Software Licence Terms and Conditions

The Software is owned and operated by DevFU Pty Ltd ACN 137 933 825 (**Provider**). The terms contained in these Software Licence Terms and Conditions together with any enclosed Proposal (together the **Terms**) govern access to and use of the Software (as defined below) by you, the individual using the Software, and any legal entity on whose behalf you are acting (**Client**). These Terms will also apply to the supply of any Equipment (as defined below) by the Provider to the Client that is incidental to the use of the Software.

These Terms will become binding on the Client upon (a) the Client signing any Proposal attached to these terms either electronically or in physical form or otherwise accepting the Proposal that is attached; or (b) the Client clicking "I agree" (or a similar button) that is presented to the Client in relation to these Terms; or (c) the Client using or accessing the Software; or (d) the Client giving the Provider instructions to proceed; or (e) the Client making payment of any amount to the Provider under these Terms.

If a person is agreeing to these Terms on behalf of the Client, the person agreeing on behalf of the Client warrants that it is the Client's agent and has the irrevocable authority and agreement of the Client to be bound by these Terms.

The Provider may, at its sole discretion, vary or modify these Terms and any Services on giving 30 days' notice to the Client. The amended Terms and their date of effect will be published on the Provider's website (or provided to the Client). Any subsequent access to or use by the Client of the Software and the Services will constitute an acceptance of those changes. If the Client does not agree to these new terms, the Client must stop using the Software and the Services.

This document was last updated on 27th of April, 2021.

1. Definitions and Interpretations

1.1 Definitions

In these Terms unless inconsistent with the context or subject matter the following terms have the corresponding definitions:

(a) **Account:** an account enabling the Client and an Authorised User to access and use the Software.

(b) **ACL:** the Australian Consumer Law (as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth)).

(c) **Address for Service:** the email address for each party as set out in the Proposal, or such other address for service advised by the party to the other party in writing from time to time.

(d) **Applicable Laws:** any laws governing or affecting the arrangements contemplated by these Terms.

(e) **Authorised User**: such persons authorised to use the Software in accordance with the Proposal and these Terms.

(f) **Client Data**: all data, files, works and materials uploaded to or stored within the Software (or a connected database) by the Client (or Authorised Users), transmitted by the Software at the instigation of the Client (or Authorised Users), or supplied by the Client (or Authorised Users) to the Provider for transmission by or storage within the Software.

(g) **Commencement Date**: the date that these Terms become binding on the Client.

(h) **Confidential Information**: of a party means all information (in any form):

    (i) that concerns a party's business operations and which any reasonable person would consider to be of a confidential nature (such as trade secrets, methods, strategies, client lists, pricing, and other business processes), including:

        A. the Client Data (this is the Client's Confidential Information);

        B. the information regarding the Services and the Software including (the operation and structure of the Software, the Software and Materials, information or data, source codes and other information technology relating to the Software and Materials, pricing, quotes, proposals, training materials and technical information, including trade secrets, drawings, plans, encryptions, codes and product descriptions and information relating to or connected with the Software and Materials) (this is the Provider's Confidential Information); and

    (ii) includes these Terms (as far as they are not publicly available),

but does not include information that becomes publicly available without breach of these Terms.

(i) **Corporations Act:** the *Corporations Act 2001* (Cth).

(j) **End User Licence Agreement**: the End User Licence Agreement which applies to all Authorised Users of the Software as published on the Provider's website or otherwise provided by the Provider to the Client and amended from time to time.

(k) **Equipment**: any equipment used or supplied by the Provider in the provision of the Services and includes such hardware specified in the Proposal.

(l) **Fee**: any fees payable by the Client to the Provider to use the Services in accordance with clause 5., including the Licence Fee and any other fees set out in the Proposal or otherwise payable by the Client to the Provider under these Terms.

(m) **Force Majeure Event**: events, circumstances or causes beyond a party's reasonable control including (but not limited to):

    (i) strikes, lock-outs or other industrial action;

    (ii) civil commotion, riot, invasion, cyber-attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

    (iii) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic (including COVID-19), health emergencies, disease, or other natural disaster;

    (iv) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

    (v) interruption or failure of utility services (including the inability to use public or private telecommunications networks);

    (vi) interruption of networks or third party services (including telecommunication or web services); and

    (vii) the acts, decrees, legislation, regulations or restrictions of any Government Agency,

however does not include a lack of funds.

(n) **Further Term**: has the meaning provided for that term in clause 3.(b).

(o) **Government Agency:** any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

(p) **GST Law:** has the same meaning as GST Law in the A New Tax System (Goods & Services Tax) Act 1999 (Cth).

(q) **Insolvency Event**:

    (i) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;

    (ii) a liquidator or provisional liquidator is appointed in respect of a person;

    (iii) any application (that is not withdrawn or dismissed within seven days is made to a court for an order, or an order is made, or a meeting is convened or a resolution is passed, for the purpose of (i) appointing a person referred to in paragraph (i) or (ii) of this definition; (ii) winding up or deregistering a person; or (iii) proposing or implementing a scheme of arrangement of a person, other than with the prior approval of the Agent under a scheme of arrangement pursuant to Part 5.1 of the Corporations Act;

    (iv) any action, proceedings, procedure or step is taken for the purpose of implementing or agreeing (i) a moratorium of any indebtedness of a person; (ii) any other composition, compromise, assignment or arrangement with any creditor or creditors of a person; or (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of its creditors or a trustee;

    (v) any event occurs in relation to a person in any jurisdiction that is analogous, or has a substantially similar effect, to those set out in paragraphs (i) to (iv) of this definition (inclusive); or

    (vi) a person is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

(r) **Intellectual Property Rights**: all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

(s) **Licence**: means the licence to use the Software granted by the Provider to the Client in accordance with clause 3.(a).

(t) **Licence Fee:** the licence fees payable by the Client for the Licence as specified in the Proposal.

(u) **Loss**: any loss, liability, cost (including legal costs on a solicitor and own client basis), charge, expense, tax or damage of any nature whatsoever, including lost profits, loss of goodwill, loss of business, loss of production and any other special, incidental, exemplary, compensatory or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).

(v) **Materials**: all materials, documentation and information (whether reduced to written form or otherwise) provided to the Client by the Provider at any time.

(w)   **Minimum Term:** one year, unless otherwise stated in the Proposal.

(x)   **Personnel:** the directors, officers, employees, contractors, suppliers, Authorised Users, advisers or agents of a party.

(y)   **Proposal:** means the written proposal in respect of the Services provided by the Provider to the Client.

(z)   **Policy**: means any policy of the Provider in place from time to time.

(aa)   **PPSA**: means the Personal Property Securities Act 2009 (Cth) and its regulations as amended and in force from time to time.

(bb)   **PPS Register**: means the Personal Property Securities Register established under the PPSA.

(cc)   **Privacy Legislation:** means the Privacy Act 1988 (Cth), including Australian Privacy Principles, and the guidance and codes of practice issued by the Office of the Australian Information Commissioner from time to time.

(dd)   **Privacy Policy**: means the privacy policy of the Provider as made available on the Provider's website.

(ee)   **Related Entity:** has the meaning given in section 9 of the Corporations Act.

(ff)   **Proposal**: means the Proposal as attached to these Software Licence Terms and Conditions.

(gg)   **Services**: means any services that the Provider provides to the Client, including without limitation the Software and supply of Equipment.

(hh)   **Service Level Agreement**: the Service Level Agreement for the Software (if any) as provided by the Provider the Client and amended from time to time.

(ii)   **Software**: means the proprietary software owned or licenced by the Provider as specified in the Proposal.

(jj)   **State:** New South Wales.

(kk)   **System:** means the Client's system and IT infrastructure that will host the Software.

(ll)   **Term**: means the term of these Terms, commencing on the Commencement Date and ending on the date that they are terminated in accordance with these Terms, including the Minimum Term and each Further Term.

(mm)   **Terms:** this Software Licence Terms and Conditions and the Proposal and any amendments to these Terms from time to time.

1.2   Interpretation

In these Terms the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

(a)   Headings and subheadings are for convenience only and do not affect the interpretation of these Terms.

(b)   References to clauses, schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the schedules, annexures, appendices, attachments and exhibits to, these Terms.

(c)   References to parties are references to the parties to these Terms.

(d)   References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.

(e)   Words denoting the singular include the plural and words denoting the plural include the singular.

(f)   Words denoting any gender include all genders.

(g) The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency.

(h) A reference to a body (other than a party to these Terms), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.

(i) A reference to any agreement or document (including these Terms) includes any amendments to or replacements of that document.

(j) A reference to a law includes:

   (i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;

   (ii) any constitutional provision, treaty or decree;

   (iii) any judgment;

   (iv) any rule or principle of common law or equity,

   and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts.

(k) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.

(l) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.

(m) No provision of these Terms will be construed adversely to a party because that party was responsible for the preparation of that provision or these Terms.

(n) If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.

(o) A reference to time is a reference to time in the capital city of the State.

(p) A reference to a day is a reference to a day in the capital city of the State.

(q) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

(r) If any act is required to be performed under these Terms by a party on or by a specified day and the act is performed after 5.00 pm on that day, the act is deemed to be performed on the next day.

(s) If any act is required to be performed under these Terms on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.

(t) A reference to an amount of dollars, Australian dollars, $ or A$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.

(u) Specifying anything in these Terms after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.

(v) Where these Terms is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.

(w)   These Terms includes all schedules, annexures, appendices, attachments and exhibits to it.

(x)   A reference to writing or written includes email.

(y)   Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.   Proposals

2.1   Unless otherwise agreed, all Proposals provided are valid for 30 days. Proposals will not be binding on the Provider until the Provider expressly acknowledges acceptance. Any order placed by the Client for Services based on a Proposal will be an offer by the Client to purchase the Services in accordance with these Terms. The Provider reserves the right to update and/or amend any details set out in the Proposal on providing the Client with written notice.

2.2   Once a Proposal has been accepted by the Client, the Client will be committed to purchase the Services and cannot cancel unless otherwise permitted under these Terms.

2.3   The Client acknowledges and agrees that the supply of Services under any accepted Proposal remains subject to availability and if, for any reason the Provider is unable to proceed with the supply of the Services, then the Provider reserves the right to cancel the Proposal (in which case the Provider will refund all amounts paid under the Proposal in respect of Services that were not delivered). This is the Client's sole remedy in these circumstances.

2.4   In the event of any inconsistency between these Software Licence Terms and Conditions and the Proposal, the terms contained in the Proposal will prevail to the extent of such inconsistency.

3.   Licence

3.1   Term of Licence

(a)   These Terms shall commence on the Commencement Date and continue for the Term.

(b)   Unless otherwise agreed by the parties, either party must provide at least 30 days' written notice to the other party prior to the end of the Minimum Term of their intention to terminate these Terms. If neither party provides this notification, then the parties will be deemed to have agreed to continue these Terms on a year-to-year basis, during which time these Terms will continue to roll over for successive periods of one year (each a **Further Term**) unless either party gives written notice of termination to the other party at least 30 days before the end of the current Further Term then in effect, in which case these Terms will terminate at the end of the then current Further Term.

3.2   Grant of Licence

(a)   In consideration of the Fees paid by the Client to the Provider in accordance with clause 5., the Provider grants the Client a non-exclusive, non-transferable, non-assignable, non-sublicencable revocable Licence to use the Software during the Term, in accordance with these Terms.

(b)   Unless otherwise specified in the Proposal, the Licence granted provides the Client with access to install and use the Software on one instance for its Authorised Users only and is subject to any restrictions and limitations as stated in the Proposal. One instance refers to use by one department of the Client only. For purposes of this clause, use of the Software will be restricted to use in the provided form for the purpose of processing the Client's data for the normal business purposes of the Client. The Client is able to make back-ups of the Software, however only one instance of the Software may be used.

At the discretion of the Provider additional instances may be setup for testing purposes or where requested by the Client. Additional instances for testing purposes are limited in accordance with clause 3.4. Unless otherwise agreed, the Provider will facilitate the install of the Software on the Client's Systems in accordance with the Proposal.

(c) In the event that the Client requires the Software for additional instances, the Client must contact the Provider and request those additional instances and pay to the Provider the additional Fees as specified by the Provider prior to the Provider setting up the Software for the additional instances. The Provider is under no obligation to provide or permit additional instances.

(d) The Client acknowledges and agrees that the Provider has the right to audit the Client's use of the Software. In the event that an audit reveals that the Client has exceeded any Licence limitations specified in the Proposal or these Terms, the Client must pay to the Provider the additional fees the Provider would have otherwise charged the Client had the Provider known the Licence limitations were exceeded.

(e) All Authorised Users of the Software must agree to and will be bound by the End User Licence Agreement, and the Client is solely responsible for ensuring that they do so, and is solely responsible for all actions and omissions of all Authorised Users (and any other person that uses the Client's access). In the event the Client, or any Authorised Users do not agree to the End User Licence Agreement, they must not use the Software.

(f) The Client is solely responsible for ensuring its Authorised Users comply with the provisions of these Terms, and a breach by any of the Authorised Users of these Terms, will be deemed to be a breach by the Client. Any licence granted to Authorised Users is solely while they are an employee of the Client (or authorised by the Provider). Upon their cessation, their licence to access the Platform immediately ceases and the Client is responsible for terminating their access.

(g) The Client is strictly prohibited from granting access to the Software including any database to any other person (apart from Authorised Users) and must ensure that no competitor of the Provider gains access to or use of the Software including any database. If a third party requests access to a database, the Client must first request approval of the Provider by giving written notice to the Provider outlining the details of the third party and a suitable mechanism that maintains the database. The Provider may grant such approval at its discretion and on any terms it sees fit. The Client is solely responsible for any actions of such third party.

3.3   Access restrictions

(a) Except to the extent expressly permitted in these Terms, the Licence granted by the Provider to the Client under clause (d) is subject to the following prohibitions:

    (i)   the Client must not sublicence, assign or novate the benefit or burden of this Licence in whole or in part to any third party (except that it is permitted to sub-license its right to access and use the Software to Authorised Users in accordance with these Terms);

    (ii)   the Client must only use the Software as it is intended;

    (iii)   the Client must not directly or indirectly copy, reproduce, share, republish, frame, download, transmit, distribute, sell, reverse engineer, decompile, translate, alter, modify, disassemble or otherwise attempt to discover the source code, object code, underlying structure or database schema, ideas, know-how or algorithms relevant to the

Software or any software, documentation or data related to the Services (except to the extent expressly permitted by Provider for backups or authorised within the Software);

(iv) the Client must not create derivative works based on the Software (except to the extent expressly permitted by Provider or authorised within the Software); and

(v) the Client must not make any alteration to the Software.

(b) The Client acknowledges that the Licence granted does not grant the Client any right to discover, or request information relating to the operation, structure or underlying source and object code of the Software. Such information is confidential to the Provider, and the Client is strictly prohibited from accessing or attempting to access such information.

(c) Any act or omission by any of the Client's Personnel will be deemed to be an act or omission of the Client for the purposes of these Terms.

3.4 Limited licence for training

(a) The Provider may grant additional instances to the Client for training purposes. The Client must:

(i) not use such instances on an ongoing basis other than strictly for training purposes; and

(ii) not use such instances in an operational environment and for any unauthorised purpose.

(b) The Client acknowledges that such instances:

(i) will be used for testing and verification of upgrades and new features, and may not be available for client training unless organised prior with the Provider; and

(ii) are not covered by any support services, including the Support Level Agreement.

4. Account

4.1 In order to use the Software, the Client and each Authorised User will be required to have their own Account (either by creating on the Software or using the Single Sign-On feature (or similar feature) to link your credentials to an Account which will be assigned permissions). In using the Account, the Client:

(a) must not use false or misleading information and must update their details should they have changed from the last time they used the Software;

(b) must follow any password policies specified by the Provider;

(c) is responsible for the security of its username and password and the Provider will assume that anyone using the Client's (and each Authorised User's) Account is authorised to do so by the Client and the Client is responsible for their actions. Under no circumstances will unauthorised access and use of the Client's Account reduce the Client's liability to the Provider;

(d) must notify the Provider immediately if it becomes aware of any unauthorised use of its Account or other security breach; and

(e) must ensure that each Authorised User complies with the above obligations.

5. Fees

5.1 Licence Fees

(a) The Client must pay the Provider the Licence Fee and any other Fees as specified in the Proposal during the Term in order to be granted the Licence in accordance with these Terms.

(b) Payment of the Licence Fee is due in accordance with the payment terms set out in the Proposal. Where no payment terms are set out then payment of the Licence Fee is payable by the Client annually in advance throughout the Term, with the first payment to be made as follows:

(i) 50% of the Licence Fee for the first year is due upfront on or before the Commencement Date; and

(ii) the balance of the Licence Fee for the first year is due on installation of the Software on the Client's systems,

and each subsequent payment to be made on or before the commencement of each Further Term.

(c) Payment of all other Fees are due at the time specified in the Proposal, or if no time is specified then within 5 Business Days of a request for payment by the Provider.

5.2 Payment method

(a) Payment of the Fees is to be made via bank transfer, credit card or direct debit, unless the Provider permits the Client to pay using another payment method.

(b) If the parties have agreed that the Fees will be paid via a direct debit arrangement, then the Client irrevocably authorises the Provider to debit the Fees during the term from the Client's nominated bank account/credit card/debit card ("**Debit Account**"), on or about the due date for payment without notice to the Client. The Client must ensure that the Debit Account details are up to date at all times and the Client must notify the Provider in the event that the details are no longer current, and provide replacement details. The Client also irrevocably authorises the Provider to deduct all other fees and charges payable by the Client to the Provider under these Terms from the Client's nominated Debit Account. The Client warrants that the Client is the owner or has the right to use any Debit Account details provided to the Provider. Default charges will apply in the event that the Client stops the authority to charge the Debit Account without acceptance by the Provider. Insufficient funds in the Debit Account will also attract a fee.

(c) The Provider will provide the Client with an invoice for all Fees payable by the Client.

5.3 Overdue Payments

(a) Where any part of the Fees or other monies payable by the Client under or in connection with these Terms are not paid by its due date, the Provider reserves the right to:

(i) suspend the Licence to the Software until the Provider receives payment of all overdue amounts (including interest) in cleared funds; and/or

(ii) charge the Client interest on the overdue amount at the rate of 12% per annum accruing daily and compounding monthly until payment is received in full.

(b) The Client acknowledges that the Provider may not grant the Client access to the Software until they have received payment of all required Fees payable in cleared funds.

5.4 Increase in fees

(a) The Licence Fee shall be increased on each anniversary of the Commencement Date by the annual positive movement in the CPI (Australia, All Groups Consumer Fee Index published by the Australian Bureau of Statistics) in the preceding 12 months.

(b) During the first five years of the Term (inclusive of the Minimum Term and each Further Term) the Licence Fees will not be increased other than in accordance with clause 5.(a). Following this time, the Provider reserves the right to increase the Licence Fee on giving the Client notice. The increased Licence Fee will take effect on the commencement of the following Further Term after the notice was given.

5.5 General

(a) The Client must pay all Fees and other amounts without set-off or claim under any circumstance including if a dispute exists.

(b) The Provider may impose or deduct foreign currency processing costs on or from any payments or payouts made in currencies other than Australian dollars.

(c) All amounts stated in or in relation to these Terms are, unless the context requires otherwise, stated exclusive of GST, which will be added to those amounts and payable by the Client to the Provider.

(d) Depending on the method of payment the Client uses to pay the Fees, additional charges may be incurred (such as a credit card processing charge).

(e) All amounts paid by the Client (including any deposits) are non-refundable to the extent permitted by law. The Client acknowledges and agrees that once a Proposal is agreed to, the Provider allocates time and resources for the provision of the Software and the Equipment.

6. Client obligations

6.1 Security & access

(a) The Client must:

(i) ensure that the Provider and its Personnel have full, safe, secure, unobstructed and unfettered access to the Client's System where the Software is installed at all times during the Term. The Provider must be provided with secure remote access to the servers where the Software is installed and access to take a snapshot of the database for development, testing and support purposes. Client Data is deemed Confidential Information of the Client and will be kept strictly confidential in accordance with clause 21.;

(ii) ensure that the Software and the Client's Systems are protected at all times from misuse, damage, destruction or any form of unauthorised use;

(iii) keep accurate records of use of the Software, and permit the Provider to inspect such records at any time during the Term;

(iv) notify the Provider as soon as it becomes aware of any unauthorised access or use of the Software by any person; and

(v) provide at least 30 days' notice of any changes to the Client's Systems that may impact the operation of the Software.

6.2 Use of Software

(a) The Client acknowledges and agrees that it will:

(i) only use the Software in accordance with these Terms and any Policy; and

(ii)   not use the Software in any way that causes, or may cause, damage to the Software or impairment of the availability or accessibility of the Software.

(b)   The acts and omissions of any Authorised User are deemed to be the acts and omissions of the Client and the Client is liable for its Authorised Users and must ensure that they comply with the Client's obligations in respect of the use of the Software.

(c)   The Client's use of the Software and the Services, including the information submitted on the Software and the Services, must not (and they must ensure that its Authorised Users use and information must not):

(i)   be false, inaccurate, misleading, fraudulent, deceptive or unlawful;

(ii)   be in any manner which could damage, disable, overburden, or impair the Software or interfere with any other party's use and enjoyment of this Software;

(iii)   be in any manner to phish or deceptively obtain information of other users on the Software;

(iv)   impersonate or otherwise misrepresent the Client's identity or affiliation with any other person or entity;

(v)   be for purposes of junk, obscene, indecent, offensive or threatening electronic mail or electronic mail in contravention of the Spam Act 2003 (Cth) or to attract, lure or illegally obtain information from other users on the Software;

(vi)   infringe any third party's rights or violate any Applicable Laws;

(vii)   contain any viruses or similar which could affect the integrity, operation or security of the Software;

(viii) create liability for the Provider or cause the Provider to lose (in whole or in part) the services or custom of our internet service provider, other clients, users or other suppliers;

(ix)   damage the credibility or integrity of the Software or the Provider, or dilute, tarnish, or otherwise harm the Provider's brand in any way; or

(x)   interfere with or disrupt the Software or servers or networks connected to the Software, or disobey any requirements, procedures, policies, or regulations of networks connected to the Software.

(d)   Whilst using the Software and the Services, the Client must not, and must ensure that its Authorised Users do not:

(i)   attempt to gain unauthorised access to the Software or computer systems or networks connected to the Software through any means, this includes attempting to gain access to view or decompile the source code of the Software;

(ii)   attempt to modify the Software to gain access to features that are not included in the Client's Licence;

(iii)   commit forgery (or attempted forgery), harass any individual, or harm minors in any way;

(iv)   collect, store, input, upload, post, disclose or transmit personal information or data about others, including, without limitation email addresses

(v)   breach or violate any of the Provider's policies;

(vi)   falsify or delete any attributions, legends, or other proprietary designations of origin or source of any content of the Software;

(vii) copy, store or otherwise access or use any information contained on the Software for purposes not expressly permitted by these Terms;

(viii) use the Software for any purposes that are not permitted by these Terms or in any way that is inconsistent with the purpose of the Software, or in a manner that falsely implies the Provider's endorsement, partnership or otherwise misleads others as to the Client's affiliation with the Provider;

(ix) attempt to circumvent payment of any fees in anyway;

(x) tamper with, hinder the operation of or make unauthorised modifications to the Software or any part thereof;

(xi) damage or modify the Software or the Software or any part thereof; or

(xii) circumvent, disable or otherwise attempt to interfere with any security related features.

7. Software

7.1 Software Updates

(a) The Provider is under no obligation to provide updates or new releases of the Software to the Client at any time.

(b) The Client acknowledges and agrees that the Licence granted to the Client pursuant to these Terms does not include access to any new features or modules that are created in the future and/or any that are not explicitly licensed to the Client.

(c) The Provider does not warrant that the Software will be updated by the Provider during the Term.

7.2 Software Maintenance

(a) Unless otherwise agreed, the Software will at all times be installed and run from the Client's System. The Provider is not obliged to provide the Client with the source code for the Software or any other information in connection with the Software that is not strictly required to enable the Client's use of the Software for its intended purpose (as specified by the Provider).

(b) The Client acknowledges and agrees that the Software may occasionally be unavailable during periods of planned or unscheduled critical and urgent maintenance.

7.3 End of Life

Versions of the Software may be deemed "end of life" at the sole discretion of the Provider. Versions of Software that are deemed "end of life" by the Provider do not include any maintenance or support services. If the Client continues to use "end of life" Software, the Client accepts all liability for any Loss that may occur in connection with their use of the "end of life" Software and uses it solely at their own risk. For the avoidance of doubt, the Provider will not be liable for any Loss as a result of the Client's use of "end of life" Software.

7.4 Support & Service Levels

In the event that the Provider provides the Client with a Service Level Agreement, then:

(a) subject to the other terms of this clause, the Provider will use commercially reasonable efforts to provide the Software and the support services in accordance with the Service Level Agreement (the "Service Levels"); and

(b) the Provider provides no guarantee as to the availability and/or uptime of the Software. The Provider will not be in breach of these Terms if it fails to

achieve the Service Levels, nor will it be liable for any Loss suffered by the Client or any other person in this regard.

7.5 Variations and amendments

(a) The Provider is not required to perform any customisations or amendments to the Software unless otherwise agreed between the parties in accordance with this clause.

(b) Should the Client require customisations and/or amendments to the Software, then the Client may request the Provider provide such amendments, and the Provider may accept or reject such request at its sole discretion. If the Provider accepts such requests then it will provide an additional quote (with additional fees if required to be paid as advised by the Provider at the time of request) and if accepted by the Client, an invoice will be issued to accommodate these changes.

(c) The Provider reserves the right to make changes to the Software which are necessary to comply with Applicable Laws, Government Agency requests or safety requirements.

(d) If agreed by the Provider, the Provider can feature the Client's logo and business details on the version of the Software licenced to the Client so that it appears white labelled to the Client.

7.6 Third Party Integrations

(a) The Client acknowledges that the Software will be running on the Client's Systems and that such Systems are beyond the Provider's reasonable control.

(b) In the event that:

(i) the Client's System is experiencing issues or downtime; or

(ii) the Client is required to maintain an account with that third party service and fails to do so,

this may also cause the Software to become unavailable and the Provider accepts no responsibility for any Losses or notification in this regard.

(c) Where information is transferred to a third party service, the Provider will not be liable for any Loss arising from the use of that information by that third party service.

(d) Where information stored in the Software is provided by or transferred from a third party service, the Provider will not be liable for any Loss arising from the errors or omissions from the data provided by third party, or from the unavailability of the third party's service.

(e) For the avoidance of doubt, the Provider has no obligations with regards to the Software or the Services to assist or provide any services to any third party. Any requests to or from third parties are outside of the scope of the Licence granted under these Terms.

8. Intellectual Property Rights

8.1 The Software and Materials

(a) The Provider shall at all times retain all title, rights and interest in and to the Software and Materials including:

(i) the Intellectual Property Rights subsisting in each;

(ii) any customisations of, modifications to, and additions to, the Software and Materials to suit the Client's individual needs;

(iii) information or data, source codes and other information technology relating to or connected with the Services or Materials;

    (iv)   marketing information relating to or connected with the Software or Materials; and

    (v)   technical information, including trade secrets, drawings, plans, encryptions, codes and product descriptions and information relating to or connected with the Software,

however, excludes the Client Data.

(b)   No right, title and interest in any of the Software and Materials is transferred or granted to the Client except so far as expressly stated in these Terms. The Client must not use the Software in any way that is inconsistent with the Provider's ownership or that is otherwise in contravention of these Terms.

(c)   For the avoidance of doubt, the Client has no right to access the software code (including object code, intermediate code and source code) of the Software, either during or after the Term.

8.2 Client Data

(a)   The Client (or its appropriate licensors) shall at all times retain ownership of the Client Data including the Intellectual Property Rights subsisting in it.

(b)   The Client is solely responsible for inputting any Client Data. The Provider may, in its absolute discretion, refuse to accept the input of Client Data to the Software. The Client agrees that the Provider shall not be liable to the Client for any Loss or damage the Client may suffer as a result of this.

(c)   The Client hereby grants to the Provider an irrevocable, worldwide, perpetual, transferable, non-exclusive license to use, communicate, display, copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Data to the extent reasonably required for the performance of the Provider's obligations, for technical reasons for the Client and for the exercise of the Provider's rights under these Terms, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under these Terms.

(d)   The Client also grants the Provider an irrevocable, non-exclusive licence to use the Client Data as non-personally identifiable data in aggregated and blinded formats where the data provides no identifying, referencing or implication of an association with the Client, only for the purposes of display on the Software, improving the Software, bench marking, research and marketing analysis, surveys, reports and studies, and to measure any metrics associated with the Client's use of the Software.

(e)   The Provider warrants that:

    (i)   it will only use the Client Data as set out in these Terms and the Provider's Privacy Policy in place from time to time; and

    (ii)   it will not sell, rent or lease the Client Data to any third party.

(f)   The Client warrants to the Provider that:

    (i)   the Client owns or has the necessary licenses to transmit such Client Data through the Software and that any Client Data provided will not infringe any third party rights (including intellectual property or confidentiality obligations) nor give rise to a liability to make royalty or other payments to a third party;

    (ii)   the Client Data will not:

        A.   breach the provisions of any law, statute or regulation; or

        B.   give rise to any cause of action against the Provider,

in each case in any jurisdiction and under any applicable law.

8.3 Publicity Rights

Each party grants the other party a royalty free, non-exclusive licence to use that party's logo and business name in marketing solely as follows:

(a) to be identified as a client of the Provider; and

(b) to be identified as a user of the Software.

9. Restriction of access to Client Data

9.1 Subject to the other terms of this clause, in the event that:

(a) the Client fails to pay any part of the Fees or other monies payable by the Client under or in connection with these Terms by its due date; or

(b) these Terms and/or the Client's access to the Software is suspended, restricted or terminated; or

(c) the Client closes their account or their subscription or terminates these Terms,

the Client's access to the Client Data will be immediately revoked and the Client's Account will become inactive. For the avoidance of doubt the Client will have no access to the Client Data (including access to download any Client Data that is available for them to download) while the Client's Account is inactive.

9.2 Prior to termination of these Terms or the Client's Account otherwise becoming inactive, the Client is solely responsible for downloading any Client Data that is available for download from the Software. Only the Client Data that is made available in the format as specified on the Software may be downloaded. The Provider does not guarantee, represent or warrant that all of the Client Data will be able to be downloaded.

9.3 Following termination of these Terms the Provider reserves the right to delete all Client Data from the Software and is under no obligation to provide any notice or copies of such Client Data to the Client prior to its deletion. The Provider may provide the ability to download Client Data following termination, however, does not guarantee, that any Client Data will be able to be downloaded post termination. Where such request is made, an administrative fee will be payable, as advised by the Provider.

10. Training

10.1 The Client acknowledges and agrees that, unless otherwise stated in the Proposal or otherwise agreed between the parties in writing, the Licence granted under these Terms does not include any training.

10.2 If the Client requires the Provider to provide training on the Software (outside that included in the Proposal) it may make a request to the Provider, setting out the training required. The Provider may accept or reject any training request (at its sole discretion). If the Provider is willing to provide the training it will provide the Client with a quote for such training setting out:

(a) the number of persons to attend the training;

(b) the scope of the training;

(c) the place or online location of training; and

(d) the price of the training.

10.3 The Provider will not commence training until such time as the Client has accepted the quote, and paid any fees upfront (unless otherwise agreed). Any additional changes to a training request, or additional training requests will incur additional costs.

10.4 Where the Provider agrees to provide training or training is otherwise specified in the Proposal, the Client agrees to pay for all reasonable expenses incurred by the Provider in the provision of the training including (without limitation) travel, accommodation and food.

11. Equipment

11.1 Supply of Equipment

The Provider agrees to provide the Equipment to the Client on the terms and conditions contained in these Terms. The Equipment will be as specified in the Proposal.

11.2 Ownership

Notwithstanding anything to the contrary express or implied in these Terms, the parties agree that the Provider retains full title to the Equipment and title will not at any time pass to the Client. The Equipment is to be used solely by the Provider and the Client for the provision of the Services, and may be collected or inspected by the Provider at any time. The Client acknowledges and agrees that:

(a) it will not use the Equipment without the Provider's consent (outside that use which is necessary for the use of the Software);

(b) it will, if requested by the Provider, return the Equipment to the Provider following non-fulfilment of any obligation of the Client (including payment of monies) without limiting any other right the Provider may have;

(c) it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the Equipment without the express written consent of the Provider;

(d) even though the Provider retains ownership of the Equipment, all risk for the Equipment passes to the Client on delivery of the Equipment to the Client;

(e) it will deliver up the Equipment to the Provider upon demand by the Provider and hereby irrevocably grants the Provider and its Personnel an unrestricted licence to enter any premises occupied by the Client and any premises where it believes any Equipment may be stored (without liability for trespass or any resulting damage) and to use the name of the Client and to act on its behalf, if necessary, to recover possession of the Equipment and agrees to indemnify the Provider and its Personnel from any damage, injury and/or loss arising from such recovery or attempted recovery of the Equipment; and

(f) it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Equipment on trust for and as agent for the Provider immediately when they are receivable or are received.

11.3 Repairs and maintenance

(a) The Client must keep and maintain the Equipment in the same condition and in working order as it was provided to the Client, except for fair wear and tear.

(b) The Client must immediately make good any damage caused to the Equipment, either by repairing or replacing such Equipment (at the direction of the Provider).

(c) Except to the extent caused or contributed to by the Provider, the Client is solely responsible for any damage that occurs to the Equipment whilst it is on the Client's premises or within their possession or any Loss suffered by the Client or any third party in connection with that Equipment being left with the Client. The Client indemnifies the Provider in respect of any Loss suffered by the Provider in connection with the Equipment being left on the Client's premises or in their possession.

11.4 Limitations

(a) Except to the extent expressly permitted in these Terms, the Client must not:

    (i) use the Equipment for any unauthorised purposes;

    (ii) directly or indirectly copy, reproduce, share, republish, frame, download, transmit, distribute, sell, reverse engineer, decompile, translate, alter, modify, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms present on the Equipment (except to the extent expressly permitted by Provider for backups or authorised within the Software);

    (iii) the Client must not make any alteration to the Hardware.

12. Personal Property Securities

12.1 The Client acknowledges and agrees that notwithstanding any other provision of these Terms:

(a) the PPSA applies to any performance of Services of any kind by the Provider to the Client;

(b) by agreeing to and/or accepting or adopting these Terms the Client grants to the Provider a purchase money security interest in the Equipment (to the extent the hire or possession by the Client of the Equipment is a PPS Lease), to secure the Provider's interest in the Equipment;

(c) if a purchase money security interest is not able to be claimed by the Provider in respect of the Equipment for any reason, the Provider will have a security interest in the Equipment;

(d) the Client agrees to do all things necessary and required by the Provider to effect registration of the Provider's security interest on the PPS Register in order to give the Provider's security interest the best priority possible and anything else the Provider requests the Client to do in connection with the PPSA without delay;

(e) the Client warrants that all information provided by the Provider to the Client, including but not limited to the Client's details, including the entity, name, ACN or ABN and address is correct in all respects and must not change its name, address or other details provided to the Provider without providing Provider with at least 20 business days prior written notice;

(f) the Client unconditionally and irrevocably appoints the Provider as its attorney to do any of acts and matters set out in this clause 10 in the event that the Client fails, delays or declines to execute such documents or do such acts;

(g) the Client agrees that it will not grant a security interest or other encumbrance in the Equipment whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of the Provider;

(h) the Client waives its right under the PPSA to object to a proposal by the Provider to dispose of or purchase or retain the Equipment in satisfaction of any obligation owed by the Client to the Provider; and

(i) will not give (or allow any person to give) to the Provider a written demand requiring the Provider to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the PPS Register a financing change statement under the PPSA.

12.2 The parties agree that the Provider is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.

12.3 Further Supplies/Services

The parties acknowledge and agree that any supply of Equipment or performance of Services of any kind by the Provider to the Client which is not specifically set out in a Proposal but for which the Provider has or later issues an invoice or any other documentation to the Client is deemed to form part of these Terms and is subject to the terms of these Terms.

12.4   Enforcement

(a)   The enforcement provisions contained in these Terms are in addition to any rights available to the Provider under the PPSA and apply to the maximum extent permitted by law.

(b)   Without limitation to clause 10.4(a) and any other provision of these Terms section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

12.5   Interpretation

A term used in this clause 12. is taken to have the meaning defined under the PPSA.

13.   Warranties

13.1   The Client warrants:

(a)   that it has the legal right and authority to enter into these Terms and to perform its obligations under these Terms;

(b)   that it has not relied upon any representations, warranties or conditions offered or made by or on behalf of the Provider except to the extent expressly set out in these Terms.

13.2   All of the parties' warranties and representations in respect of the subject matter of these Terms are expressly set out in these Terms. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of these Terms will be implied into these Terms or any related contract.

14.   Disclaimer

14.1   The Provider provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Client relies on the Services at its own risk and is solely responsible and liable for how they use the Services.

14.2   Without limiting clause 14.1, the Client acknowledges and agrees that:

(a)   the Provider does not guarantee continuous, uninterrupted or secure access to its Software or that any information provided by the Provider is up to date and accurate;

(b)   the Provider does not warrant that the use of the Software will result in the Client or its Authorised Users achieving any specific result;

(c)   the Provider makes no representations about the suitability of the Software for any purpose;

(d)   the Provider makes no guarantees that there will be no loss or corruption of Client Data at any time;

(e)   whilst best endeavours will be made to ensure the accuracy of the Software and any output provided by the Software, the Provider cannot guarantee the accuracy, currency, suitability, reliability and availability of the Software and any content gained within;

(f)   the information provided on and in the Software is general information and is not in the nature of financial, legal or any form of advice. The Client should obtain advice before making any decision based on the Software;

(g)   the Provider reserves the right to withdraw, or amend, update or change the functionality or content of the Software at any time, without notice;

(h)   complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Software will be wholly free from defects, errors and bugs; and

(i)   the Provider will maintain appropriate technical and organisational measures to protect the security of the Client Data. However, the Provider does not guarantee that unauthorised third parties will never be able to defeat those measures to access the Client Data for improper purposes. The Client acknowledges that there are risks inherent in internet connectivity that could result in the loss of privacy, confidential information and Client Data. Accordingly, any Client Data that is transmitted by the Client is transmitted solely at the Client's risk. The Client is solely liable for their Client Data.

15.   Technical disclaimers

15.1   Data Backup

The Provider is not responsible for providing any data backup services and the Provider makes no guarantees that there will be no loss or corruption of Client Data at any time. Unfortunately, data loss happens and the Client holds harmless and releases the Provider for any Loss the Client suffers in the event that the Client Data is lost.

15.2   IT Infrastructure

The Provider is only responsible for the Software and the Equipment that it supplies to the Client. The Provider is not responsible for the Client's Systems or any external components.

Data Security

15.3   The Provider will maintain appropriate technical and organisational measures to protect the security of the Client Data. The Provider does not guarantee that unauthorised third parties will never be able to defeat those measures to access the Client Data for improper purposes. The Client acknowledges that there are risks inherent in internet connectivity that could result in the loss of privacy, confidential information and Client Data. Accordingly, any Client Data that is transmitted by the Client is transmitted solely at the Client's risk.

16.   Limitation of Liability

16.1   Subject to the other terms of this clause, the Provider excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in these Terms to the maximum extent permitted by law.

16.2   Without limitation to clause 16.1, to the extent permitted by law, the Provider excludes all liability to the Client and Authorised Users and/or anyone else for Losses arising in any way in connection with the Software or its use and/or the Services and/or these Terms, including but not limited to Losses suffered as a result of:

(a)   any planned or foreshadowed system downtime of the Software;

(b)   non-performance of the Software;

(c)   any reliance on the Software (or any information provided from the Software);

(d)   any incorrect data entry or information made by the Client or Authorised Users on the Software;

(e)   any incorrect data or content, errors, mistakes or inaccuracies on the Software;

(f)   any loss or corruption of Client Data at any time;

(g)   any defects, errors and bugs in the Software;

(h)   any unauthorised access to or use of the Software;

(i)   any misuse, abuse or alterations to the Software or the Equipment by the Client;

(j)   any interruption or cessation of transmission to or from the Software;

(k)   the Client's acts or omissions, including the Client's wilful damage, negligence or abnormal working conditions;

(l)   an event outside of the Provider's reasonable control;

(m)   any actions or inactions of a third party (except for the Provider);

(n)   the Client's System, applications, equipment, software or other third party equipment and software;

(o)   any viruses, trojan horses or other harmful code or communications which may be transmitted to or through the Software by any third party; and/or

(p)   loss of privacy and confidential information.

16.3   Subject to the other terms of this clause, the Provider's maximum aggregate liability to the Client for any Loss or damage or injury arising out of or in connection with these Terms, including any breach by the Provider of these Terms however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual Fees paid by the Client to the Provider under these Terms in the one-month period preceding the matter or event giving rise to the claim.

16.4   Nothing in these Terms is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services, to the extent that the ACL applies to the Services.

16.5   If the Provider is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the Provider's total liability to the Client for that failure is limited to, at the option of the Provider the resupply of the Services or the payment of the cost of resupply.

16.6   The limitation and exclusion of liability in this clause applies whether the liability claim is based on breach of contract, under a warranty or an indemnity, tort (including negligence), under statute, in equity or otherwise.

16.7   Without limitation to the other terms of this clause, the Provider excludes any liability to the Client, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms.

16.8   Notwithstanding anything else in this clause, the Provider's liability will be reduced to the extent the loss or damage is caused by or contributed to by the Client, the Client's Authorised Users or the Client's Personnel.

16.9   Where the Client is or may be entitled to recover from a third party any sum in respect of any matter or event that could give rise to a claim under these Terms, the Client must:

(a)   use its best endeavours to recover that sum before making the claim;

(b)   keep the Provider at all times fully and promptly informed of the conduct of such recovery; and

(c)   reduce the amount of the claim to the extent that sums are recovered.

17.   Indemnity

17.1   Except to the extent caused by the breach of these Terms by the Provider, the Client indemnifies and releases the Provider, and its officers, directors, shareholders,

employees, consultants, agents, and related bodies corporate from and against any Losses (including any direct, indirect, special or consequential Losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Provider arising out of or in connection with:

(a)   the Client or the Client's Authorised User's use of the Services;

(b)   the supply, suspension, restriction or cancellation of the Client or the Client's Authorised User's access to the Software in accordance with these Terms;

(c)   the Client or the Client's Authorised User's breach or negligent performance or non-performance of these Terms (including the disclosure of Confidential Information);

(d)   the Client or the Client's Authorised User's violation of any applicable law;

(e)   any claim made against the Provider and/or the Client and/or its Authorised Users by a third party arising out of or in connection with these Terms, to the extent that such claim arises from the act or omission of the Client and/or its Authorised Users or out of the breach, negligent performance or failure or delay in performance of these Terms by the Client;

(f)   any claim made against the Provider for actual or alleged infringement of a third party's rights arising out of or in connection with the Client Data; and/or

(g)   the enforcement of these Terms by the Provider.

17.2   The Client must make payments under this clause:

(a)   in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and

(b)   in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

17.3   It is not necessary for the Provider to incur expense or make payment before enforcing a right of indemnity under this clause.

17.4   The indemnities in this clause:

(a)   are continuing obligations of the Client, independent from its other obligations under these Terms and survive termination or expiry of these Terms; and

(b)   are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting the liability of the Client.

17.5   The Provider's liability under this indemnity is limited under clause 16..

18.   Force Majeure Event

18.1   The Provider will not be in breach of these Terms or liable to the Client for any Loss incurred by the Client as a direct result of the Provider failing or being prevented, hindered or delayed in the performance of its obligations under these Terms where such prevention, hindrance or delay results from a Force Majeure Event.

18.2   If a Force Majeure Event occurs, the Provider must notify the Client in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.

18.3   On providing the notice in clause 18.2, the Provider will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, the Provider must continue to use all reasonable endeavours to perform those obligations.

18.4   The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

19. Termination and Suspension

19.1 Termination by the Client

(a) The Client may terminate these Terms with immediate effect, where:

    (i) the Provider breaches any term of these Terms and fails to rectify that breach within a reasonable time (being no less than 14 days) from being given notice by the Client; or

    (ii) the Provider suffers an Insolvency Event.

(b) In the event that the Client terminates these Terms in accordance with clause 19.(a) the Provider will offer a pro-rata refund of the Fees paid by the Client for the remainder of the Term. This is the sole remedy available to the Client.

19.2 Provider's right to terminate, suspend or restrict

(a) The Provider may immediately suspend, restrict or terminate these Terms and/or the Client's (and the Client's Authorised Users') access to all or part of the Services, including access to the Client Data immediately where:

    (i) it is reasonably necessary for security, technical, copyright, legal or operational reasons;

    (ii) the Client breaches any term of these Terms;

    (iii) the Client violates the rights of any third party or the Provider;

    (iv) the Client fails to pay any fees when due to the Provider in cleared funds in accordance with these Terms;

    (v) the Provider reasonably believes that the Client is engaged in illegal or fraudulent use of the Services;

    (vi) the Provider reasonably believes that the Client Data is inappropriate or unlawful;

    (vii) the Provider reasonably believes that the Client has acted in a way that is abusive, threatening or violent towards the Provider and its Personnel;

    (viii) the Provider reasonably believes that the Client is using the Services in a way that would cause Loss or damage to or otherwise cause legal liability to the Provider, other users, third parties or disrupt others' use of the Services; or

    (ix) the Client suffers an Insolvency Event.

20. Effects of termination

20.1 On termination of these Terms:

(a) the Licence is immediately revoked and the Client and its Authorised Users must cease using the Software and uninstall and deliver up to the Provider any copies of the Software (including all source code, databases and libraries connected with the Software) and the Equipment promptly in accordance with the Provider's directions; and

(b) all amounts payable by the Client to the Provider (including amounts that are not yet due) shall become immediately due and payable and must be paid within 7 days of termination without set-off or counter claim.

20.2 The Client acknowledges and agrees that it irrevocably grants the Provider and its Personnel an unrestricted licence to enter any premises occupied by the Client and any premises where it believes the Software (including all source code, databases and libraries connected with the Software) may be installed (without liability for trespass or any resulting damage) such as the Client's premises and to use the name of the Client and to act on its behalf, if necessary, to recover/uninstall the Software

(including all source code, databases and libraries connected with the Software) and agrees to indemnify the Provider and its Personnel from any Loss arising from such recovery or attempted recovery/un-installation of the Software.

20.3 Any clause of these Terms which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

21. Confidentiality and Privacy

21.1 Confidential Information

(a) The parties undertake that they and their respective personnel will not, without the prior written consent of the other party:

    (i) disclose the Confidential Information of the other party to any person; or

    (ii) use the Confidential Information of the other party for their own or a third party's benefit.

(b) Each party must take all reasonable steps to ensure that the Confidential Information of the other party is only disclosed to such of its personnel as require that information in order to enable the performance of these Terms.

(c) If requested by either party the other party must return all Confidential Information and any copies of the Confidential Information to the other party.

(d) In the event that either party is requested or becomes legally compelled to disclose any of the other party's Confidential Information, that party will (subject to any regulatory restrictions) provide the other party with prompt notice so that the other party may seek such protective order or other appropriate remedy as it thinks appropriate.

(e) In the event of a breach or threatened breach of the terms of this clause by either party (**Breaching Party**), the other party will, as between the parties, be entitled to an injunction restraining the Breaching Party from committing any breach of this clause without showing or proving actual damage sustained or likely to be sustained by the party.

21.2 Privacy

(a) In respect of any Personal Information (as defined in the Privacy Legislation) that is included in Client Data or otherwise provided to, collected or received by either party in connection with the Software, the Client must comply with:

    (i) the Privacy Legislation, and Personal Information in accordance with the Privacy Legislation (as it applies to that party); and

    (ii) the applicable Policies and guidelines of the Provider as made known from time to time.

(b) The Client warrants and represents that all Personal Information that it provides to the Provider complies with this clause and these Terms at all times. Immediately upon the Client becoming aware of any breach by it of any Privacy Legislation in respect of Personal Information provided to the Provider, the Client must inform the Provider of this.

(c) If either party receives a request for access to or correction of any Personal Information from any person (including the Office of the Australian Information Commissioner) prior to providing such access to or correcting the information it must notify the other party.

(d) Where the Provider reasonably believes there has been unauthorised access to the Client Data and there is a notifiable data breach under the terms of the

NDB scheme (as contained in Part IIIC of the Privacy Act 1988 (Cth)), the Provider will advise the Client as soon as practicable and no later than 7 days.

22.   Notices

22.1   All notices authorised or required under these Terms to be given by a party to the other shall be in writing sent by email or delivered personally or sent by pre-paid registered post and in each case addressed to the other party at that party's Address for Service or as the case may be at such other address as a party may from time to time notify to the other.

22.2   The following shall constitute proof of receipt:

(a)   proof by posting by registered post; or

(b)   proof of dispatch by email.

22.3   Receipt of a notice given under these Terms will be deemed to occur:

(a)   in the case of a communication sent by pre-paid registered post, on the third business day after posting;

(b)   in the case of an email, on the business day immediately following the day of dispatch.

22.4   If a notice is sent via post, it must also be sent via email.

23.   General Provisions

23.1   **Variation**

An amendment or variation of any term of these Terms must be in writing and signed by each party.

23.2   **No Waiver**

(a)   No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with these Terms unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

(b)   Words or conduct referred to in clause 23.(a) include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

23.3   **Assignment, Novation and Other Dealings**

(a)   The Provider may assign or novate any rights that arise out of or under these Terms without the consent of the Client.

(b)   Any rights of the Client that arise out of or under these Terms are not assignable or capable of novation by the Client without the prior written consent of the Provider, whose consent may be unreasonably withheld.

23.4   **Counterparts**

These Terms may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute these Terms by signing any counterpart. The date on which the last counterpart is executed is the date of these Terms. Communication of the fact of execution to the other parties may be made by sending evidence of execution by email.

23.5   **Costs**

The parties must bear their own costs of and incidental to the negotiation, preparation and execution of these Terms.

23.6 Severability

(a) If the whole or any part of a provision of these Terms is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

(b) Clause 23.(a) does not apply if the severance of a provision of these Terms in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under these Terms.

23.7 No Merger

On completion or termination of these Terms, the rights and obligations of the parties set out in these Terms will not merge and any provision that has not been fulfilled remains in force.

23.8 Survival

Any clause which by its nature is intended to survive termination or expiry of these Terms will survive such termination or expiry.

23.9 Further Action

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to these Terms and the transactions contemplated by these Terms.

23.10 Time of the Essence

Time is of the essence in these Terms in respect of any date or time period and any obligation to pay money.

23.11 Relationship of the Parties

(a) Nothing in these Terms gives a party authority to bind any other party in any way.

(b) Nothing in these Terms imposes any fiduciary duties on a party in relation to any other party.

23.12 Remedies Cumulative

Except as provided in these Terms and permitted by law, the rights, powers and remedies provided in these Terms are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of these Terms.

23.13 Entire agreement

These Terms states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

23.14 No Reliance

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in these Terms.

23.15 Governing Law and Jurisdiction

(a) These Terms is governed by the law in force in the State.

(b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms.

(c) Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in clause 23.(b) on the basis that:

(i) any proceeding arising out of or in connection with these Terms has been brought in an inconvenient forum; or

(ii) the courts described in clause 23.(b) do not have jurisdiction.