

TERMS AND CONDITIONS

1. Definitions and interpretation

In this Agreement, unless context requires otherwise:

Agreement means this document and the Scope as amended from time to time.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and provisions of similar relevant state legislation, as amended from time to time.

Business Day means on which banks are open in Perth, Western Australia.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Client means the entity referred to in the Scope.

Fees means the fees or rates set out in the Scope for the supply of Goods, Services or Software or, where not specified, as determined in accordance with this Agreement or in the schedule.

Fixed User Support Plans are service agreements that offer fixed fee support services to the Client.

Goods means the goods supplied by the Supplier to the Client under this Agreement.

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other protected right.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Overconsumption refers to the situation where the Client's usage of agreed support services exceeds the predefined limits for three consecutive months.

Prepaid refers to service agreement based on a pre paid block of hours.

Scope means a scope of Goods or Services provided by the Supplier to the Client in writing or confirmed in writing from time to time, which may be by email and may be expressed to be a quote. A Scope may not exhaustively list all individual Goods, Services and Software which will be provided under that Scope.

Services means the services provided by the Supplier to the Client under this Agreement and includes the supply, reselling, licensing, sub-licensing or procuring of a licence for Software.

Service Level Agreement (SLA) is the agreement between the Supplier and a Client that outlines the specific services to be provided, performance metrics, response times, and responsibilities of both parties.

Software means any software, software-as-a-service, platform-as-a-service, infrastructure- as-a-service, programs and any other operating information.

Supplier means Essential Business Information Technology Pty Ltd (ACN 146 946 787) as trustee for the Di Candilo Family Trust (ABN 44 988 411 946) of U2 L1 331-335 Hay Street, Subiaco WA 6008.

1.1 In this Agreement, unless context requires otherwise:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) a reference to a definition that is capitalised may also be a reference to such definition in lower case;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or

schedule or annexure to, the Agreement, and a reference to the Agreement includes any schedule or annexure;

- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (j) headings are for ease of reference only and do not affect interpretation;
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the agreement or these terms and conditions or any part of them; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.2 If there is an inconsistency between the terms in this document and the terms in a Scope, then, to the extent of the inconsistency, the terms will be interpreted in the following order of priority:

- (a) the terms in this document; and
- (b) the written terms in a Scope.

2. **Acceptance and application**

2.1 This Agreement applies to the supply of Goods and Services:

- (a) described in a Scope, including a future Scope;
- (b) supplied by the Supplier prior to acceptance of this Agreement but in contemplation of it; and
- (c) supplied by the Supplier from time to time after this Agreement is accepted.

This Agreement may be accepted by:

- (d) signing and returning this Agreement;
- (e) communicating acceptance of this Agreement or a Scope in writing or otherwise;
- (f) making the first payment for any Goods or Services; or
- (g) if the Client has made the first payment for Goods or Services before the Supplier provides this Agreement, the Client continuing to instruct the Supplier to provide the Goods or Services.

By accepting this Agreement in any manner set out in clause 2.2, the Client's representative warrants it has the authority to bind the Client to this Agreement.

3. **Supply of Goods**

3.1 Application

This clause 3 applies where the Supplier agrees to supply Goods to the Client.

3.2 The price for Goods is:

- (a) as stated in a Scope;
- (b) as stated in a schedule to this Agreement;
- (c) if not stated in a Scope or a schedule, at the Supplier's prevailing price at the time of supply; or
- (d) if not otherwise stated, at the actual cost to the Supplier.

3.3 Unless otherwise agreed in a Scope, the Client must pay the Fees for the Goods prior to delivery, and the Supplier is not obliged to deliver until the Fees have been paid, unless agreed otherwise in writing.

3.4 The Client acknowledges that the Supplier retains title to the Goods until the later of the Goods having been delivered to the Supplier and the Client having paid for the Goods, unless agreed otherwise in writing.

4. **Leasing of Goods**

4.1 This clause applies where and in respect of Goods which are leased to the Client by the Supplier.

4.2 The leasing of any Goods may be on a month to month basis, or for a fixed term, in accordance with the Scope. If the leasing for any Goods is for a fixed term and that term elapses, the lease reverts to a month to month lease of the Goods, with the Fee determined on a pro-rata monthly basis.

4.3 The Fee for the leasing of any Goods is:

- (a) as stated in a Scope;
- (b) as stated in a schedule to this Agreement; or
- (c) if not stated in a Scope or a schedule, at the Supplier's prevailing rates at the time of supply.

4.4 The Client will:

- (a) keep the Goods in first class condition;
- (b) only use the Goods as they would be used by a careful and prudent owner;
- (c) not use the Goods for any illegal purpose;
- (d) report any damage to, or loss of, the Goods to the owner immediately such damage or loss occurs;
- (e) be liable for any breach of this Agreement committed by the Client's servants or agents; and
- (f) indemnify the Supplier for any loss (including legal costs) incurred by the Supplier in relation to any breach of this Agreement and for any liability arising out of any such breach as it relates to the leasing of any Goods.

4.5 Title to the Goods remains with the Supplier at all times. The Supplier may retake possession of the Goods if the Client breaches any provision of this Agreement, this Agreement is terminated, or the lease ends. The Client acknowledges that the Supplier retains title to the Goods and that the Client has rights to possess the Goods as a mere bailee only. The Client grants a security interest in favour

of the Supplier in respect of any Goods which are leased from time to time.

- 4.6 The Client does not have any right to pledge the Supplier's credit in connection with the Goods and agrees not to do so.
- 4.7 The Client also agrees not to agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let on hire or otherwise part with or attempt to part with the personal possession of or otherwise deal with the Goods and not to conceal or alter the Goods or make any addition or alteration to, or repair of, the Goods.
- 4.8 The leasing of any particular Goods may be brought to an end:
 - (a) if the lease is for a fixed term, at the end of that term by giving written notice and the Client returning the Goods to the Supplier before the expiry of that month; or
 - (b) if the lease is not for a fixed term, by giving one month's written notice to the Supplier and the Client returning the Goods to the Supplier before the expiry of that month.
- 4.9 At the end of the lease of any particular Goods, the Client must, at the election of the Supplier, return the Goods to the Supplier or make the Goods available to the Supplier for collection at the Supplier's cost.
- 4.10 If any Goods leased are not returned at the end of the term or as required by clause 4.8, the Client must pay the leasing Fees until the Goods are returned to the Supplier.
- 4.11 The Client is responsible for securely operating their IT systems. While the Supplier will offer guidance and support, they are not liable for any security breaches resulting from the Client's failure to ensure secure use of their IT systems.
- 4.12 The Client agrees to indemnify and hold harmless the Supplier from any claims, losses, or damages arising from security breaches caused by the Client's actions or negligence.
- 4.13 The Client agrees to indemnify and hold harmless the Supplier from any claims, losses, or damages arising from security breaches caused by the Client's actions or negligence.

5. Supply of Services

- 5.1 The Supplier will provide the Services according to the Scope to the Client.
- 5.2 Support services are offered on a prepaid, fixed per user, or hourly basis, for the Services in the Scope of the agreement. If provided for a fixed term that expires, the Services will transition to a month-to-month basis, with fees calculated monthly.
- 5.3 The Fee for Services is:
 - (a) as stated in a Scope;
 - (b) as stated in a schedule to this Agreement; or
 - (c) if not stated in a Scope or a schedule, at the Supplier's prevailing rates at the time of supply.
- 5.4 The Supplier will start providing the Services on the date specified in the Scope or as otherwise agreed in writing between the parties.
- 5.5 Where the Supplier agrees to provide the Services in a Scope for a fixed term, then during that fixed term, the Supplier will use its reasonable endeavours to provide those Services within the time frames in the schedule or Scope.
- 5.6 The Client must:
 - (a) provide all reasonable assistance requested by the Supplier in the diagnosis of any problem within the infrastructure of the Services and follow any reasonable direction of the Supplier in the course of doing so;

- (b) make available free of charge and within a reasonable time all information, facilities and services reasonably required to enable the Supplier to provide the Services;
 - (c) provide reasonable access to its premises thereby granting a non-exclusive licence to the Supplier to give effect to the matters described in clauses 5.6(a) and 5.6(b); and
 - (d) provide such facilities as reasonably required by the Supplier for performance of the Services.
- 5.7 The Supplier will use best endeavours to supply the Services without warranting that supply will be interruption or error free.
- 5.8 Despite anything else within the Agreement, the Client acknowledges and accepts that the Services may not be available in all circumstances.
- 5.9 The Supplier is not obliged to support, or continue to support, any particular Goods, Software or configuration of Goods and of Software, and makes no guarantee or warranty that it will continue to do so after the date of this Agreement.
- 5.10 The Supplier may, from time to time, remove the support for any particular Goods, Software or configuration of Goods and of Software from a Scope. While the Supplier may continue to support these, they will be the subject of a separate Scope with associated Fees.
- 5.11 The supply of any particular Services may be brought to an end:
 - (a) if the supply of the Services is for a fixed term, at the end of that term by giving written notice.
 - (b) A pre purchased block of hours has been consumed or *has* expired.
 - (c) by submitting a change order in accordance with clause 7.
- 5.12 The Client agrees to indemnify and release the Supplier against any claim for damages arising in contract and or tort (including negligence) for default or failure to perform our obligations under the Agreement resulting from circumstances reasonably beyond its control. This includes but is not limited to, weather conditions, power failure, telecommunications failure, technical failure, maintenance requirements, inability to access the Client's premises, the Client's acts or omissions or those of any third party.
- 5.13 For pre-paid service agreements, blocks of hours will expire if not consumed 18 months from the purchase date.
- 5.14 Cybersecurity services are provided on a best-effort basis and do not guarantee complete protection. The Client remains responsible for maintaining internal security protocols, user hygiene, and insurance coverage. The Supplier shall not be liable for any breach, loss, or damage arising from cybersecurity incidents unless directly caused by the Supplier's gross negligence
- 5.15 The Client acknowledges that any support services requested or required outside of standard business hours (8:00 AM to 5:00 PM WST, Monday to Friday) will automatically incur after-hours multipliers as outlined in the Rate Schedule.
In the event of a critical incident requiring immediate response, the Supplier reserves the right to act without prior written or verbal consent from the Client. Such responses will be deemed authorized and billed at the applicable after-hours rate. The Supplier will notify the Client of the incident and actions taken as soon as reasonably practicable.
- 5.16 The scope of services included under this agreement is defined in Appendix C , Agreement Inclusion List. Services not listed are considered out-of-scope and may be quoted separately

6. Supply of Software

- 6.1 The Supplier may supply Software to the Client by, in its discretion:
 - (a) sub-licensing the Software to the Client;

- (b) acting as agent for the Client, entering into a license with the provider of the Software on behalf of the Client; or
 - (c) transferring a license for the Software to the Client.
 - 6.2 Title in any Software is limited to the sub-license or license granted to the Client, and the Client acquires no right or title in the Software.
 - 6.3 The supply of any Software in clause 6.1(a) and 6.1(b) may be on a month-to-month basis or for a fixed term.
 - 6.4 Unless agreed otherwise or stated otherwise in the Scope, the Fees in respect of any Software is:
 - (a) as stated in a Scope;
 - (b) as stated in a schedule to this Agreement;
 - (c) if not stated in a Scope or a schedule, at the Supplier's prevailing price at the time of supply; or
 - (d) the cost of that Software to the Supplier. The Client acknowledges that this may fluctuate from time to time including via the Software vendor changing its prices and fluctuations in exchange rates.
 - 6.5 The Client appoints the Supplier as its agent to accept any end user licence agreement or other terms and conditions in respect of the supply and use of the Software. The Client agrees to comply with any such terms. The Client releases and holds harmless the Supplier in respect of any breach of such terms.
 - 6.6 The supply of any particular Software may be brought to an end:
 - (a) if the supply is for a fixed term, at the end of that term by giving written notice;
 - (b) if the supply is for a fixed term, prior to the end of that term in accordance with clause 6.7; or
 - (c) by submitting a change order in accordance with clause 7.
 - 6.7 Early termination
 - (a) Where the supply of Software is for a fixed term, and:
 - (i) this Agreement is terminated or ends for any reason;
 - (ii) the Client wishes to cease using or paying for the Software prior to the end of the term; or
 - (iii) the Client no longer wishes for the Supplier to supply Services in respect of or relating to the Software,
- the Client must:
- (iv) relieve the Supplier of the obligation to pay for the Software (which may include taking an assignment of the obligation to pay or providing payment details); and
 - (v) pay (or reimburse the Supplier for) for any periodic or lump sum fees (including any early termination fee).
- 6.8 The Client acknowledges that it may not be able to access its data if the supply of Software ends.
- 6.9 The Client acknowledges that certain services provided under this Agreement may rely on third-party subscriptions, licences, or platforms. Where such third-party providers adjust their pricing due to exchange rate fluctuations, vendor pricing changes, or other external factors, the Supplier reserves the right to pass on those increases to the Client. The Supplier will provide 30 days written notice of any such adjustment and apply the change from the effective date of the vendor's pricing update.
- 6.10

7. Change orders

- 7.1 The Supplier is not obliged to provide any services other than the Services in a Scope or otherwise covered by this Agreement. If the Supplier agrees to provide services other than the Services, this Agreement applies to that supply.
- 7.2 If the Client wishes to change the Scope:
- (a) the Client must notify the Supplier that it wishes to change the Scope and provide the Supplier with any information the Supplier deems necessary to prepare a new Scope;
 - (b) the Supplier will provide the Client with a new Scope (including by confirming the Scope in writing), with pricing as in the Scope, or a previous Scope, or otherwise in accordance with this Agreement;
 - (c) the Client:
 - (i) may accept the new Scope in accordance with clause 2.2 of this Agreement; or
 - (ii) may expressly reject the new Scope, in which case the existing Scope applies; or
 - (iii) is deemed to have accepted the new Scope if it does neither within a time frame stated in the Scope or a reasonable time. For the purposes of this clause, 'reasonable time' shall mean 10 Business Days from the date the revised Scope is provided.
- 7.3 Any services other than the Services that are provided by the Supplier will be charged in accordance with the time and materials "Out of Scope" hourly rate included in the Agreement, or as agreed.
- 7.4 The services that are Out of Scope include but are not limited to:
- (a) travel time to and from and support of equipment at remote locations such as staff homes;
 - (b) installation of new or additional Goods or provision of Services which is not specifically mentioned in the Agreement or covered by the Scope;
 - (c) the relocation of Goods if the Client moves location.

8. Payment

- 8.1 In consideration of the provision of the Goods and Services in accordance with this Agreement, the Client will pay the Supplier the Fees.
- 8.2 Where the Supplier's charges are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.
- 8.3 The Client acknowledges that the Fees are exclusive of any GST that may be charged by the Supplier to the Client, and therefore, the Supplier will be entitled to add on GST.
- 8.4 The Supplier will provide the Client with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 8.
- 8.5 Unless provided otherwise, the Client must make payment in cleared funds to the Supplier within 7 days of the Supplier sending its invoice.
- 8.6 When making a payment, the Client must quote relevant reference numbers and the invoice number.
- 8.7 If the Client disagrees with an invoice, it must pay the invoice and must not withhold payment of the invoice pending the resolution of the disagreement.

- 8.8 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the Agreement, the Supplier may:
- (a) charge interest on the outstanding amount at 10% per annum, accruing daily;
 - (b) require the Client to pay, in advance, for any Goods or Services (or any part of the Goods or Services) which have not yet been performed; and
 - (c) refuse to provide any further Goods or Services (or any part of the Goods or Services), end any lease of Goods and cease the supply of any Software.
- 8.9 The Supplier may review and adjust EBIT services such as standard hourly rates, per-user monthly service fees, and cybersecurity management service fees annually, effective on the agreement anniversary renewal date each year. Any increase shall not exceed the greater of 5% or the Consumer Price Index (CPI) for the preceding 12 months, unless otherwise agreed in writing.

These adjustments are independent of and are not subject to the limitations or adjustment caps outlined in Clause 9. The Supplier will provide the Client with 30 days' written notice of any such adjustment, and the revised rates will apply from the effective date specified in the notice.

9. Fair Usage and Adjustment Clause – Fixed User Support Service Plans

- 9.1 This clause applies exclusively to support plans for fixed user and IT support services. It does not impact prepaid service agreements.
- 9.2 Supplier will monitor the Client's monthly usage of agreed support services. If the Client exceeds usage limits for three consecutive months, it will be considered overconsumption.
- 9.3 Over consumption is calculated by dividing the fixed per user support service monthly figure by the standard hourly rate. If the result exceeds 200% of the monthly figure, it is considered over usage.
- 9.4 Upon identifying a pattern of overconsumption, the Supplier will notify the Client in writing. This notification will include details of the overconsumption and the specific services that have been overused. The Supplier will assist the Client with identifying or suggesting ways to reduce service overconsumption.
- 9.5 Client Response Period: The Client will have one (1) month from the date of notification to review and address the overconsumption. During this period, the Client may choose to:
- (a) Adjust their usage to align with the agreed service levels, or
 - (b) Agree to an increase in the monthly per-user fee to accommodate the higher usage levels, or
 - (c) Request the Supplier to identify and implement efficiency improvements if any available to reduce the time required to supply the service. This may involve a one-off fee for adjustments aimed at cost maintenance and reductions.
- 9.6 If the Client opts to increase the monthly fixed user and IT support services fee or choose to remove service inclusions, the Supplier will provide a revised agreement reflecting the new rate or adjustments.
- 9.7 This revised agreement will take effect from the beginning of the month following the review period. Within the 12-month contract term, the per-user services fee can be adjusted after it has been increased, but it cannot be reduced below the figure provided at the start of the commitment term. This support service fee may be considered for reduction at the next annual renewal date at the sole discretion of the Supplier.
- 9.8 Limit on Adjustments: To ensure stability and predictability in the service agreement, there shall be no more than two (2) adjustments to the per-user services fee within any 12-month contract term. This limitation applies to both increases and decreases in the capped per user support service fee. Any adjustments made will be documented and agreed upon in writing by both parties. This provision is

intended to balance the need for flexibility with the importance of maintaining a consistent and manageable service cost structure.

- 9.9 In the event that overconsumption is caused by the Supplier it will not be regarded as overconsumption, and the Client will not be notified of its occurrence.

10. Intellectual property

Intellectual Property Rights in materials developed by the Supplier pursuant to this Agreement vest in the Supplier.

11. Personal Property Securities Register

11.1 In this clause:

- (a) PPSA means the Personal Property Securities Act 2009 (Cth); and
- (b) words and phrases that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

11.2 Grant

- (a) The Client grants a security interest to the Supplier over any Goods:
 - (i) leased to the Client; and
 - (ii) sold to the Client for which possession, but not title, has passed.
- (b) The Client grants a security interest to the Supplier over all present and after acquired property of the Client to secured payment of any amounts under the Agreement or otherwise owing to the Supplier by the Client.

11.3 Consent to registration

- (a) The Client consents to the Supplier perfecting any security interest that it considers this document provides for by registration under the PPSA. The Client agrees to do anything the Supplier reasonably asks to ensure that the security interest:
 - (i) is enforceable, perfected and otherwise effective; and
 - (ii) has priority over all other security interests.

11.4 Waiver of notices and information requests

- (a) To the extent the law permits, the Client waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent the Supplier from giving a notice under the PPSA.
- (b) The Client agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. However this does not limit the Client's rights to request information other than under section 275.

11.5 Enforcement of security interest

- (a) To the extent the law permits, the Supplier need not comply with, and the Client may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- (b) if the Supplier exercises a right, power or remedy in connection with this document or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this paragraph does not apply to a right, power or remedy which can

only be exercised under the PPSA.

11.6 Dealings with Goods

- (a) The Client must not do any of the following in relation to any of the Goods:
 - (i) create or allow any interest in, or dispose or part with possession of, the Goods;
 - (ii) allow the Goods to be taken or removed from the location to which they were delivered or installed;
 - (iii) allow the Goods to become an accession to or commingled with any other property; or
 - (iv) encumbered or a security interest granted in respect of.
- (b) The Client must notify the Supplier if anything mentioned in paragraph 10.6(a) occurs immediately upon becoming aware of it.

12. Warranties

12.1 The Supplier warrants that it will use reasonable care and skill in providing the Goods and Services.

12.2 The Supplier provides no warranty and make no representation that:

- (a) any result or objective can or will be achieved or attained at all or by a given completion date or any other date, whether stated in this Agreement or the Scope or elsewhere;
- (b) that the Software will be fit for purpose, free of defects or available at all times; or
- (c) the Goods will be fit for purpose, free of defects or that repairs and replacement parts are available.

12.3 The Supplier makes no other representations or warranties in respect of the Goods, Services or Software except for those expressly stated in this document (which excludes a Scope).

12.4 The Client must indemnify and hold harmless the Supplier from and against all Claims and Losses arising from damage, liability, injury to the Supplier, its employees and third parties, infringement of third party intellectual property (including Software and breach of the terms of a Software licence), or third party losses by reason of or arising out of any information supplied to the Client by the Supplier, its employees or consultants, or supplied to the Supplier by the Client within or without the scope of this agreement.

12.5 The Client acknowledge that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

12.6 Nothing in this Agreement excludes or restricts or modifies any condition, warranty, right or remedy which the Australian Consumer Law provides. To the extent this Agreement purports to do so, that condition, warranty, right or remedy is severed from this Agreement without affecting the balance of the Agreement.

13. Liability

13.1 The Client acknowledges that the Goods, Software and Services supplied by the Supplier are not of the kind ordinarily acquired for personal, domestic or household use or consumption.

13.2 The Supplier limits its liability to payment of an amount equal to the lowest of:

- (a) the cost of replacing the Goods or Services or supplying equivalent Goods or Services;
 - (b) the cost of repair of the Goods or rectification of the Services; and
 - (c) the cost of having the Goods or Services replaced.
- 13.3 The Supplier will not be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the Goods or Services, and any indirect, special or consequential damages or injury to any person, corporation or other entity.
- 13.4 The Supplier is not liable for default or failure in performance of its obligations pursuant to this Agreement resulting directly or indirectly from acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of the Supplier.
- 13.5 Except in the case of death or personal injury caused by the Supplier's negligence, the liability of the Supplier under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Client to the Supplier under this Agreement within the previous 12 months.
- 13.6 The Supplier is not liable to the Client in terms of contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Client of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.
- 13.7 The Supplier shall not be liable for any delay, disruption, breach, or failure in service delivery caused by outages, performance issues, or security incidents attributable to third-party suppliers, vendors, or platforms. This includes, but is not limited to, breaches of data protection laws, privacy obligations, or cybersecurity standards arising from such third-party platforms or vendors.
- The Client agrees to indemnify and hold harmless the Supplier from any claims, losses, liabilities, penalties, or damages arising from such third-party service interruptions or compliance failures, except where caused by the Supplier's gross negligence or willful misconduct.

14. **Dispute resolution**

- 14.1 Except as otherwise provided by an express provision of this Agreement, a party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause.
- 14.2 A party claiming that a Dispute has arisen must notify the other parties, giving details of the Dispute. Where the Client claims a Dispute, it must first pay all outstanding Fees (including disputed Fees).
- 14.3 During the 21 day period after a notice is given under clause 13.2 (or longer period agreed by the parties to the Dispute) (**Initial Period**) each party must use its best efforts to resolve the Dispute.
- 14.4 If the parties are unable to resolve the dispute within the initial period, each party agrees that the dispute must be referred for mediation at the request of a party, to:
- (a) a mediator agreed on by the parties; or
 - (b) if the parties are unable to agree on a mediator within 5 Business Days after the end of the Initial Period, a mediator nominated by the Resolution Institute.
- 14.5 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- 14.6 Any information or documents disclosed by a party under this clause:
- (a) must be kept confidential; and

- (b) may not be used for any purpose except to attempt to resolve the dispute.
- 14.7 Each party must bear its own costs of complying with this clause and the party must bear equally the costs of the mediator.
- 14.8 This clause 13 does not apply in respect of any obligation to pay Fees or where a party seeks interlocutory relief.

15. Termination

- 15.1 The Client may terminate this Agreement where:
 - (a) the Supplier is in breach of a material term of this Agreement;
 - (b) the dispute resolution process in clause 13 has been exhausted and the dispute not resolved; and
 - (c) the Supplier has failed or refused to remedy this breach, following the expiration of 15 Business Days notice of the Client giving written notice of the breach and what the Client reasonably requires of the Supplier to remedy the breach.
- 15.2 The Supplier may terminate this Agreement where:
 - (a) the Client is in breach of a term of this Agreement, including an obligation to pay;
 - (b) the dispute resolution process in clause 13 has been exhausted and the dispute not resolved, or is not required to be followed; and
 - (c) the Supplier has failed or refused to remedy this breach, following the expiration of 5 Business Days notice of the Supplier giving written notice of the breach and what the Supplier reasonably requires of the Client to remedy the breach.
- 15.3 A party may terminate this Agreement if:
 - (a) the Client enters into a deed of arrangement or an order is made for it to be wound up;
 - (b) an administrator, receiver or receiver/manager or a liquidator is appointed to the Client pursuant to the Corporations Act 2001 (Cth); or
 - (c) the Client would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).
- 15.4 If this Agreement terminates or ends for any reason:
 - (a) the obligation on the Supplier to supply any Services, Software, Goods and Goods via a lease ends;
 - (b) the Client must comply with its obligations in clauses 4.9, 4.10 and 6.7, including to pay money;
 - (c) pay all Fees owing under this Agreement; and
 - (d) pay an amount equivalent to the remaining fees for any fixed term Services or lease of Goods, and in lieu of any notice period.
- 15.5 Upon termination of this agreement any fees, expenses or reimbursements payable by the Client to the Supplier in respect of any period prior to the termination date must be paid by the Client within 7 days after the termination date.

16. General

16.1 Force majeure

- (a) Neither party has any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party.
- (b) The party affected by such circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.
- (d) In the event of a Force Majeure occurrence, the Supplier shall not be held to any SLA response or resolution timeframes where the Client has not provided a documented and approved Business Continuity and Disaster Recovery (BCDR) or Business Continuity Plan (BCP). The absence of such documentation shall be deemed a contributing factor to the delay, and the Supplier shall be relieved of any performance obligations under SLA metrics until such documentation is provided and operational.

16.2 Amendments

- (a) The Supplier may give three months' written notice of any variation to this Agreement (including replacement terms). The Client accepts the varied Agreement in accordance with clause 2.2.
- (b) This Agreement may be amended in writing signed by duly authorised representatives of the parties.

16.3 Assignment

- (a) Subject to clause 15.3(b), neither party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written agreement of the other party.
- (b) A party may assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the proposed assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this Agreement.

16.4 Entire agreement

- (a) This Agreement contains the whole agreement between the parties in respect of the Scope accompanying or contemplating this Agreement, including in respect of any future Scopes or supply of Goods or Services by the Supplier to the Client
- (b) This Agreement supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to the matters in clause 15.4(a).
- (c) The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

16.5 Waiver

- (a) No failure or delay by the Supplier in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

16.6 Relationship of the parties

- (a) This Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- (b) Neither party may, nor represent that it has, any authority to make any commitments on the other party's behalf.

16.7 Further assurance

Each party to this Agreement must at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

16.8 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement. It will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

16.9 Notices

A notice or other communication connected with this Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this Agreement, or sent by facsimile to the facsimile number of the addressee.

16.10 Law and jurisdiction

This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in Western Australia, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

16.11 Insurance

The Client shall maintain adequate insurance coverage for security-related risks, including but not limited to data breaches, cyber-attacks, and business interruption. The Client shall provide annual proof of coverage upon request.

16.12 Indemnity for Lack of Cybersecurity Insurance

If the Client fails to maintain adequate cybersecurity insurance coverage as required under this Agreement, the Client agrees to indemnify and hold harmless the Supplier from and against any and all claims, losses, liabilities, penalties, damages, costs, or expenses (including legal fees on a full indemnity basis) arising from or in connection with:

- (a) any data breach, cyber-attack, or security incident affecting the Client's systems, infrastructure, or data;
- (b) any regulatory or legal action resulting from such incidents;
- (c) any business interruption, reputational harm, or financial loss suffered by the Client or third parties;
- (d) any failure to comply with applicable data protection or privacy laws due to the absence of adequate insurance coverage.
- (e) This indemnity applies regardless of whether the Supplier has provided guidance or support in relation to cybersecurity, except where the incident is directly caused by the Supplier's gross negligence or wilful misconduct.

16.13 Notification

In the event of a security breach, the client must notify the Supplier in writing within 24 hours. The notification must include details of the breach and the steps being taken to mitigate its impact at the time of

writing. Both parties agree to cooperate in addressing the breach and preventing future occurrences.

16.14 Client introduced technology

The Client shall indemnify the Supplier against any claims, losses, or damages arising from the introduction of software, hardware, or configurations not previously disclosed or approved by the Supplier

