

# Managed Services Terms and Conditions

Transition and Due Diligence Services  
Server Monitoring Services  
Patch Management Services  
Remote Server Support Services  
Onsite Support Services  
Health Check Services  
Helpdesk Services  
Monthly Reporting Services



Meridian IT Pty Ltd  
ABN 86 064 019 290

## 1 Definitions and interpretation

### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**Audit Report** means the report produced by the Supplier following its performance of the audit review conducted as part of the Transition and Due Diligence Services.

**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.

**Computer System** means the Customer's existing computer systems, including all hardware and software owned by, licensed to or leased by the Customer.

**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, service providers, 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.

**Coverage Hours** means, unless otherwise specified in the Quotation for a Managed Service, Business Days from 8:30 am to 5:30 pm AEST. The Quotation may specify different Coverage Hours for each Managed Service.

**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.

**Documentation** means any user manual or other operational documentation or installation instructions provided by (as applicable) the manufacturer of the Supported Software.

**Fees** means the fees payable by the Customer to the Supplier for provision of the Managed Services as specified in the Quotation and includes any expenses or disbursements 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).

**Health Check Services** means the service which comprises the review of various parameters of the Managed Components, either remotely or by attending the Site, as detailed in the Quotation.

**Helpdesk Services** means the Supplier's provision of information technology support services in respect of the Managed Components, as detailed in the Quotation.

**Initial Term** means, for each Managed Service, the period nominated in the Quotation for that Managed Service.

**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 16.2(a).

**Managed Services** means any one or more of the following, as specified in the Quotation:

- (1) Transition and Due Diligence Services;
- (2) Server Monitoring Services;
- (3) Patch Management Services;
- (4) Remote Server Support Services;
- (5) Onsite Support Services;
- (6) Health Check Services;
- (7) Helpdesk Services;
- (8) Monthly Reporting Services,

and any other services which the Quotation requires the Supplier to provide to the Customer.

**Managed Components** means the components of the Customer's Computer System, including the Supported Software, nominated in the Quotation, in respect of which the Supplier will provide the Managed Services.

**Management Plan** means the document (developed by the Supplier (including a Patch Proposal) where required by the Quotation) which, in respect of one or more Managed Services, specifies the services, materials and personnel to be contributed by each party and the responsibilities of each party relating to the Managed Services to be provided under this Agreement. A Management Plan will only be developed where required by the Quotation.

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

**Monthly Reporting Services** means the Supplier's provision of various monthly reports in respect of the Managed Services, as detailed in the Quotation.

**Monthly Reports** means those reports nominated in the Quotation to be provided to the Customer as part of the Monthly Reporting Services.

**Onsite Support Services** means the attendance by the Supplier's personnel at the Site for a nominated number of days per month during the Service Period to provide support for the Managed Components, as detailed in the Quotation.

**Patch Management Services** means the Supplier's installation of the patches released for the Supported Software, as detailed in the Quotation.

**Patch Proposal** means the proposal for updating the Supported Software as set out in clause 7.2(a);

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Quotation** means the written quotation, which has been accepted by the Customer, which describes the Managed Services (as applicable) that are to be provided 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 Managed Services.

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

**Remote Server Support Services** means remote server support services provided by the Supplier for the Customer's nominated servers as detailed in the Quotation, which may include:

- (a) resolution of service or system incidents;
- (b) configuration changes as requested by an appropriate service request;
- (c) fault escalation to third party software and hardware vendors, where the third party software and hardware is nominated for support within the Quotation;
- (d) user account creation and modification;
- (f) installation of security patches;
- (g) storage and backup support;
- (h) management of backup schedules;
- (i) antivirus system management,

as detailed in the Quotation.

**Renewal Term** means, in respect of a Managed Service, the further period, equal in duration to the Initial Term, during

which the Supplier will continue to perform the Managed Service.

**Server Monitoring Services** means the Supplier's monitoring of various network parameters of the Managed Components, as detailed in the Quotation.

**Server Monitoring Thresholds** means the thresholds for each network parameter being monitored as part of the Server Monitoring Services or Health Check Services as set out in the Quotation or Management Plan (if applicable).

**Service Period** means, in respect of a Managed Service, the Initial Term and any Renewal Term for that Managed Service.

**Site** means the location at which (or in respect of which in the case of any Managed Service to be provided remotely), the Managed Services will be provided (if applicable) as specified in the Quotation.

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

**Supplier Hardware** means the Supplier's hardware or any third party hardware licensed by the Supplier (if any) which the Supplier uses or installs into the Customer's Computer System to enable the Supplier to perform the Managed Services.

**Supplier Software** means the Supplier's software or any third party licensed software (if any) which the Supplier uses or installs on the Customer's Computer System to enable the Supplier to perform the Managed Services.

**Supported Software** means the software, nominated in the Quotation, in respect of which the Supplier will provide the Managed Services.

**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.

**Term** has the meaning provided by clause 3.

**Transition and Due Diligence Services** means the Supplier's audit of the Customer's information technology infrastructure, as detailed in the Quotation.

## 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 Management 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.

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## 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.

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## 3 Term

### 3.1 Term

The Agreement commences on the Commencement Date and will continue until the day the last Service Period for a Managed Service under this Agreement expires.

### 3.2 Renewal Term

Unless the Customer or the Supplier notifies the other that it wishes to cease the relevant Managed Service no less than 1 month prior to the last day of the Initial Term or then current Renewal Term, the Customer will continue to procure, and the Supplier will continue to perform, the Managed Services for a further Renewal Term.

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## 4 Management Plan

- (a) If the Quotation requires the development of a Management Plan, the parties must develop and agree the Management Plan before the Supplier provides any of the applicable Managed Services.
- (b) The Customer and the Supplier will consult with each other and use reasonable efforts to develop the Management Plan.
- (c) The Customer will pay the Supplier for the development of the Management Plan in accordance with the Quotation.
- (d) The Management 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 performance of the Managed Services;

- (2) the Service Period and, if applicable, the Milestone Dates applicable to the performance of the Managed Services; and
- (3) any other the details required by the Quotation.

- (e) Once the Management Plan has been developed and agreed the parties must comply with the Management Plan.

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## 5 Transition and Due Diligence Services

This clause 5 applies only if the Quotation requires the Supplier to provide the Customer with Transition and Due Diligence Services.

### 5.1 Provision of Transition and Due Diligence Services

- (a) The Supplier will provide the Customer with the Transition and Due Diligence Services in accordance with the terms of this Agreement.
- (b) The Supplier will endeavour to perform the Transition and Due Diligence Services in accordance with any applicable Milestone Dates set out in the Management Plan (as applicable) or in the absence of a Management Plan, within the time frame specified in the Quotation.
- (c) Where a Managed Service is dependent or reliant on the results of the Audit Report, the Supplier is not obliged to perform that Managed Service until the Audit Report has been completed and the recommendations (if any) are implemented by the Customer.

### 5.2 Audit review

- (a) The Customer must provide the Supplier with any assistance requested by the Supplier within a reasonable time to enable the Supplier to perform an audit of the Customer's information technology infrastructure by the applicable Milestone Dates or within the time frame specified in the Quotation.
- (b) Following the Supplier's review of the Customer's information technology infrastructure, the Supplier will prepare the Audit Report, which will contain:
  - (1) the results of the audit review; and
  - (2) recommendations for changes or enhancements to the Customer's information technology infrastructure.
- (c) If the Customer does not implement the recommendations made in the Audit Report, the Supplier may:
  - (1) terminate this Agreement without further obligation to the Customer; or
  - (2) require a variation to the Fees before the Supplier performs any other Managed Service.

### 5.3 Completion of Transition and Due Diligence Services

- (a) On provision of the Audit Report, the Supplier will have completed the Transition and Due Diligence Services.
- (b) The Transition and Due Diligence Services are a one off service and there is no Renewal Term for this service. If this Agreement or the Customer requires the performance of the Transition and Due Diligence Services after the initial provision of the Audit Report, the Customer must pay a further Fee for performance of this service.

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## 6 Server Monitoring Services

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

### 6.1 Provision of Server Monitoring Services

- (a) The Supplier will provide the Customer with the Server Monitoring Services during the Service Period in accordance with the terms of this Agreement.
- (b) The Supplier will only perform the Server Monitoring Services on the Managed Components that have been nominated in the Quotation, or Management Plan (if applicable).

### 6.2 Customer's assistance

- (a) To enable the Supplier to begin performing the Server Monitoring Services, the Customer:
  - (1) consents to the installation of, and agrees to provide the Supplier with sufficient space, facilities (including access to power and cooling facilities) and assistance to allow the Supplier to install, any Supplier Hardware and Supplier Software the Supplier considers necessary to enable the Supplier to perform the Server Monitoring Services;
  - (2) must, at its own cost, establish and maintain a connection to the internet at all times during the Service Period to enable the Supplier to connect remotely to the Customer's Computer System; and
  - (3) 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.
- (b) Despite any provision of the Quotation, or Management Plan (if applicable), the Supplier is not required to perform the Server Monitoring Services until the Customer provides the assistance set out in sub clause (a), but the Customer is still required to pay the Fees for the Service Period.

### 6.3 Notification of issues

- (a) If the Supplier identifies any parameter of the Managed Components that exceeds the Server Monitoring Thresholds, it will:
  - (1) notify the Customer's nominated representative; or
  - (2) if the Supplier is performing a Managed Service under this Agreement under which it is required to resolve or rectify any issues with the Customer's Computer System, seek to resolve or rectify the issue in accordance with the terms of that Managed Service.

### 6.4 Scope of the Supplier's obligations

The Supplier is not required to resolve or rectify any issues identified while performing the Server Monitoring Services.

## 7 Patch Management Services

This clause 7 applies only if the Quotation requires the Supplier to provide the Customer with Patch Management Services.

### 7.1 Monitoring of Supported Software

The Supplier will monitor the Supported Software during the Service Period for any patches released by the vendor of the Supported Software.

### 7.2 Notification of Supported Software updates

- (a) If a software patch is made available by the vendor of the Supported Software, the Supplier will notify the Customer of:

- (1) the specifications and features of the patch as detailed by the manufacturer of the Supported Software in the Documentation;
- (2) the costs and expenses (if any) to procure the patch or any additional hardware necessary to properly operate the Supported Software after the patch is applied (**Upgrade Costs**); and
- (3) the proposed timeline for testing the patch and updating the Supported Software with the patch, including any downtime required to apply the patch to the Supported Software.

(the **Patch Proposal**).

- (b) If the Customer wishes to proceed with updating the Supported Software in accordance with the Patch Proposal, the Customer must notify the Supplier within 10 Business Days of receiving the Patch Proposal.

### 7.3 Frequency of Updates

The Supplier will install the number of patches for the Supported Software specified in the Quotation or, if no number is specified, up to 2patches, for each period of 12 months during the Service Period.

### 7.4 Scope of the Supplier's obligations

- (a) On receipt of the Customer's approval of the Patch Proposal, the Supplier must use its reasonable endeavours to update the Supported Software in accordance with the Patch Proposal and the Documentation.
- (b) Unless expressly required by the Quotation, the obligations of the Supplier when providing the Patch Management Services are confined to testing and installing the patch for the Supported Software in accordance with the Patch Proposal and by following the installation steps, if any, prescribed by the Documentation.
- (c) Unless otherwise expressly required by the Quotation, the Supplier is not required to integrate the installed Supported Software with any other software or parts of the Customer's Computer System, migrate any Customer data or install any Customer provided software after upgrading the Supported Software with the relevant patch.
- (d) The Customer acknowledges that:
  - (1) the Supplier does not warrant or represent that the Supported Software will perform as described by the Vendor or set out in the Patch Proposal; and
  - (2) the testing of the Supported Software updated with the patch may fail and if it does so and the Customer elects to not proceed with the upgrade of the Supported Software, the Customer is still liable to the Supplier for the Fees and any associated costs and expenses.
- (e) The Customer acknowledges that the Supplier does not warrant or represent that the upgraded Supported Software:
  - (1) will operate as intended or be error or bug free; or
  - (2) is appropriate for the Customer's requirements,
 and the Supplier is not liable for any loss, damage, claim or liability arising from the use or operation of the Supported Software following the upgrade unless such loss, damage, claim or liability arises as a result of the Supplier's failure to comply with the Documentation when upgrading the Supported Software.

## 7.5 Costs

All Costs associated with the upgrade, including any charges applied by the vendor of the Supported Software, and hardware charges will be borne by the Customer and, if provided by the Supplier, will be supplied under separate terms and conditions.

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## 8 Remote Server Support Services

This clause 8 applies only if the Quotation requires the Supplier to provide the Customer with Remote Server Support Services.

### 8.1 Provision of Remote Server Support Services

- (a) The Supplier will provide the Customer with the Remote Server Support Services during the Coverage Hours during the Service Period in accordance with the terms of this Agreement.
- (b) The Supplier will only perform the Remote Server Support Services on the Managed Components that have been nominated in the Quotation, or Management Plan (if applicable).

### 8.2 Customer's assistance

- (a) To enable the Supplier to perform the Remote Server Support Services, the Customer:
  - (1) consents to the installation of, and agrees to provide the Supplier with sufficient space, facilities (including access to power and cooling facilities) and assistance to allow the Supplier to install, any Supplier Hardware and Supplier Software the Supplier considers necessary to enable the Supplier to perform the Remote Server Support Services; and
  - (2) must, at its own cost, establish and maintain a connection to the internet at all times during the Service Period to enable the Supplier to connect remotely to the Customer's Computer System; and
  - (3) 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.
- (b) Despite any provision of the Quotation, or Management Plan (if applicable), the Supplier is not required to perform the Remote Server Support Services until the Customer provides the assistance set out in sub clause (a), but the Customer is still required to pay the Fees for the Service Period.

### 8.3 Scope of the Supplier's obligations

- (a) Unless expressly required by the Quotation, the obligations of the Supplier when providing the Remote Server Support Services are confined to:
  - (1) only providing the Remote Server Support Services nominated in the Quotation;
  - (2) providing the Remote Server Support Services remotely and only to the extent the services can be provided without attending the Site; and
  - (3) the provision of technical services only. Any maintenance required for the Managed Components will be referred to the relevant vendor of the Customer's hardware or Supported Software.
- (b) The Supplier's obligation to provide the Remote Server Support Services is dependent on, and subject to, the Customer:
  - (1) providing the assistance set out in clause 8.2;

- (2) procuring and maintaining hardware and software support contracts with the applicable vendors for the Managed Components.

## 8.4 Storage and back up support

- (a) If storage and backup support is offered as part of the Remote Server Support Services the Supplier will provide day to day management of the back up schedules as detailed in the Quotation, but the Customer must:
  - (1) provide and replace and replace back up media;
  - (2) transport and store back up media off site;
  - (3) purchase additional hardware and software if the existing back up hardware and software is deemed insufficient by the Supplier for the Customer's storage requirements;
  - (4) maintain its back up software licences; and
  - (5) notify the Supplier of any change to the back up schedule or change to the Computer System (noting that clause 13.4(a) does not allow this to occur without the Supplier's consent).
- (b) The Customer acknowledges that the Supplier does not warrant or represent that the Customer's back up software is appropriate for the Customer's requirements. The Supplier is not liable for any loss, damage, claim or liability arising from the use of the Customer's back up software.

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## 9 Onsite Support Services

This clause 9 applies only if the Quotation requires the Supplier to provide the Customer with Onsite Support Services.

### 9.1 Provision of the Onsite Support Services

- (a) The Supplier will procure that its personnel will attend the Site during the Service Period and provide the Customer with the Onsite Support Services for the number of days per month nominated in the Quotation and otherwise in accordance with the terms of this Agreement.
- (b) Unless otherwise specified in the Quotation, the Supplier will procure one of its personnel to attend the Site during the number of days per month nominated in the Quotation during the Coverage Hours.
- (c) The Supplier will only perform the Onsite Support Services on the Managed Components that have been nominated in the Quotation, or Management Plan (if applicable).

### 9.2 Customer's assistance

- (a) To enable the Supplier to perform the Onsite Support Services, the Customer must:
  - (1) provide a clean and safe working environment at the Site for the Supplier's personnel with access to a desk, power, network connections both to the Computer System and the internet, a fixed phone line and document storage facilities; and
  - (2) 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.
- (b) Despite any provision of the Quotation, or Management Plan (if applicable), the Supplier is not required to perform the Onsite Support Services until the Customer provides the assistance set out in sub clause (a), but the Customer is still required to pay the Fees for the Service Period.

### 9.3 Scope of the Supplier's obligations

- (a) Unless expressly required by the Quotation, the obligations of the Supplier when providing the Onsite Support Services are confined to:
- (1) only providing the Onsite Support Services nominated in the Quotation;
  - (2) providing the Onsite Support Services while located at the Site during Coverage Hours only; and
  - (3) the provision of technical services only. Any maintenance required for the Managed Components will be referred to the relevant vendor of the Customer's hardware or Supported Software.
- (b) The Supplier's obligation to provide the Onsite Support Services is dependent on, and subject to, the Customer:
- (1) providing the assistance set out in clause 9.2;
  - (2) procuring and maintaining hardware and software support contracts with the applicable vendors for the Managed Components.

### 9.4 Storage and back up support

- (a) If storage and backup support is offered as part of the Onsite Support Services the Supplier will provide management of the back up schedules while located at the Site on the nominated days as detailed in the Quotation, but the Customer must:
- (1) provide and replace and replace back up media;
  - (2) transport and store back up media off site;
  - (3) purchase additional hardware and software if the existing back up hardware and software is deemed insufficient by the Supplier for the Customer's storage requirements;
  - (4) maintain its back up software licences; and
  - (5) notify the Supplier of any change to the back up schedule or change to the Computer System (noting that clause 13.4(a) does not allow this to occur without the Supplier's consent).
- (b) The Customer acknowledges that the Supplier does not warrant or represent that the Customer's back up software is appropriate for the Customer's requirements. The Supplier is not liable for any loss, damage, claim or liability arising from the use of the Customer's back up software.

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## 10 Health Check Services

This clause 10 applies only if the Quotation requires the Supplier to provide the Customer with Health Check Services.

### 10.1 Provision of Health Check Services

- (a) The Supplier will provide the Customer with the Health Check Services during the Service Period in accordance with the terms of this Agreement.
- (b) The Supplier will only perform the Health Check Services on the Managed Components that have been nominated in the Quotation, or Management Plan (if applicable).

### 10.2 Customer's assistance

- (a) To enable the Supplier to perform the Health Check Services, the Customer:
- (1) consents to the installation of, and agrees to provide the Supplier with sufficient space, facilities (including access to power and cooling facilities) and assistance to allow the Supplier to install, any Supplier Hardware and Supplier Software the

Supplier considers necessary to enable the Supplier to perform the Health Check Services;

- (2) must, at its own cost, establish and maintain a connection to the internet at all times during the Service Period to enable the Supplier to connect remotely to the Customer's Computer System; and
  - (3) 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.
- (b) Despite any provision of the Quotation, or Management Plan (if applicable), the Supplier is not required to perform the Health Check Services until the Customer provides the assistance set out in sub clause (a), but the Customer is still required to pay the Fees for the Service Period.

### 10.3 Notification of issues

- (a) If the Supplier identifies any parameter of the Managed Components that exceeds the Server Monitoring Thresholds, it will:
- (1) notify the Customer's nominated representative; or
  - (2) if the Supplier is performing a Managed Service under this Agreement under which it is required to resolve or rectify any issues with the Customer's Computer System, seek to resolve or rectify the issue in accordance with the terms of that Managed Service.

### 10.4 Scope of the Supplier's obligations

The Supplier is not required to resolve or rectify any issues identified while performing the Health Check Services.

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## 11 Helpdesk Services

This clause 11 applies only if the Quotation requires the Supplier to provide the Customer with Helpdesk Services.

### 11.1 Provision of Helpdesk Services

- (a) The Supplier will provide the Customer with the Helpdesk Services during the Coverage Hours during the Service Period in accordance with the terms of this Agreement.
- (b) The Supplier will only perform the Helpdesk Services in respect of the Managed Components that have been nominated in the Quotation, or Management Plan (if applicable).

### 11.2 Scope of the Supplier's obligations

- (a) Unless expressly required by the Quotation, the obligations of the Supplier when providing the Helpdesk Services are confined to:
- (1) only providing the Helpdesk Services nominated in the Quotation;
  - (2) the provision of technical services only. Any maintenance of the Managed Components will be referred to the relevant vendor of the Customer's hardware or Supported Software.
- (b) The Supplier's obligation to provide the Helpdesk Services is dependent on, and subject to, the Customer procuring and maintaining hardware and software support contracts with the applicable vendors for the Managed Components.

### 11.3 Fair Use of Helpdesk Services

- (a) Unless otherwise specified in the Quotation, the Fees for the Helpdesk Services are applied on the basis that each issue notified to the Helpdesk Service can be resolved within 15 minutes.

- (b) To the extent that any issue takes longer than 15 minutes to resolve, the Customer must pay the hourly rates for resolution of the issue as nominated in the Quotation.
- (c) If a call to the Helpdesk Service relates to any matter other than a technical issue within the scope of the Helpdesk Service as nominated in the Quotation, the Supplier may, at its election:
  - (1) charge its standard hourly rates, as amended by the Supplier from time to time, for providing the requested assistance; or
  - (2) terminate the call.

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## 12 Monthly Reporting Services

This clause 12 applies only if the Quotation requires the Supplier to provide the Customer with Monthly Reporting Services.

### 12.1 Provision of Monthly Reporting Services

- (a) The Supplier will provide the Customer with the Monthly Reports during the Service Period by the times nominated in the Quotation, in accordance with the terms of this Agreement.
- (b) The Supplier will only provide Monthly Reports in respect of the Managed Services performed by the Supplier.

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## 13 Managed Services – general obligations

### 13.1 Appointment

- (a) Nothing in this Agreement requires the Supplier to provide any Managed Services to the Customer at any time when:
  - (1) the Customer has not paid for Managed 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.

### 13.2 Personnel, facilities, access and Site

- (a) The Customer will provide sufficient, qualified personnel capable of performing all of its duties and obligations under the Quotation and Management 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 Managed Services, including reasonable and necessary on-line access, electrical power, telephone services and working space as the Supplier may reasonably request.

### 13.3 Maintaining the Computer System

The Customer acknowledges that the Fees have been proposed by the Supplier on the basis that the Computer System is properly maintained and up to date and the Customer agrees to continue to maintain the Computer System for the Term.

### 13.4 Change to the Managed Components

- (a) The Customer must not substitute, remove or update the Managed Components or the Customer's Computer System without first procuring the consent of the Supplier.
- (b) In giving its consent to the Customer, the Supplier may, prior to giving its consent:
  - (1) where the substitution, removal or update is performed by a third party, require the third party to

brief the Supplier on all aspects of the work performed and provide the Supplier with all relevant documentation and information relating to the altered Managed Components;

- (2) perform the Transition and Due Diligence Services on the altered Managed Components or Computer System at the Customer's cost and expense; and
- (3) vary any Fees or impose new fees for performing the Managed Services.

### 13.5 Supplier to exercise discretion

Subject to complying with its obligations under this Agreement, the Supplier shall exercise its own independent discretion as to the most appropriate and effective manner of providing the Managed Services and achieving the Customer's requirements.

### 13.6 Managed Services Exclusions

Unless expressly specified to the contrary in the Quotation or in this Agreement for a Managed Service, the Managed Services do not include the following (or services relating to any of the following):

- (a) electrical, air conditioning, building or environmental work external to the Managed Components;
- (b) effecting changes or alterations to the configuration or specifications of the Computer System;
- (c) re-installation, moving or removing of the Computer System;
- (d) repair of damage caused by:
  - (1) the operation of the Maintained Components by a person not authorised by the Customer;
  - (2) the operation of the Maintained Components other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the manufacturer or Supplier;
- (e) cleaning, painting, or refinishing any part of the Managed Components;
- (f) re-installing moving or removing the Managed Components or accessories, supplies or other items associated with the Managed Components;
- (g) maintenance which is determined by the Supplier not to be related to the Managed Components;
- (h) rectification of defects, errors or computer viruses in any software, hardware or equipment, or repairs, support or maintenance relating to those things;
- (i) backup, preservation, translation, migration or management of data;
- (j) rectification of faults in hardware, equipment or telecommunications links or telecommunications services;
- (k) development of any software or software interfaces needed to complete any installation;
- (l) supply and installation of consumables or hardware;
- (m) rectification of errors or failures caused by failure of hardware, power, air-conditioning or other environmental failure; or
- (n) installing, transferring, moving or removing software, data, hardware or other equipment or materials.

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## 14 Supplier's supply of Supplier Software and Supplier Hardware

### 14.1 Software

If the Supplier provides the Customer with Supplier Software, the Customer acknowledges that it has no right, title or interest in the Supplier Software and it is only being provided to the Customer for the purposes of the Supplier performing the Managed Services.

### 14.2 Hardware

- (a) If the Supplier installs any Supplier Hardware into the Customer's Computer System, the Customer acknowledges that it has no right, title or interest in the Supplier Hardware and it is only being provided to the Customer for the purposes of the Supplier performing the Managed Services.
- (b) The parties irrevocably agree that the Supplier Hardware is not and will not become a fixture on or to the Site.
- (c) On expiry of the Service Period, the Customer grants the Supplier, or its authorised representatives, the right to enter the Site to remove the Supplier Hardware. The Supplier agrees to make good any damage to the Site caused by the Supplier carrying out the activities contemplated in this clause.
- (d) The Customer agrees, warrants and represents that it will:
  - (1) not tamper with or remove any labels identifying the Supplier Hardware as the property of the Supplier;
  - (2) not represent that it owns or otherwise attempt to sell, rent or otherwise part with the possession of the Supplier Hardware;
  - (3) not register or permit any charge or security interest to be registered or enforced with respect to the Supplier Hardware by anyone other than the Supplier (including any interest registrable under the PPSA);
  - (4) not interfere with or tamper with the Supplier Hardware;
  - (5) provide adequate rack space for and ensure the safe storage of the Supplier Hardware on the Site at all times; and
  - (6) ensure that the Supplier Hardware located on the Site has adequate access to electrical supply and cooling systems and is at all times maintained at a suitable operating temperature as reasonably required by the Supplier from time to time.

### 14.3 PPSA

If the Supplier determines that this Agreement (or a transaction in connection with it) contains or gives rise to a registrable security interest for the purposes of the PPSA, the Customer agrees to do all things reasonably required by the Supplier (such as obtaining consents, signing documents, entering into a further agreement in relation to the security interest and supplying information) for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
- (b) enabling the Supplier to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Supplier; or
- (c) enabling the Supplier to exercise its rights in connection with the security interest.

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## 15 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 Managed Services.
- (b) The Customer assigns to the Supplier any rights the Customer has in those materials and deliverables.

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## 16 Fees

### 16.1 Fees

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

### 16.2 Invoice and payment

- (a) Subject to the Quotation, the Supplier will invoice the Customer for the Fees 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.

### 16.3 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 those services, which standard hourly rates will be as amended by the Supplier from time to time.

### 16.4 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.

### 16.5 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 16.4, 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 Rate** 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.

### 16.6 Other rights and obligations not affected

The exercise by the Supplier of any of the Supplier's rights under clause 16.5 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.

#### 16.7 Variation

- (a) The Fees are subject to variation as set out in this clause 16.7.
- (b) If the Managed Services are provided during a period greater than 24 months, the Fees in the Quotation will be subject to annual adjustment on the second 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 Fees 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 Fees were last set or varied; and
  - (2) 5%.

#### 16.8 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 Managed Services.

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### 17 Confidential Information

#### 17.1 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.

#### 17.2 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 Managed Services;
- (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 Managed Services; and
- (e) immediately notify the Discloser of any actual or suspected unauthorised use, reproduction or disclosure of the Discloser's Confidential Information.

#### 17.3 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.

#### 17.4 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.

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### 18 GST

#### 18.1 Definitions

In this clause 18:

- (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.

#### 18.2 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.

#### 18.3 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.

#### 18.4 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.

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### 19 Employees and contractors

- (a) In this clause 19, Restraint Period means a period commencing on the Commencement Date and ending 2 years after the date on which the Supplier last provided any Managed 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.

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### 20 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 Managed 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.

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## 21 Implied terms

### 21.1 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.

### 21.2 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.

### 21.3 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 21.2 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.

### 21.4 Survival of clause

Despite any other provision of this Agreement, this clause 21 survives the expiry or termination of this Agreement.

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## 22 Liability

### 22.1 Limitation of liability

Subject to clause 21, 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.

### 22.2 Maximum liability

Subject to clause 21, 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 Managed Service which was responsible for or connected with the relevant loss, damage or claim.

### 22.3 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.

### 22.4 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.

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## 23 Termination

### 23.1 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 Managed 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.

### 23.2 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.

### 23.3 Consequences of termination

If a notice of termination is given to the Supplier under clause 23.1 or clause 23.2 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 Managed Services performed in respect of which no Fees have 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 (except to the extent the Customer has already paid the applicable Fees 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.

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### 24 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 24(c), the Supplier will refund moneys previously paid by the Customer under this Agreement for the Managed Services which were not provided due to Force Majeure.

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### 25 Delay

- (a) Without limiting clause 24, the Supplier will not be responsible for any delays (or costs and losses arising from delays) which occur during the course of the Managed Services and which arise from any non-compliance by the Customer with this Agreement, an applicable Quotation or Management 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 25(a).

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### 26 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 Managed Services under this Agreement.

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### 27 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 Managed 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 35.

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### 28 Assignment

Neither the benefits nor burdens of this Agreement may not 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.

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### 29 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 29(a) will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- (c) Subject to clause 29(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.

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### 30 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 30(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.

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### 31 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.

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### 32 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.

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### 33 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.

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### 34 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.

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### 35 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.

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### 36 General

#### 36.1 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.

#### 36.2 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.

### 36.3 No adverse construction

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

### 36.4 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.

### 36.5 Counterparts

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