

1. Term

- 1.1. This Agreement begins on the Date of this Agreement (“**Commencement Date**”) or when you sign and return the copy of this document, or upon accepting the terms and conditions contained in this document and continues until the end of the Term specified in Schedule 1 (“**Initial Term**”) unless extended under clause 1.2 or terminated earlier under clause 17 (“**Right to Terminate**”).
- 1.2. Unless a party provides a notice of its election not to renew this Agreement at least 3 months before the expiry of the Initial Term referred to in clause 1.1, this Agreement will continue for a further period of 12 months (or such other longer period as agreed by the parties) (“**Extended Term**”).
- 1.3. The same terms for supply of the Services (excluding pricing which will be agreed by both Parties prior to the commencement of the Extended Term) as set out in this Agreement will apply to any Extended Term.

2. Services and Licence

- 2.1. From the Commencement Date through the Term of this Agreement and any Extended Term, Supplier will provide the Services to the Licensee, in consideration for the applicable Fees, on the terms of this Agreement (which terms includes associated Schedules annexed hereto).
- 2.2. Additional Services may be requested from Supplier through a written Change Request or amendment to this Agreement.
- 2.3. In order for Supplier to provide the Services, Supplier:
 - a) (grants to the Licensee a fully paid-up (upon payment of the applicable Fees), non-exclusive, non-transferable (subject to the terms of this Agreement) licence, in accordance with the Specified Licensed Use outlined in Schedule 1, Clause B, for the Term to allow the Licensee and its Personnel to access and use the Application over the public internet solely for the internal purposes of the Licensee and not for distribution, transfer, sale or use for the benefit of any third party.
 - b) The licence granted in clause 2.3a) includes a licence to use any Upgrades released by Supplier during the Term of this Agreement;
 - c) The Licensee agrees to allow Supplier to migrate the Licensee to the updated version of the Application on the date the Upgrade is made available to the Licensee.

- d) With respect to Personnel who are Contractors, the Licensee shall be responsible for any breaches of the obligations in this Agreement by Contractors.

2.4. The Licensee retains all of its right, title and interest in and to the Licensee Data, and ownership of the Licensee Data is not transferred to Supplier under this Agreement.

2.5. The Licensee and its Personnel shall not:

- a) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms of the Application;
- b) transfer, sell, lease, lend, disclose, or use for timesharing or service bureau purposes the Application;
- c) remove or modify any Application markings or any other notice of Supplier' proprietary rights on the Application or any related documentation;
- d) create any derivative works based on the Application; and/or
- e) access, scrape, copy, monitor or use any portion of the Application or any materials or other content on the Application by using any robot, "bot," spider, web crawler or other similar automatic device, except as approved in advance in writing by Supplier.

2.6. The Licensee acknowledges and agrees that Supplier owns all right, title and interest in and to the Application and all work product resulting from the performance of the Services, including all Intellectual Property Rights therein.

2.7. If the Licensee engages Supplier to perform Professional Services, upon payment for such Professional Services, the Licensee shall have a licence to use the deliverables resulting from such Services stated in the relevant Change Request, consistent with the license rights to use the Application in this clause 2.

3. Service Levels

3.1. Supplier must provide the Services to the Licensee in accordance with this Agreement to meet or exceed the Service Levels.

3.2. Where Supplier fails to meet any Service Level solely due to the fault of Supplier, Supplier must promptly:

- a) if requested by a Licensee, and to the extent feasible given the nature of the Services, re-perform those Services which gave rise to the failure to meet the Service Level;
- b) use all reasonable endeavours to correct the fault which caused the failure to meet the Service Level (including conducting a root-cause analysis); and
- c) arrange all additional resources reasonably necessary to perform the Services in accordance with the Service Level as soon as practicable,

at no additional cost to the Licensee.

4. Fees and Payment

- 4.1. All Fees specified by Supplier are inclusive of GST and are in Australian Dollars (AUD).
- 4.2. In consideration of Supplier performing the Services, the Licensee will pay Supplier the Fees set out in Schedule 1, Clause C in accordance with Clause D of Schedule 1, Payment Terms. .
- 4.3. Supplier will render a Tax Invoice to the Licensee in relation to the provision of the Services.
- 4.4. The Licensee will pay the Fees in accordance with this clause 4 by electronic funds transfer into the Supplier' nominated bank account as specified by Supplier from time to time. For the avoidance of doubt, the cost of payment, including but not limited to any applicable bank fees or electronic transfer fees, shall be the responsibility of the Licensee.
- 4.5. Unless otherwise agreed in Schedule 1D, each invoice will be paid by the Licensee to Supplier within 7 days after the date of the invoice.
- 4.6. Payments which are not received by the due date shall accrue interest on the unpaid balance at the rate of 2.5 percent per month, invoiced monthly by Supplier to the Licensee.
- 4.7. Should any invoice remain unpaid for more than 7 days from the invoice date, Supplier reserves the right to temporarily suspend the Licensee's access to the Application and Services until such Licensee pays all such undisputed invoiced amounts in full to Supplier. Habitual failure by the Licensee to pay undisputed invoices timely (where habitual failure shall be defined as three or more instances in any 12 month period) shall be considered a material breach of this Agreement.

5. Taxes

- 5.1. All amounts payable under or in connection with this Agreement, (including any amount by way of reimbursement, indemnity, damages or otherwise) are:

- a) exclusive of Taxes, except for any Taxes assessed upon Supplier' net income; and
- b) exclusive of Indirect Transaction Taxes, unless expressed otherwise.

6. Licensee Responsibilities

- 6.1. The Licensee will perform the Licensee Responsibilities as outlined below.
- 6.2. The Licensee shall be responsible for providing its own internal Equipment necessary for accessing the Application via the internet using the https protocol.
- 6.3. The Licensee is responsible for keeping any logins and passwords secure and accessible only to the persons authorised to access the Application.
- 6.4. The Licensee shall not provide third parties with access to the Application without the prior consent in writing of Supplier.
- 6.5. Supplier must notify the Licensee as soon as reasonably practicable after it becomes aware of any failure or likely failure by a Licensee to perform any obligation of the Licensee under this Agreement, including a failure to perform any of the Licensee Responsibilities.
- 6.6. Supplier will not be in breach of this Agreement to the extent that its failure to perform an obligation is a result of a Licensee's failure to perform an obligation of the Licensee under this Agreement, including the Licensee Responsibilities.
- 6.7. Where Supplier incurs additional costs in performing the Services in these circumstances, it may raise a Change Request and submit to the Licensee for its approval, such approval not to be unreasonably withheld.

7. Security and Privacy Requirements

- 7.1. Supplier will use reasonable commercial efforts not to breach the security or integrity of Licensee Data as set out in the Licensee's policies as set out in clause 7.2.
- 7.2. In the performance of the Services, Supplier must comply, and must ensure that Supplier Personnel comply, with any applicable security policy or requirements supplied to Supplier in writing and acknowledged by Supplier in writing.
- 7.3. Supplier will process all Personal Data in connection with this Agreement only for the purposes of performing its obligations under this Agreement.
- 7.4. Supplier will comply with all reasonable requests or directions of the Licensee in connection with the obligations of the Licensee under the Privacy Laws.

7.5. Supplier will not disclose Personal Information collected for the purposes of this Agreement without the prior written authority of the Licensee unless the disclosure is required:

- a) for the purposes of performing its obligations under this Agreement; or
- b) by law, in which case Supplier must immediately notify the Licensee where it becomes aware that a disclosure of Personal Information may be required.

7.6. Supplier will not transfer outside Australia Personal Data collected for the purposes of this Agreement, or allow parties outside Australia to have access to such Personal Information, without the prior written approval of the Licensee, unless the disclosure is required for the purposes of performing its obligations under this Agreement.

7.7. Supplier will notify the Licensee immediately if it becomes aware of a breach of any of clause 11 by itself or any employee, agent or sub-contractor of Supplier.

8. Confidentiality

8.1. Without prejudice to any provision of this Agreement relating to security, privacy or data protection, each Party undertakes and agrees:

- a) to hold in strict confidence all Confidential Information received from the other Party and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who reasonably require access to the Confidential Information; and
- b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent permitted or required by this Agreement,

unless the Party has obtained the prior written consent of the other Party to do so (which consent may be withheld by the disclosing Party in its discretion or given on such terms as it sees fit).

8.2. Clause 8.1 does not apply to:

- a) information after it becomes generally available to the public other than as a result of the breach of clause 8.1 or any other obligations of confidence imposed on the receiving Party; or
- b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that:
 - i) prior to such disclosure the receiving Party gives notice to the disclosing

Party with full particulars of the proposed disclosure;

- ii) the receiving Party provides the disclosing Party with reasonable assistance in the opposing or limiting of such disclosure; and
 - iii) the receiving Party limits such disclosure to that strictly required by such court, Government Agency or legal process and otherwise continues to observe the obligations of this clause 8 with respect to such Confidential Information.
- c) information that is already known to the receiving Party at the time of its disclosure by the disclosing Party, and is not subject to confidentiality restrictions imposed by the disclosing Party;
 - d) following its disclosure to the receiving Party, is received by the receiving Party from a third party without obligation of confidence to the disclosing Party; or
 - e) Information that is independently developed by the receiving Party without reference to or use of the disclosing Party's Confidential Information.

8.3. Each Party acknowledges that failure to comply with this clause 8 may irreparably harm the business of the other Party and that a breach of one Party's obligations under this clause 8 will entitle the other Party to seek immediate injunctive relief, in addition to any other remedies that it may have.

8.4. If requested by the disclosing Party, whether prior to or after the expiry or earlier termination of this Agreement, the receiving Party must promptly deliver to the disclosing Party all Confidential Information in its (or any of its Personnel's) custody, possession or control.

8.5. This clause 8 will survive the termination of this Agreement.

9. Audit

Supplier may audit Licensee's use of the Application periodically to ensure the proper and compliant licensed use by the Licensee of the Application.

10. Change Control

10.1. If a Party wishes to propose a change to the Services (a "Change"), it must send a Change Request to the other Party's Representative (being the Licensee Representative or the Supplier Representative, as the case may be), specifying in as much detail as is reasonably practicable, the nature of the Change sought, the costs involved and the likely timeframe for delivery of the Change.

- 10.2. If the Licensee wishes to extend the Term of the Agreement and/or increase the Specified Licensed Use, the Licensee will complete the Supplier License Extension which will outline the agreed Term, Fees and Specified Licensed Use.
- 10.3. Supplier may provide Upgrades to the Application without following the Change Control process described in this clause 10.
- 10.4. Within 7 days after receiving a Change Request, the receiving party must advise whether it accepts or rejects such Change.

11. Intellectual Property Rights

- 11.1. Supplier indemnifies the Licensee in respect of any Liabilities incurred or sustained by the Licensee to a third party resulting from any actual or alleged infringement of any Intellectual Property Rights caused by:
- the performance of the Services by the Supplier;
 - the exercise by the Licensee of the rights granted to it under this Agreement; or
 - enjoyment of the Services by the Licensee in accordance with this Agreement.
- 11.2. The indemnification obligations under this clause 11 are subject to the Licensee notifying Supplier promptly, but in no event longer than seven days following the date on which it becomes aware of a Claim being threatened or made against an Indemnified Party in relation to any of the matters covered by the indemnity in clause 11.1 and providing Supplier with reasonable assistance in the defence of the Claim, at Supplier' expense.
- 11.3. The indemnification obligations under this clause 11 are further predicated on the Indemnified Party allowing Supplier to conduct any litigation that may arise from a Claim referred to in clause 11.1 and all negotiations for settlement of that Claim.
- 11.4. Notwithstanding anything in this Agreement to the contrary, Supplier shall have no obligation or liability to an Indemnified Party or any third party for any Claim in which the alleged infringement directly or indirectly arises from:
- the Licensee's or its respective employees', agents' or other users' Misuse or modification of the Application, Services or related documentation;
 - the Licensee's failure to use corrections or enhancements such as patches or fixes made available by Supplier or a third party, which use would avoid such infringement; or
 - use of the Application, Services or related documentation in combination with any

computer program, product, material, service or information not provided by Supplier for such use.

- 11.5. The Licensee indemnifies Supplier in respect of breach or of misuse of Intellectual Property rights of Supplier under this Agreement, by the Licensee or the Licensees Body Corporate, employees, agents, officers, directors or subcontractor. This clause 11.5.5 will survive the termination of this Agreement.

12. Insurance

Supplier is not required to effect and maintain insurance in relation to risks or occurrences arising, or which may arise, out of the performance of this Agreement.

13. Mutual Representations and Warranties

- 13.1. Each Party represents and warrants from the date of this Agreement and at all times during the Term, that:
- they have full capacity and authority to enter into and to perform this Agreement;
 - this Agreement is executed by a duly authorised representative of that Party;
 - there are no actions, suits or proceedings pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitral tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement;
 - once duly signed this Agreement will constitute legal, valid and binding obligations;
 - they will perform their obligations under this Agreement in accordance with all applicable laws and regulations; and
 - they will act in a timely manner in regard to all reasonable requests from the other Party.

14. Supplier Representations and Warranties

- 14.1. Supplier represents and warrants from the date of this Agreement and at all times during the Term, that:
- it has all necessary licences, permits and consents to enter into and to perform this Agreement; and
 - The services supplied as part of or for the provision of the Services, will materially comply with the "**Implementation Services**".
- 14.2. The Licensee must notify Supplier of any Service warranty deficiencies within 9 calendar days of Installation Acceptance as outlined in Schedule 1, Clause E.

14.3. Licensee's sole remedy with respect to the warranties in this clause 14 for the Services will be for Supplier to re-perform the specific Services which were not as warranted at no additional charge, or if Supplier cannot correct the breach in a commercially reasonable manner, for Supplier to refund the fees paid for the applicable non-conforming Services which were not as warranted, however, the foregoing remedy shall not exceed a period of two months fees.

14.4. Except as otherwise set forth in this Agreement, neither party makes any warranties of any kind to the other party with respect to the Application or Services including, without limitation, any implied warranty of merchantability or fitness for a particular purpose.

15. Indemnity

15.1. Each party will indemnify the other from and against all Liabilities that a party incurs to a third party arising out of or in connection with, directly or indirectly, any one or more of the following:

- a) Negligence, Wilful Misconduct or breach of statutory duty by a party or its Personnel arising out of or in connection with the performance or non-performance of this Agreement that results in personal injury or tangible property damage; or
- b) a breach of the other party's Intellectual Property Rights.

15.2. The indemnification obligations in this clause 15 are at all times subject to the indemnified party notifying the indemnifying party promptly (but in no event longer than seven days following receipt of a Claim) and providing the indemnifying party with reasonable assistance in the defence of the Claim, at the indemnifying party's expense.

16. Limitation of Liability

16.1. Neither Party shall be liable to the other for any indirect, consequential, incidental, exemplary, punitive or special damages or lost profits (whether in contract or in tort).

16.2. The total Liability of a Party under this Agreement will be limited to an amount equal to the Fees paid and payable by the Licensee to Supplier for the 12 month period preceding the date on which the cause of action arose.

16.3. The limitations of Liability contained in clause 16.1 do not apply to:

- a) the indemnification obligations of the Parties under the Agreement;
- b) Liability howsoever arising in connection with any act or omission of a Party under

this Agreement, or in performance of the Services, in respect of:

- i. death or personal injury of any person;
- ii. loss of, or damage to, tangible property of any person;
- iii. fraud or fraudulent misrepresentation of a Party;
- iv. Wilful Misconduct of a Party;
- v. breach by a Party of any confidentiality obligation, whether under this Agreement, common law, equity or otherwise.

17. Right to Terminate

17.1. Either Party may terminate this Agreement immediately by notice in writing to the other Party if the Other Party becomes Insolvent or ceases or threatens to cease business.

17.2. The Supplier may terminate this Agreement immediately by notice in writing at its absolute discretion by giving the Licensee 7-days written notice or if the Licensee breaches its obligations under this Agreement and:

- a) the breach cannot be remedied; or
- b) the breach can be remedied, but a party fails to do so within 7 days of the other party giving notice of the breach and requirement to remedy.

17.3. Upon termination or expiration of this Agreement with respect to the Licensee:

- a) all rights of the Licensee to use and access the Application or Services shall cease;
- b) the Licensee shall pay Supplier all Fees due for Services provided up to the date of termination or expiration; and
- c) the Supplier at its absolute discretion may delete any data stored on behalf of the Licensee.

17.4. There shall be no refund of any Fees previously paid to Supplier.

18. Reference Site

18.1. The Licensee acknowledges and agrees that Supplier may identify the Licensee as a customer of Supplier and use the Licensee's name and logo in brochures, presentations and websites ("Marketing Materials").

18.2. The Licensee acknowledges and agrees that with prior approval from the Licensee, the Licensee will:

- a) nominate a suitably qualified manager to act as a verbal referee to potential clients of Supplier;

- b) jointly develop with Supplier such press releases or case studies within 365 days of the Effective Date, describing the Application (including but not limited to reference to the Licensee's previous business processes, the migration to the Application by the Licensee, the benefits of the Application to the Licensee, and a quote or testimonial by an executive of the Licensee);
- c) conduct media interviews if required in relation to paragraph 15.2b) above; and
- d) nominate a suitably qualified manager to present a jointly developed case study on the Application at relevant forums.

18.3. Supplier acknowledges and agrees that:

- a) it will act in good faith when referring to the Licensee in its Marketing Material; and
- b) in making any reference to the Licensee that it will not do anything which may have a negative effect on the goodwill or reputation of the Licensee or which may cause embarrassment or bring the Licensee's business into disrepute;

19. No Assignment or Transfer

The Licensee may not assign, sub-license, novate, transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of the Supplier which will not be unreasonably withheld or delayed.

20. Third Party Providers

The Licensee acknowledges and agrees that Supplier may utilise Third Party Providers for the provision of the Hosted Service Facilities.

21. Relationship of the Parties

Nothing contained or implied in this Agreement means a Party is the partner, agent, or legal representative of any other Party for any purpose or creates any partnership, agency or trust, and no Party has any authority to bind any other Party in any way.

22. Notices

- 22.1. Any notice, demand, consent or other communication ("Notice") given or made pursuant to this Agreement
 - a) must be in writing;
 - b) be marked to the attention of the Licensee' Representative or the Supplier Representative (as applicable);
 - c) must be delivered by prepaid post, by hand, or e-mail to the Party to whom the notice is addressed at its address shown

at the commencement of this Agreement or such other address as that Party may have notified to the other.

23. Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Agreement nor does it affect the validity or enforceability of that provision in any other jurisdiction.

24. Entire Agreement

This Agreement contains the entire Agreement between the parties with respect to its subject matter and supersedes all prior communications and negotiations between Licensee and Supplier in this regard, unless those communications expressly form part of this Agreement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as expressly stated in this Agreement. No Party shall have any remedy in respect of any untrue statement made by any other Party upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other Party's ability to perform its obligations under this Agreement) and that Party's only remedies shall be for breach of Agreement as provided in this Agreement.

25. Licensee Standard Terms

If during the Term the Licensee issues a request for Services which attaches a separate set of terms and conditions other than those incorporated in this Agreement, those terms and conditions will not form part of, or be incorporated into, this Agreement and will be of no legal force or affect between the parties.

- 25.1. The Supplier may at any time and, in its absolute discretion modify or amend the terms and conditions upon which goods or services are supplied to you including these terms of use and such modifications will be binding upon you once displayed on this web site. You should regularly check the terms and conditions displayed on this web site.

26. Dispute

- 26.1. In the event of any dispute, question or difference of opinion between the Licensee and Supplier arising out of or under this Agreement ("**Dispute**"), a Party may give to the other affected Party a notice specifying the Dispute

and requiring its resolution under this clause 26.

- 26.2. Unless specified otherwise in this Agreement, any Dispute must first be submitted to the managing Directors of each party for resolution.
- 26.3. If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then any Party to the Dispute may refer the Dispute to be finally resolved by a mediator appointed by agreement of the parties or, if the parties cannot agree to a mediator, a mediator shall be appointed by the President of the Law Institute of Victoria, Australia on behalf of the parties.
- 26.4. If a dispute cannot be resolved by virtue of clauses 26.2 and 26.3, the parties can elect to refer the dispute for resolution by the courts of Victoria, Australia.

27. Amendment, Variation and Waiver

Except as expressly provided in this Agreement, a provision of this Agreement or a right created under it, may not be waived or varied or amended except in writing, signed by the Party or Parties to be bound.

28. Waiver

A failure to exercise, or any delay in exercising any right power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

29. Further Assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

30. Negotiation in Good Faith

Where a provision is prohibited or unenforceable, the parties must negotiate in good faith to replace the invalid provision which is in accordance with the applicable law and which must be as close as possible to the parties' original intent and appropriate consequential amendments (if any) will be made to this Agreement.

31. Survival

Subject to any provision to the contrary, this Agreement will enure to the benefit of and be binding upon the parties and their successors,

trustees, permitted assigns or receivers but will not enure to the benefit of any other persons.

32. Definitions

- 32.1. These meanings apply unless the contrary intention appears:
- a) **Application** means the computer software and programs and/or data in Executable Code form, branded as **Dealer Drive**, together with any technical information and documentation necessary for the use of such programs and/or data, provided by Supplier, to the Licensee together with other materials as they exist as of the Commencement Date, and Upgrades thereto released during the term of the Agreement, and which is accessed and used by the Licensee.
 - b) **Application Services** means the provision of access to the Application and related Services.
 - c) **Change** is defined in clause 10.
 - d) **Change Control** means the procedure for Changes as set out in clause 10.
 - e) **Change Request** means any written request by a Party for Changes pursuant to Change Control.
 - f) **Claim** means any action, suit, proceeding or demand of any kind whether in Agreement, negligence (or any other tort), under statute or otherwise at all.
 - g) **Commencement Date** means the date for commencing the provision of the Services by Supplier to the Licensee.
 - h) **Confidential Information** means either the Licensee Confidential Information or Supplier Confidential Information, as the context requires.
 - i) **Consulting Services** are Professional Services delivered by Supplier' Consultants and include training.
 - j) **Equipment** means one or more servers and/or workstations located at facilities owned or leased by the Licensee.
 - k) **Fees** mean the charges payable by the Licensee for the provision of the Services as set out in Schedule 1C.
 - l) **Hosted Service Facilities** means one or more servers located at Supplier' nominated Third Party Provider.
 - m) **Implementation Services** means the configuration and related Professional Services provided by Supplier to the Licensee in order to set up the Application for the Licensee, and are as outlined in Schedule 1E.

- n) **Included Technical Services** are Professional Services included as part of the Implementation Services that must be utilised by the Licensee within a period of 12 months from the Commencement Date.
- o) **Insolvency** or **Insolvent** means, in respect of a Party, that the Party ceases to trade because it is unable to pay its debts when they fall due, has an administrator or receiver or is otherwise deemed insolvent under the Corporations law of Australia.
- p) **Installation Acceptance** means the Installation Acceptance process which signifies the successful installation of the Application as outlined in Schedule 1E.
- q) **Intellectual Property Rights** means (in the context of a Party) copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.
- r) **Liabilities** means damages, losses, liabilities, fines, penalties, claims, costs and expenses (including legal fees on a solicitor-client indemnity basis) of any kind.
- s) **Licensee Confidential Information** means this Agreement, and any information (in whatever form) of a confidential nature (or which Supplier or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of a Licensee or members of the Licensee Group (including in relation to the Services), including information comprised in Licensee Data, which is required to be kept confidential and which:
- i) is disclosed to Supplier or its Personnel by or on behalf of a Licensee;
 - ii) is generated by Supplier or its Personnel in performing the Services; or
 - iii) otherwise comes to the knowledge of Supplier or its Personnel.
- t) **Licensee Data** means all data, information, drawings or other materials which are embodied in any electronic or tangible medium, and which are made available by the Licensee to Supplier which is generated, collected, processed, archived, stored and/or transmitted under this Agreement, including any Licensee Personal Data.
- u) **Licensee Personal Data** means the Personal Data that Licensee uploads into the Application or transfers to Supplier from time to time in connection with this Agreement.
- v) **Licensee Responsibilities** means those responsibilities of Licensee as set out in clause 6.
- w) **Misuse** means:
- i) Licensee's use of the Application in a manner that creates a substantial risk of damage to the Application, Licensee Data or other Licensee or Supplier information stored, or a material security risk thereto;
 - ii) Licensee's material breach of its nondisclosure obligations under the Agreement with respect to the Application;
 - iii) Licensee's material breach of the license rights granted to Licensee under clause 2.1 of this Agreement; or
 - iv) Licensee's material breach of its obligations under this Agreement pertaining to Supplier' Intellectual Property Rights in the Application.
- x) **Party** means a party to this Agreement and Parties means all the parties to this Agreement.
- y) **Personal Data** has the same meaning as Personal Information as set out in the Privacy Act (Cth) 1988.
- z) **Personnel of a Party** means the officers, employees, Third Party Providers and agents of that Party and its Related Bodies Corporate.
- aa) **Professional Services** means Consulting Services or Technical Services provided by Supplier and specified in the Agreement or Change Requests.
- bb) **Related Body Corporate** has the meaning set out in the Corporations Act 2001 (Cth).
- cc) **Representative of a Party** may be an employee, agent, officer, director, advisor, partner, consultant, or subcontractor of that Party as nominated by that Party under at the commencement of this Agreement

- dd) **Supplier Confidential Information** means this Agreement, the Application platform (including without limitation, the Application and the flow of screens), any benchmark tests related to the Application and any information (in whatever form) or documentation of a confidential nature (or which the Licensee ought reasonably to know to be confidential) which relates to the business, affairs or activities of Supplier (including in relation to the Services) which is required to be kept confidential and which:
- i) is disclosed to the Licensee or its Personnel by or on behalf of Supplier;
 - ii) is generated by the Licensee or its Personnel from such confidential information; or
 - iii) otherwise comes to the knowledge of a Licensee or its Personnel.
- ee) **Supplier Licence Extension** refers to the process for modifying the Terms, Fees or Specified Licence Use.
- ff) **Supplier Personnel** means all employees, agents, consultants and Third Party Providers of Supplier.
- gg) **Service Levels** means the minimum performance levels for the Support Services set out in Schedule 2.
- hh) **Service Level Default** means a failure to meet a Service Level.
- ii) **Services** means services to be provided by Supplier to the Licensee under this Agreement, as set out in Schedule 1, including Application Services, Implementation Services, Support Services and Professional Services provided in connection with the access and use of the Application by the Licensee.
- jj) **Specification** is the documentation developed by Supplier with the Licensee, and signed off by both Parties outlining the Licensees specific Application requirements.
- kk) **Support Services** means the ongoing assistance provided by Supplier' account services representatives as described in Schedule 2.
- ll) **Technical Services** are Professional Services delivered by Supplier' Developers and include application configuration, customisation or modifications that are requested by the Licensee.
- mm) **Tax or Taxes** includes Good and Services Tax and Indirect Transaction Taxes.
- nn) **Tax Invoice** means an invoice or other document, including without limit a credit note or debit note.
- oo) **Third Party Provider** means an organisation engaged by Supplier to provide Hosted Service Facilities.
- pp) **Term** means the term of this Agreement from the date of this Agreement as set out in Schedule 1.
- qq) **Upgrade** means any bug fixes, error corrections, modifications, updates, upgrades and new versions of the Application that are provided by Supplier generally to its clients at no additional charge.
- rr) **Wilful Misconduct** means a conscious and voluntary act or omission of a Party which falls materially below the standard of care which a reasonable person would have exercised in the position of the Party and thereby amounting to a wanton or reckless disregard for or violation of the rights or safety of others.

33. General Terms

- 33.1. (\$) the reference to "\$" is a reference to the lawful currency of the Commonwealth of Australia;
- 33.2. (reference to a Business Day) a Business Day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- 33.3. (meaning not limited) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- 33.4. Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.

EXECUTED as an Agreement:

Party	Name of Authorised Representative	Signature
Supplier	Name:..... Title:
Licensee	Name:..... Title:

SCHEDULE 1

A. Term

Term	Insert
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B. Specified Licensed Use

The Licensee's use of the Application is limited to the authorised employee(s), agents or servants of the Licensee ("the authorised persons"). The authorised persons are defined as those with an individual employee number or ID uploaded into the Software.

C. Fees

Implementation Services Fee ("Included Technical Services" of xx Hours)	\$Insert (plus GST)
Annual Licence and Support Services Fee	\$Insert per annum (plus GST)
Professional Services Fees	\$250 per hour (plus GST)

D. Payment Schedule

Implementation Services Fee	Within 14 calendar days of the Commencement Date
First Year Licence and Support Services Fee	Within 14 calendar days of the Commencement Date
Subsequent Year(s) Licence and Support Services Fee	Within 14 calendar days of the anniversary of the Commencement Date
Professional Services Fee	Within 14 calendar days of invoicing

E. Implementation Services

The Implementation Services to be supplied by Supplier to the Licensee are limited to the following:

- a) Set-up, configuration and installation of the Application based on the Licensees agreed requirements as outlined in the Specification at Supplier' nominated Hosted Service Facility.
- b) Installation of the Application on a server(s) which is connected by high speed access to the Internet and suitably equipped and maintained using commonly recognised, industry-standard hardware, software and communications equipment for Internet access.
- c) Provision of access to the Application via the public Internet.
- d) Supply by Supplier, upon request of the Licensee, of such information and assistance reasonably required by the Licensee to enable the Licensee to access the Application via the internet.
- e) Completion of the "Installation Acceptance" together with the Licensee's nominated representative. Should Installation Acceptance not be signed by the Licensee and supplied to Supplier within 5 business days of receipt by the Licensee, the Licensee acknowledges and agrees that Installation Acceptance will be deemed to have been given to Supplier.

SCHEDULE 2

A. Support Services

Support Services include:

- a) Email support for the Nominated Licensee Contact;
- b) Technical maintenance including the provision of fixes and patches as deemed necessary by Supplier;
- c) Provision of Updates;
- d) Management and monitoring the Application on behalf of the Licensee
 - i. The Application will be monitored during and after business hours. Backups will be completed nightly to tape. Nightly backups will be overwritten the next time that day of the week occurs; however Friday backups will be taken offsite and kept on a grandfather, father, son schedule. In addition hourly snapshots of the data will be taken during the Remuneration Review Process and held for 24 hours.
 - ii. Supplier will use reasonable commercial endeavours in the provision of access to the Application, however because of the general reliability of the Internet and of connections to and from the Internet; the supply of access to the Application may be influenced by factors beyond the control of Supplier. It is impossible to guarantee that access to the Application will be uninterrupted, that the Licensee will be able to properly access and use the Application, or that the Hosted Service Facility will be free from malicious attack or intrusion by third parties.
 - iii. If Supplier is informed by the Licensee that access to the Application has been interrupted, Supplier will diagnose and correct the problem in accordance with the Service Levels in Schedule 2D.
 - iv. Scheduled maintenance of the Hosted Service Facility will generally be undertaken before 7.30am and after 7.30pm, Monday – Friday, Eastern Daylight Time (in summer) or Eastern Standard Time (in winter).
 - v. During maintenance the Application may not be available to the Licensee.
 - vi. If maintenance is to be undertaken and access to the Application is likely to be unavailable, Supplier will endeavour to notify the Licensee 48 hours in advance of the maintenance.

B. Support Hours

- a) Support is provided during the hours of 9.30am – 5.00pm Eastern Daylight Time (in summer) or Eastern Standard Time (in winter), Monday - Friday, excluding public holidays (and any other holidays observed by Supplier).
- b) After hours support is available to the Licensee. For Support requests received outside of standard hours, the Licensee may be charged at Supplier current hourly rate for Professional Services.
- c) As **Dealer Drive** is a Hosted Solution, on-site technical support is not required.

C. Support and Escalation Process

This process applies to requests for raising a question regarding the Application, technical assistance or logging errors or problems.

- a) If an employee of the Licensee requires Support assistance, the employee will need to contact the Nominated Licensee Contact at the Licensee's site.
- b) The Nominated Licensee Contact will then address the request, in the first instance. The Licensee is expected to carry out a level of troubleshooting to eliminate infrastructure related problems e.g. connectivity failure.
- c) If the Nominated Licensee Contact is unable to resolve the request and troubleshooting has eliminated infrastructure related problems, the Nominated Licensee Contact should contact the allocated Supplier Account Manager via the phone and by email. The Nominated Licensee will be asked to provide details of the issue.

If the problem is escalated to Supplier and is identified as not related to a service provided by Supplier, then the time taken to identify the cause of the problem may be chargeable.

D. Service Levels – Response Times and Workarounds

Supplier will use reasonable commercial endeavours to meet the Response Time outlined below.

Severity (as assessed by Supplier)	Description	Response Time
Critical	Issue impacts all end users. Review process stalled.	Resolve issue or provide a work-around within 24 hours.
High	Issue impacts one manager only; and/or R.Review is functioning so that the process can continue.	Resolve issue or provide a work-around within 3 business days.
Medium	Issue does not directly impact the review process but causes some inconvenience.	Resolve issue or provide a work-around within 10 business days.
Low	Request for enhancements.	These requests will be assessed based on requests from other clients, and prioritised and if appropriate included as part of the next patch/upgrade.