whether described in the agreement, order form, documentation, or communicated by us.

4.2 Protective measures. We may throttle, sandbox, suspend, or restrict traffic, integrations, IP addresses, or accounts to mitigate security, operational risk, or suspected misuse.

## 5. Integrations and Third-Party Services

5.1 The Service may interoperate with third-party services or enable the Customer to connect integrations. The Customer is responsible for:

- complying with third-party terms; and
- configuring integrations securely (including permission scopes, tokens, and access keys).

5.2 The Supplier is not responsible for third-party systems, outages, or data handling by third parties except as set out in the agreement.

## 6. Monitoring, Investigation, and Cooperation

6.1 Monitoring. To operate, secure, and support the Service, we may monitor usage and performance, investigate suspected misuse, and analyse telemetry and logs.

6.2 Investigation. We may investigate suspected violations of this AUP or the agreement, including by reviewing relevant account activity and Customer Content to the extent reasonably necessary.

6.3 Cooperation. The Customer will provide reasonable cooperation and information to assist with investigations and remediation, including promptly rotating compromised credentials and disabling affected integrations.

## 7. Enforcement

7.1 Remedies. A breach of this AUP will be a breach of your agreement with us. In addition to any remedies for breach in the agreement, if we reasonably believe there is a violation of this AUP, we may, in our discretion and without liability:

- issue a warning and require remediation within a specified timeframe;
- suspend or restrict access to the Service (including specific features, Users, IP ranges, or integrations);
- throttle usage or apply additional technical controls;
- remove or disable access to non-compliant Customer Content; and/or
- terminate the agreement in accordance with its terms (including for material breach).

7.2 No obligation to act. We are not required to monitor for violations or to take any particular enforcement action.

7.3 Emergency action. We may take immediate action (including suspension) where we believe it is necessary to protect the Service, other customers, users, or the public, or to comply with law or lawful requests.

## **9. Reporting Security Issues and Abuse**

9.1 Report promptly. The Customer must promptly notify us of any suspected unauthorised access, security incident, or misuse involving Customer accounts or the Service.

9.2 Contact. Reports should be logged via <https://support.magiqsoftware.com/>

9.3 Mitigation. Customer will promptly take reasonable steps requested by us to mitigate harm (e.g., disable compromised credentials, restrict IPs, update SSO policies).

## **10. Changes to This AUP**

10.1 We may update this AUP from time to time. If we make a material change, we will provide notice through the Service, our website, or to the account administrator.

10.2 Continued use of the Service after the effective date of an updated AUP constitutes acceptance of the updated AUP, subject to any change-control provisions in the agreement.