

General Terms and Conditions

Hardware supply
Implementation service
Licensed software supply
Licensed software support plans
Licensed software installation service
Training service



Meridian IT Pty Ltd
ABN 86 064 019 290

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Business Day means a day on which banks are open for retail banking business in Sydney, New South Wales other than a Saturday or Sunday.

Commencement Date means the date determined in accordance with clause 2.2.

Computer System means the Customer's existing computer system described in the relevant Quotation or Project Plan, in respect of which the Supplier will provide the Services (if applicable).

Confidential Information means in the case of each party, all of that party's information which would reasonably be regarded as confidential, disclosed or made available to the other party before or after the Commencement Date, including information relating to its business, customers, suppliers, products, databases, services, strategies, or plans, but excluding information which:

- (a) the other party can prove it possessed before the relevant information was disclosed or made available to it by or on behalf of the disclosing party;
- (b) is lawfully acquired prior to the date of disclosure under this Agreement by the other party from a third person without restrictions as to its use or disclosure; or
- (c) is in or becomes part of the public domain other than as a result of the breach by the other party of this Agreement.

CPI means the Consumer Price Index, Australia, All Groups, Weighted Average of Eight Capital Cities, published by the Australian Bureau of Statistics and, if that index ceases to be published, an alternative consumer price index nominated by the Supplier.

Customer means the company, person or other entity named as the customer in the Quotation.

Delivery Date means, in respect of any Hardware Product, the date scheduled for delivery of the Hardware Product as specified in the Quotation.

Documentation means any user manual or other operational documentation provided by (as applicable) the manufacturer of the Hardware Products or the licensor of the Licensed Software.

Price means the price payable by the Customer to the Supplier for provision of the Hardware Products and Services as specified in the Quotation and also includes any expenses payable by the Customer as required by the Quotation.

Force Majeure means a circumstance beyond the reasonable control of a party which results in the party being unable to observe or perform on time an obligation under this Agreement.

GST means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 and related legislation (as amended).

Hardware Products means the particular computer hardware and related accessories (if any) described in the Quotation which the Supplier will supply to the Customer.

Implementation Service means the Hardware Products installation, connection and/or commissioning service (if any) described in the Quotation which the Supplier must supply to the Customer.

Insolvency Event means that:

- (a) a party enters into any arrangement between itself and its creditors;
- (b) a party ceases to be able to pay its debts as they become due;
- (c) a party ceases to carry on business;
- (d) a mortgagee enters into possession or disposes of the whole or any part of the party's assets or business;
- (e) an order is made (and not set aside within 28 days) or a resolution passed for the winding-up or dissolution of a party; or
- (f) a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person for the party's applicable place of incorporation is appointed over the whole or any part of the party's assets or business.

Intellectual Property Rights means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of know-how, trade secrets, copyright, trade marks, designs, patents and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

Invoice has the meaning given to it in clause 12.2(a).

Licensed Software means the third party licensed software (if any) identified in the Quotation which the Supplier must supply to the Customer.

Licensed Software Installation Service means the Licensed Software installation service (if any) described in the Quotation which the Supplier must supply to the Customer.

Licensed Software Support Plan means a software support plan for Licensed Software (if any) as described in the Quotation which the Supplier must supply to the Customer.

Licensed Software Licence means the relevant end user licence terms applicable to the Licensed Software.

Milestone Dates means, in respect of a specific task which is to be performed by the Supplier as part of the Services, the target date for the performance of the relevant task.

Project Plan means the document (developed by the Supplier where required by the Quotation) which specifies the services, materials and personnel to be contributed by each party and the responsibilities of each party relating to the Services to be provided under this Agreement. A Project Plan will only be developed where required by the Quotation.

Quotation means the written quotation, which has been accepted by the Customer, which describes (as applicable):

- (a) the Hardware Products;
- (b) the Implementation Service;
- (c) the Licensed Software Licence;
- (d) the Licensed Software Support Plan;
- (e) the Licensed Software Installation Service; and/or
- (f) the Training Service.

which are to be supplied by the Supplier to the Customer under this Agreement. The Quotation does not include any pre-sales information (including any proposal) which the Supplier may have provided to the Customer in connection with the Services and/or Hardware Products.

Related Bodies Corporate has the meaning provided by the Corporations Act 2001.

Service means, in respect of a Quotation, the Implementation Services, the Licensed Software Installation Services, the Training Services, procuring or supplying Licensed Software Licences, procuring or supplying Licensed Software Support Plans and any other services which the Quotation requires the Supplier to provide to the Customer.

Site means the location at which the Hardware Products will be delivered and the Services will be provided (if applicable) as specified in the Quotation.

Supplier means Meridian IT Pty Ltd, ABN 86 064 019 290.

Taxes means all taxes, charges, duties and similar imposed by a government or statutory body relating to the supply or use of goods or services or otherwise arising out of this Agreement including sales tax, goods and services tax, value added tax, fringe benefits tax, undistributed profits tax, financial institutions duty, stamp duties and any interest or penalty imposed in connection with any of the preceding items but does not include income or capital gains tax.

Training Services means the training or related services (if any) described in the Quotation which the Supplier must supply to the Customer.

Term has the meaning provided by clause 3.

1.2 Interpretation

In this Agreement:

- (a) The singular includes the plural and vice versa.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- (d) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.
- (e) Headings are for ease of reference and do not affect the construction of this Agreement.
- (f) Money amounts are stated in Australian currency unless otherwise specified.
- (g) The words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient.

1.3 Interpretation – order of precedence

This Agreement is comprised of the following documents which apply in the following order of precedence:

- (a) the Quotation;
- (b) the Project Plan (if applicable); and
- (c) these terms and conditions,

with the result that any inconsistency between these documents will be resolved in favour of the earlier listed document.

2 Commencement Date

2.1 Customer's acceptance of Quotation

Subject to clause 2.2, the Commencement Date is the date the Customer notifies the Supplier of its acceptance of the Quotation.

2.2 Third Party Supplier acceptance

Where the Quotation is expressed to be subject to a third party's acceptance or approval:

- (a) the provision of the Quotation by the Supplier to the Customer is an invitation to treat;
- (b) the Customer's acceptance of the Quotation will not form a binding agreement between the Customer and the Supplier, but instead is an offer capable of acceptance by the Supplier;
- (c) following acceptance of a Quotation by the Customer, the Supplier will give notice to the Customer once that third party's acceptance or approval has been given and on the date such notice is given, an agreement is formed between the Supplier and Customer; and
- (d) the date the Supplier notifies the Customer of the third party's acceptance or approval is the Commencement Date.

3 Term

The Agreement commences on the Commencement Date and will continue until the parties have completed the performance of their obligations.

4 Project Plan

- (a) If the Quotation requires the development of a Project Plan, the parties must develop and agree the Project Plan before the Supplier provides any of the applicable Hardware Products or Services.
- (b) The Customer and the Supplier will consult with each other and use reasonable efforts to develop the Project Plan.
- (c) The Customer will pay the Supplier for the development of the Project Plan in accordance with the Quotation.
- (d) The Project Plan will describe:
 - (1) the obligations of each party and the resources and facilities which will be provided by each party as required for the supply of the Hardware Products and the performance of the Services;
 - (2) if applicable, the Milestone Dates applicable to the supply of the Hardware Products and the performance of the Services; and
 - (3) any other the details required by the Quotation.
- (e) Once the Project Plan has been developed and agreed the parties must comply with the Project Plan.

5 Hardware Products

This clause 5 only applies if the Supplier is required by the Quotation to supply the Customer with any Hardware Products.

5.1 Supply of Hardware Products

- (a) The Supplier will supply the Customer with the Hardware Products specified in the Quotation. The Supplier will also provide the Customer with the Documentation supplied by the manufacturer of the Hardware Products.
- (b) The manufacturers of the Hardware Products will retain all intellectual property rights in the Documentation supplied with the Hardware Products.
- (c) The Supplier may substitute or modify any component of the Hardware Products or part of any component of the Hardware Products prior to delivery without consultation with you if, in the Supplier's reasonable opinion, the substitution or modification will not materially reduce the functionality or performance of the Hardware Products.

5.2 Delivery of Hardware Products

- (a) The Supplier will use reasonable endeavours to deliver the Hardware Products to the Customer at the Site by the applicable Delivery Dates.
- (b) If the Customer requires a Hardware Product to be delivered to a location other than the Site or the Customer requests delivery of a Hardware Product to be made in advance of its Delivery Date or postponed beyond its Delivery Date, the Customer must make its request in writing to the Supplier no later than 14 days (or such other period as is agreed) prior to the Delivery Date. The Supplier may in its sole discretion determine whether to agree to such a request and what conditions will apply in the event of agreeing to such a request, including any additional charges applicable.
- (c) The Customer must ensure this it is ready to receive delivery of the Hardware Products at the Site on the Delivery Date. The Customer is responsible for ensuring that the correct quantity and specification of the Hardware Products has been delivered and for ensuring that the Hardware Products are in an acceptable condition. If the Customer considers that there is a deficiency in the number, specification or condition of the Hardware Products delivered it must notify the Supplier in writing within 48 hours of the delivery and retain such related packaging and documentation as is required to comply with the return conditions of the manufacturer of the Hardware Products. The Supplier will not accept any claim for any deficiency in the number, specification or condition of the Hardware Products delivered which is submitted more than 48 hours after delivery.
- (d) The Supplier is not responsible for unpacking the Hardware Products, disposing of packaging material or installing the Hardware Products unless specifically required by the Quotation.

5.3 Risk and title

- (a) Risk in the Hardware Products passes to the Customer (including for insurance purposes) when the Hardware Products are collected by the Customer from the Supplier's warehouse or are delivered to the Customer by the Supplier (as applicable according to the Quotation).
- (b) Notwithstanding delivery and passing of risk, the property in the Hardware Products supplied by the Supplier under a Quotation shall remain with the Supplier until the Customer has paid all monies owed by it to the Supplier under the Quotation.
- (c) If the Quotation provides that any Hardware Products are to be consigned, rented or leased to a Customer, those

Hardware Products are and shall remain the property of the Supplier. As such:

- (1) the Customer shall not lend or give the Hardware Products to any person;
- (2) the Customer shall not remove the Hardware Products from the specified area agreed under a Quotation without the written consent of the Supplier;
- (3) for the avoidance of doubt, clause 5.3(a) applies to any Hardware Products that are consigned, rented or leased to a Customer; and
- (4) the property in the Hardware Products shall remain with the Supplier for so long as the Hardware Products are consigned, rented or leased to the Customer.

5.4 Personal Property Securities Act 2009 (Cth) (PPSA)

- (a) The terms Commercial Consignment, Financing Change Statement, Financing Statement, Proceeds, Purchase Money Security Interest, PPS Lease, PPS Register, Registrar, Security Agreement and Security Interest have the meanings given in the PPSA.
- (b) For so long as any of the monies owing by the Customer to the Supplier under the Quotation remain unpaid, or for so long as the Hardware Products are consigned, rented or leased, the Customer acknowledges that:
 - (1) by virtue of clause 5.3(b) and/or clause 5.3(c) of this Agreement, the Supplier has a Security Interest in the Hardware Products and their Proceeds under the PPSA and this Agreement constitute a Security Agreement that covers the Hardware Products for the purposes of the PPSA;
 - (2) the Supplier's Security Interest under clause 5.3(b) secures all monies owing by the Customer to the Supplier under a relevant Quotation;
 - (3) the Customer shall hold the Proceeds from the sale of any of the Hardware Products on trust for the Supplier;
 - (4) the Customer will not grant or seek to grant any Security Interest in the Hardware Products adverse to the Security Interest of the Supplier;
 - (5) to the extent that a Security Interest secures payment of the amounts owing in relation to the Hardware Products or is a PPS Lease or a Commercial Consignment, the Supplier's Security Interest over the Hardware Products and their Proceeds is a Purchase Money Security Interest;
 - (6) the Supplier's Security Interest attaches to the Hardware Products when the Customer attains possession of the Hardware Products;
 - (7) it must keep the Hardware Products separate from other goods and maintain the labelling and packaging of the Supplier so that the Hardware Products are readily identifiable as the property of the Supplier;
 - (8) failure to comply with the requirements under clause 5.4(b)(7) will not affect the Supplier's Security Interest in the Hardware Products and the Supplier will continue to hold a Security Interest in the Hardware Products in accordance with and subject to the PPSA, notwithstanding that the Hardware Products may be processed, commingled or become an accession with other goods; and
 - (9) the Supplier may apply to register a Security Interest in the Hardware Products at any time before or after delivery of the Hardware Products. To the extent

permissible under the PPSA, the Customer waives its right to receive notice of any verification of the registration.

- (c) In relation to all Security Interests governed by these terms, the Customer undertakes to:
- (1) execute all documents and provide all information which the Supplier may require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
 - (2) indemnify and upon demand reimburse the Supplier for all expenses incurred in registering a Financing Statement or Financing Change Statement in relation to Security Interests on the PPS Register or releasing any Security Interests, including any maintenance or other fees the Supplier is required by the Registrar to pay under the PPSA;
 - (3) not register or permit to be registered a Financing Change Statement in the Hardware Products without the prior written consent of the Supplier; and
 - (4) provide the Supplier with not less than 7 days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or any other such change in the Customer's details registered on the PPS Register to register a Financing Change Statement if required.
- (d) If the Customer defaults under this Agreement, the Supplier is and will be entitled at any time to demand the return of the Hardware Products subject to Security Interests under this Agreement, and the Customer must do all things necessary to immediately permit the Supplier, without notice and without liability to the Supplier, to enter and access any premises occupied by the Customer in order to search for, locate, identify retrieve and remove those Hardware Products in which the Supplier has a Security Interest.
- (e) To the extent permitted by the PPSA, the Supplier and the Customer agree that sections 95, 117, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply to the enforcement by the Supplier of its Security Interest(s) in the Hardware Products.
- (f) In addition, to the extent permitted by the PPSA, if there is any inconsistency between the Supplier's rights under clause 5.4(e) and its rights under Chapter 4 of the PPSA, clause 5.4(e) prevails.

6 Implementation Service

This clause 6 applies only if the Quotation requires the Supplier to provide the Customer with Implementation Services.

6.1 Supply of the Implementation Service

- (a) The Supplier will perform the Implementation Services in accordance with the terms of this Agreement.
- (b) The Supplier will endeavour to perform the Implementation Services for the Customer in accordance with any applicable Milestone Dates set out in the Project Plan.

6.2 Scope of the Supplier's obligations

- (a) Unless expressly required by the Quotation, the obligations of the Supplier when providing the Implementation Service are confined to installing the Hardware Product which is specified in the Quotation by rendering the Hardware Product ready for the Customer's use by following the installation steps, if any, prescribed by the Documentation supplied with the Hardware Product by its manufacturer. Unless otherwise expressly

required by the Quotation the Supplier is not required to connect the installed Hardware Products to any part of the Customer's Computer System, migrate any Customer data or install any Customer provided software (whether provided by the Supplier or not) on to the Hardware Products.

- (b) If the particular Implementation Service specified in the Quotation requires the Supplier to connect any Hardware Product to the Customer's Computer System, migrate any Customer data or install any Customer provided software then:
 - (1) the obligation of the Supplier to connect the Hardware Products will be conditional on all parts of the Customer Computer System (including software) being in accordance with the specifications contained in the Quotation and otherwise having been properly installed and maintained, being in correct operational order (with appropriate software updates installed), free of defects, free of data corruption and errors and free of computer viruses and other malicious code. In no circumstances will the Supplier be responsible for correcting any deficiencies or defects in the Customer's Computer System;
 - (2) the obligations of the Supplier will not extend to developing any software or software interfaces that may be necessary to complete the implementation;
 - (3) the Customer must ensure that its Computer System, any relevant data and the Site are ready and available to the Supplier in order to facilitate the provision of the services by the Supplier;
 - (4) the Customer must provide the Supplier with the required software installation disks (or other media), the operational, installation and technical documentation relating to the various hardware and software components of the Customer's Computer System and administrator logins and passwords necessary to enable the Supplier to undertake its responsibilities.
 - (5) the Customer will ensure that its data is backed-up and secure at all times before commencement of the Implementation Service. The Supplier is not responsible for backing up any Customer data;
 - (6) the Supplier will not be responsible for cleansing any transferred data or for any data errors or corruption to the transferred data which are caused by data errors or corruption in the data provided to the Supplier for transfer or for any failure of that data to comply with the required format; and
 - (7) at the completion of the Implementation Service the Customer will be solely responsible for ensuring that all transferred data has been correctly transferred without error, corruption or omission and that all Customer supplied software which has been installed on the Hardware Products is operating correctly.

6.3 Site Preparation

Unless otherwise expressly specified by the Quotation, the Customer is solely responsible for making the Site ready for the installation of the Hardware Products. Without limiting this clause the Customer agrees that it is responsible for:

- (a) providing a suitable space at the Site for the installation of the Hardware Products;
- (b) providing appropriate storage racks (where required) for the installation of the Hardware Products,

- (c) providing the required telecommunications links and broadband services for connection to the Hardware Products,
- (d) providing environmental cooling equipment and cooling for the area where each Hardware Product will be installed in accordance with the requirements of the Documentation supplied with the Hardware Product by the manufacturer; and
- (e) electrical power circuits and power as required to operate the relevant Hardware Product in accordance with the requirements of the Documentation supplied with the Hardware Product by the manufacturer.

6.4 Exclusions from the Implementation Service

Unless expressly specified to the contrary in the Quotation, the Implementation Services do not include the following (or services relating to any of the following):

- (a) rectification of defects, errors or computer viruses in any software, hardware or equipment, or repairs, support or maintenance relating to those things;
- (b) backup, preservation, translation, migration or management of data;
- (c) rectification of faults in hardware, equipment or telecommunications links or telecommunications services;
- (d) development of any software or software interfaces needed to complete the implementation;
- (e) supply and installation of consumables or hardware;
- (f) rectification of errors or failures caused by failure of hardware, power, air-conditioning or other environmental failure;
- (g) installing, transferring, moving or removing software, data, hardware or other equipment or materials; or
- (h) provision of materials handling tools where required.

7 Supply of Licensed Software and Licensed Software Support Plans

This clause 7 applies only if the Quotation requires the Supplier to supply the Customer with a Licensed Software Licence or a Licensed Software Support Plan.

7.1 Supply of Licensed Software

The Supplier will provide the Customer with the Licensed Software and its Documentation (where provided by the licensor of that software). The Customer acknowledges that the Supplier is a reseller of the Licensed Software Licence. The Licensed Software is licensed to the Customer directly by the relevant licensor of that Licensed Software according to the terms of the Licensed Software Licence. The Supplier is not liable to the Customer for the performance of the Licensed Software. The Customer's rights in respect of the Licensed Software are as set out in the Licensed Software Licence. The Supplier is not responsible for installing the Licensed Software unless the Customer has agreed to purchase the Licensed Software Installation Service for that Licensed Software.

7.2 Supply of Licensed Software Support Plans

The Supplier will provide the Customer with the Licensed Software Support Plan. The Customer acknowledges that the Supplier is a reseller of the Licensed Software Support Plan. The support for the Licensed Software is provided by the relevant supplier specified in the Licensed Software Support Plan according to the terms of that plan. The Supplier is not liable to the Customer for the support services described in the Licensed Software Support Plan. The Customer's rights to support in respect of the Licensed Software are as set out in the Licensed Software Support Plan.

8 Supply of Licensed Software Installation Service

This clause 8 applies only if the Quotation requires the Supplier to supply the Customer with a Licensed Software Installation Service.

8.1 Supply of the Licensed Software Installation Service

- (a) The Supplier will perform the Licensed Software Installation Service in accordance with the terms of this Agreement.
- (b) The Supplier will endeavour to provide the Licensed Software Installation Services to the Customer in accordance with any applicable Milestone Dates set out in the Project Plan.

8.2 Data back up

The Customer will ensure that its data is backed-up and secure at all times before commencement of the Licensed Software Installation Service. The Supplier is not responsible for backing up any Customer data.

8.3 Scope of the Supplier's obligations

- (a) Unless expressly required by the Quotation, the obligations of the Supplier when providing the Licensed Software Installation Service are confined to installing the Licensed Software specified in the Quotation by rendering the Licensed Software ready for the Customer's use by following the installation steps, if any, prescribed by the Documentation supplied with the Licensed Software by its licensor. Unless otherwise expressly required by the Quotation the Supplier is not required to integrate the installed Licensed Software with any other software or parts of the Customer's Computer System, migrate any Customer data or install any Customer provided software.
- (b) If the particular Licensed Software Installation Service specified in the Quotation requires the Supplier to integrate the installed Licensed Software with any other software or parts of the Customer's Computer System, migrate any Customer data or install any Customer provided software then:
 - (1) the obligations of the Supplier will be conditional on all parts of the Computer System (including software) being in accordance with the specifications (if any) contained in the Quotation and otherwise having been properly installed and maintained, being in correct operational order (with all software updates installed), free of defects, free of data corruption and errors and free of computer viruses and other malicious code. In no circumstances will the Supplier be responsible for correcting any deficiencies or defects in the Customer's Computer System;
 - (2) the obligations of the Supplier will not extend to developing any software or software interfaces that may be necessary to complete the installation;
 - (3) the Customer must ensure that its Computer System, any relevant data and the Site are ready and available to the Supplier in order to facilitate the provision of the services by the Supplier;
 - (4) the Customer must provide the Supplier with the required software installation disks (or other media), the operational, installation and technical documentation relating to the various hardware and software components of the Customer's Computer System and administrator logins and passwords necessary to enable the Supplier to undertake its responsibilities;
 - (5) the Supplier will not be responsible for cleansing any transferred data or for any data errors or corruption to the transferred data which are caused by data

errors or corruption in the data provided to the Supplier for transfer or for any failure of that data to comply with the required format; and

- (6) at the completion of the Licensed Software Installation Service the Customer will be solely responsible for ensuring that all transferred data has been correctly transferred without error, corruption or omission.

8.4 Exclusions from the Licensed Software Installation Service

Unless expressly specified to the contrary in the Quotation, the Licensed Software Installation Service does not include the following (or services relating to any of the following):

- (a) rectification of defects, errors or computer viruses in any software, hardware or equipment, or repairs, support or maintenance relating to those things;
- (b) backup, preservation, translation, migration or management of data;
- (c) rectification of faults in hardware, equipment or telecommunications links or telecommunications services;
- (d) development of any software or software interfaces needed to complete the installation;
- (e) supply and installation of consumables or hardware;
- (f) rectification of errors or failures caused by failure of hardware, power, air-conditioning or other environmental failure;
- (g) installing, transferring, moving or removing software (other than the specified Licensed Software), data, hardware or other equipment or materials.

9 Training Services

This clause 9 applies only if the Quotation requires the Supplier to supply the Customer with any Training Services.

9.1 Supply of Training Services

- (a) The Supplier will provide the Customer with the Training Services in accordance with the terms of this Agreement.
- (b) The Supplier will endeavour to provide the Training Services to the Customer in accordance with any applicable Milestone Dates set out in the Project Plan (as applicable) or in the absence of a Project Plan, within the time frame specified in the Quotation.

9.2 Scope of the Supplier's obligations

The Supplier will not be required to provide any training materials to the Customer's trainees unless otherwise required by the Quotation.

10 Services – general obligations

10.1 Appointment

- (a) Nothing in this Agreement requires the Supplier to provide any Services to the Customer at any time when:
 - (1) the Customer has not paid for Services previously provided by the Supplier for which payment is then due; or
 - (2) the Customer has breached this Agreement and that breach has not been duly remedied.

10.2 Personnel, facilities and Site

- (a) The Customer will provide sufficient, qualified personnel capable of performing all of its duties and obligations under the Quotation and Project Plan (as applicable) and

this Agreement and will provide reasonable and necessary access to its relevant personnel.

- (b) The Customer will provide the Supplier with access to the information, equipment, facilities and the Site that the Supplier reasonably requires to perform the Services, including reasonable and necessary on-line access, electrical power, telephone services and working space as the Supplier may reasonably request.

11 Ownership of Intellectual Property Rights

- (a) Unless expressly specified otherwise in the Quotation, the Supplier (or its licensors) will own all Intellectual Property Rights in all materials and deliverables (including any software and documentation) provided by the Supplier to the Customer or created or developed by the Supplier in the course of providing the Services.
- (b) The Customer assigns to the Supplier any rights the Customer has in those materials and deliverables.
- (c) To the extent any material or deliverables (including software or documentation) are provided to the Customer and are not the subject of a separate licence, then the Supplier grants to the Customer (subject to payment of the Price payable under this Agreement) a royalty free, non transferrable, perpetual licence to use the material and the deliverables for its own internal business purposes.

12 Price

12.1 Price

The Customer must pay the Supplier the Price in accordance with this Agreement and the Quotation.

12.2 Invoice and payment

- (a) Subject to the Quotation, the Supplier will invoice the Customer for the Price on a monthly basis and will provide the Customer with a valid tax invoice (**Invoice**).
- (b) The Customer must pay the Supplier the amount invoiced within 14 Business Days after the date of the Invoice.

12.3 Out of scope services

Where the Supplier provides the Customer with services that are outside the scope of the services to be provided by the Supplier as set out in a Quotation, the Customer must pay the Supplier's standard hourly rates for providing that service, which standard hourly rates will be as amended by the Supplier from time to time.

12.4 Disputed invoices

If the Customer wishes to dispute an Invoice it must:

- (a) pay the Supplier all parts of the Invoice which are not the subject of a bona fide dispute; and
- (b) give the Supplier notice of the dispute and the reasons why the Customer disputes the relevant Invoice,

before the due date for payment of the Invoice.

12.5 Default in payment

If the Customer fails to pay any amount payable under this Agreement by the due date then, except where the amount has been validly disputed pursuant to clause 12.4, the Supplier may (without prejudice to any other remedies to which it is entitled):

- (a) charge the Customer interest on the amount due and not paid, for the duration that the payment is outstanding by the Customer, at the Interest Rate as prevailing on the due date. The **Interest Date** will be the 90 days Bank Accepted Bill rate as quoted by the Reserve Bank of

Australia plus 5% for the relevant calendar month in which the payment was due (or if that rate ceases to be quoted, the rate nominated by the Supplier); and/or

- (b) suspend performance of the Supplier's obligations under this Agreement without any liability to the Customer for any loss or damage suffered or incurred in respect of the suspension.

12.6 Other rights and obligations not affected

The exercise by the Supplier of any of the Supplier's rights under clause 12.5 does not affect:

- (a) the Customer's obligations; or
- (b) any other rights or remedies the Supplier may have in relation to the default by the Customer,

under this Agreement or any other agreement between the Supplier and the Customer.

12.7 Variation

- (a) The Price is subject to variation as set out in this clause 12.7.
- (b) If the Services are provided during a period greater than 12 months, the Price in the Quotation will be subject to annual adjustment on the first anniversary of the Commencement Date, and on each anniversary of the Commencement Date after that, by the Supplier giving the Customer written notice. Any increase in the Price will be calculated in accordance with the greater of:
 - (1) the change in the CPI between the relevant anniversary date and the date on which the Price were last set or varied; or
 - (2) 5%.

12.8 Expenses

The Customer must pay the Supplier or reimburse the Supplier for any expenses which the Customer is required to pay or incur under the Quotation or otherwise under this Agreement in order to provide the Services or the Hardware Products.

13 Confidential Information

13.1 Acknowledgment of confidentiality

Each party (**Recipient**) acknowledges that:

- (a) all the Confidential Information of the other party (**Discloser**) is secret and confidential to the Discloser; and
- (b) any unauthorised use, reproduction or disclosure of the Confidential Information may cause loss, damage or expense to the Discloser.

13.2 Obligation of confidentiality

The Recipient must (except as may be required by law or with the Discloser's prior written consent):

- (a) maintain the secrecy and confidentiality of the Confidential Information;
- (b) not divulge or disclose any of the Discloser's Confidential Information to any other person, firm, corporation or entity;
- (c) only use the Discloser's Confidential Information where it is necessary to do so to enable the supply or use of the Services or the Hardware Products;
- (d) refrain from copying any of the Discloser's Confidential Information, or attempting to do the same, except where necessary to do so to enable the supply or use of the Services or the Hardware Products; and

- (e) immediately notify the Discloser of any actual or suspected unauthorised use, reproduction or disclosure of the Discloser's Confidential Information.

13.3 Disclosure required by law

If the Recipient is required by law to disclose the Discloser's Confidential Information:

- (a) the Recipient will promptly give the Discloser written notice specifying the legal requirement and the Confidential Information to be disclosed; and
- (b) the Recipient will use best endeavours to arrange for disclosure of the relevant Confidential Information in a manner which safeguards the confidentiality of the information disclosed.

13.4 Injunctions

The Recipient acknowledges and agrees that a breach of this Agreement may cause the Discloser to suffer loss, damage and expense for which damages may not be adequate compensation and may be difficult to ascertain and that the Discloser may immediately seek to restrain any actual or threatened breach of this Agreement by injunction or any similar remedy.

14 GST

14.1 Definitions

In this clause 14:

- (a) the expressions **Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
- (b) **Supplier** means any party treated by the GST Act as making a Supply under this Agreement.

14.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

14.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

14.4 Reimbursement of expenses

If this Agreement requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

15 Employees and contractors

- (a) In this clause 15, Restraint Period means a period commencing on the Commencement Date and ending 2 years after the date on which the Supplier last provided any Services under this Agreement.
- (b) During the Restraint Period, the Customer will not directly or indirectly solicit for employment any person who is employed by or contracted to the Supplier.

16 Privacy

- (a) In performing their respective obligations under this Agreement, each party will comply with applicable privacy and data protection laws. In respect of any data to which the Customer gives the Supplier access or possession for the purpose of providing the Services, the Customer warrants that the Supplier's access or possession (as applicable) for that purpose complies with applicable privacy and data protection laws.
- (b) When accessing or handling the Customer's data, the Supplier will comply with the Customer's applicable reasonable policies that have been disclosed to the Supplier in writing.

17 Implied terms

17.1 Exclusion of implied terms

Any representation, warranty, condition, guarantee or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

17.2 Non-excludable rights implied by statute

Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.

17.3 Liability for breach of non-excludable rights

To the fullest extent permitted by law, the liability of the Supplier for a breach of a non-excludable guarantee referred to in clause 17.2 is limited, at the Supplier's option, to:

- (a) in the case of goods, any one or more of the following:
 - (1) the replacement of the goods or the supply of equivalent goods;
 - (2) the repair of the goods;
 - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (4) the payment of the cost of having the goods repaired; or
- (b) in the case of services:
 - (1) the supplying of the services again; or
 - (2) the payment of the cost of having the services supplied again.

17.4 Survival of clause

Despite any other provision of this Agreement, this clause 17 survives the expiry or termination of this Agreement.

18 Liability

18.1 Limitation of liability

Subject to clause 17, the Supplier will be under no liability to the Customer or any other person in respect of:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its officers, employees, agents or contractors;
- (b) any negligent act or omission by the Supplier; or
- (c) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or corruption of data or loss or damage resulting from wasted management time irrespective of whether:
 - (1) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (2) the Customer or any other person was previously notified of the possibility of the loss or damage.

18.2 Maximum liability

Subject to clause 17, the maximum aggregate liability of the Supplier for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to the Supplier under the Quotation in relation to the particular Service or Hardware Product which was responsible for or connected with the relevant loss, damage or claim.

18.3 No reliance on representations

- (a) The Customer warrants that it has not relied on any representation made by the Supplier which has not been stated expressly in this Agreement, or relied upon any descriptions, illustrations or specifications contained in any document including websites or publicity material produced or provided by the Supplier.
- (b) The Customer acknowledges that to the extent the Supplier has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

18.4 Indemnity

The Customer will at all times indemnify and hold harmless the Supplier and its officers, employees and agents ("those indemnified") from and against any loss, (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by the Customer of its obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission of the Customer.

19 Termination

19.1 Termination by Supplier

Without limiting the generality of any other provision in this Agreement, the Supplier may suspend or terminate (or suspend then subsequently terminate) its provision of all or any of the Services under any Quotation and this Agreement immediately by notice in writing if:

- (a) the Customer fails to pay an amount owing under this Agreement within 10 Business Days of a written reminder that it is overdue;
- (b) the Customer is in breach of any term of this Agreement not relating to the payment of money and that breach is not remedied within 15 Business Days of notification by the Supplier;
- (c) the Customer suffers or commits an Insolvency Event;
- (d) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- (e) the Customer, being a natural person, dies or becomes incapacitated.

19.2 Termination by Customer

The Customer may terminate this Agreement immediately by notice in writing if:

- (a) the Supplier is in breach of any term of this Agreement and that breach is not remedied within 15 Business Days of notification by the Supplier; or
- (b) the Supplier suffers or commits an Insolvency Event.

19.3 Consequences of termination

If a notice of termination is given to the Supplier under clause 19.1 or clause 19.2 or this Agreement all monies payable to the Supplier under this Agreement or which would have become payable but for that termination will, to the extent permitted by law, become immediately due and payable, and:

- (a) each party may repossess any of its property in the possession, custody or control of the other party;
- (b) the Supplier may retain any monies paid;
- (c) the Supplier may charge for all Services performed in respect of which no Price has been previously charged;
- (d) the Supplier may charge for all costs, disbursements and expenses, incurred in expectation of performing all of the requirements of the Quotation including the cost of any Licensed Software Licences, Licensed Software Support Plans and Hardware Products purchased for on supply to the Customer prior to the termination date (except to the extent the Customer has already paid the applicable Price for those items);
- (e) each party may require the other party to deliver to it or erase or destroy, or procure the delivery, erasure or destruction (as applicable), all materials containing its Confidential Information and certify its compliance with these obligations; and
- (f) each party may pursue any additional or alternative remedies provided by law.

20 Force Majeure

- (a) The Supplier will not be liable for any delay or failure to perform its obligations under a Quotation or this Agreement if that delay is due to Force Majeure.
- (b) If a delay or failure of the Supplier to perform its obligations is caused or anticipated due to Force Majeure, the performance of the Supplier's obligations will be suspended.
- (c) If a delay or failure by the Supplier to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the Agreement on providing notice in writing to the other party, in which event the Supplier will not be deemed to have breached this Agreement.

- (d) If this Agreement is terminated pursuant to clause 20(c), the Supplier will refund moneys previously paid by the Customer under this Agreement for the Services which were not provided due to Force Majeure.

21 Delay

- (a) Without limiting clause 20, the Supplier will not be responsible for any delays (or costs and losses arising from delays) which occur during the course of the Services and which arise from any non-compliance by the Customer with this Agreement, an applicable Quotation or Project Plan, the late supply or provision of instructions and information by the Customer, delays in obtaining access to the Site or any delays caused by the Customer's third party suppliers and contractors.
- (b) The Supplier will be entitled to extension of time in respect of any schedule, deadline or milestone equal to the duration of any delay caused by Force Majeure or a cause specified in clause 21(a).

22 Sub-contracts

- (a) The Supplier may sub-contract the performance of all or part of its obligations under this Agreement.
- (b) The Supplier may, without the consent of the Customer, engage individuals on a subcontract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of the Services under this Agreement.

23 Entire agreement

- (a) These terms and conditions and the Quotation constitute this Agreement which is the entire agreement between the parties for the supply of the Hardware Products and the Services and supersedes all prior representations, statements and understandings or undertakings, whether verbal or in writing.
- (b) No modification or alteration of any provision of this Agreement will be valid except those in writing signed by each party as set out in clause 31.

24 Assignment

Neither the benefits nor burdens of this Agreement may be assigned, transferred, licensed or sub-licensed by the Customer without the prior written consent of the Supplier. The Supplier may assign the benefits or burdens of this Agreement to a Related Body Corporate or other entity under common ownership with the Supplier or the purchaser of all or a substantial part of the Supplier's business.

25 Waiver

- (a) No right under this Agreement will be deemed to be waived except by notice in writing signed by each party.
- (b) A waiver by the Supplier under clause 25(a) will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- (c) Subject to clause 25(a), any failure by the Supplier to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Supplier to the Customer, will not be construed as a waiver of the Supplier's rights under this Agreement.

26 Disputes

- (a) Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the parties or their representatives will be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules

- (b) Prior to referring a matter to mediation under clause 26(a), the parties will:
- (1) formally refer the dispute to their respective contract managers for consideration; and
 - (2) if the respective contract managers are unable to resolve the dispute after 5 Business Days (or such other period as is agreed between the parties) from the date of referral, refer the dispute to the respective chief executive officers of each party.
- (c) Nothing in this clause will prevent a party from seeking urgent equitable relief before an appropriate court.

27 Supplier's rights

Any express statement of a right of the Supplier under this Agreement is without prejudice to any other right of the Supplier expressly stated in this Agreement or existing at law.

28 Survival

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Term or termination will remain in full force and effect following the expiration of the Term or termination.

29 Governing law

This Agreement will be governed by and construed in accordance with the laws in force in the State of New South Wales, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that State and of the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

30 Notices

- (a) Notices under this Agreement may be delivered by hand, by mail, by e-mail or by facsimile to the addresses specified in the Quotation.
- (b) Notices will be deemed given:
- (1) in the case of hand delivery, upon delivery;
 - (2) in the case of post, 3 days after posting;
 - (3) in the case of e-mail or facsimile, upon receipt by the sender of confirmation of transmission if confirmation is received before 5.00 pm on a business day or otherwise at the commencement of the first business day following transmission.

31 Variation and change control

- (a) The provisions of this Agreement may not be varied, except by agreement in writing signed by the parties.
- (b) If either party (the **Proposing Party**) wishes to vary the Agreement:
- (1) the Proposing Party will submit a copy of the proposed variations to the other Party (the **Receiving Party**), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal;
 - (2) if the Receiving Party accepts the variations, the Agreement will be deemed to be so amended from the date of acceptance; and
 - (3) if the Receiving Party rejects the proposed variations, each party will perform the Agreement in accordance with the unvaried terms.

32 General

32.1 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

32.2 Further assurances

A party, at its own cost and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to this Agreement.

32.3 No adverse construction

This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

32.4 No right of set-off

Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party.

32.5 Counterparts

If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.