

## Enterprise Software

### GENERAL TERMS & CONDITIONS

This Agreement sets out the terms and conditions governing the Customer's use of the Solution and the provision of the Services by the Supplier. By entering into the Purchase Order the Customer agrees to the terms and conditions set out in this Agreement.

#### **1 Commencement Date and Term**

- 1.1 This Agreement commences on the Commencement Date and continues for the Initial Term.
- 1.2 Unless terminated in accordance with clause 20, following the expiration of the Initial Term and upon the expiration of any subsequent Renewal Term, this Agreement shall be renewed automatically for a further term of 12 months ("Renewal Term"). Either party may, by giving written notice to the other party no less than 60 days prior to the expiration of the then current term, elect not to renew this Agreement, in which case this Agreement shall expire at the end of the then current term.

#### **2 Licence to Use Solution**

- 2.1 In consideration of payment of the Annual Fee, the Supplier grants to the Customer and the Related Bodies Corporate a non-transferable and non-exclusive licence to access and use the Solution for the Customer's internal use by Authorised Users and for the purpose of performing tax and/or accounting services for the Customer's clients during the Term in the Territory, in accordance with the Use Profile. Where specified in the Purchase Order, the Customer may permit its clients to access and use the Solution solely for the purposes of data input and review.
- 2.2 The Customer acknowledges and agrees that:
  - (a) there is no transfer of title, or ownership of the Solution;
  - (b) other than the rights granted pursuant to clause 2.1, the Customer has no further right to use, sublicense, distribute, transfer, transmit or otherwise exploit the Solution; and
  - (c) the Solution will only be used by the Authorised Users.
- 2.3 The Solution includes Open Source Software as set out in the Associated Documentation. Without limiting clause 9.4, any use of the Open Source Software by the Customer will be governed by and subject to the terms and conditions of the applicable licences for the Open Source Software. After the Commencement Date, the Supplier may change the Open

Source Software used in the Solution or identify any Open Source Software distributed with the Solution in its applicable Associated Documentation, provided that the Supplier shall use reasonable endeavours to notify the Customer of any such change.

- 2.4 The Customer acknowledges that the Supplier, through the use of the Solution, is not providing an agent service, does not provide legal or taxation advice and is not responsible for the preparation of any taxation, superannuation or other related documents on behalf of the Customer. The Supplier may submit transmissions (e.g. lodgement and prefill) through the SBR channel that the Customer chooses to make through the Solution.

### **3 Associated Documentation**

- 3.1 The Supplier will provide the Customer with access to any Associated Documentation in electronic form.
- 3.2 The Associated Documentation will not be used by the Customer except to assist in the normal operation of the Solution.
- 3.3 The Supplier undertakes to provide the Customer with any revisions of the Associated Documentation generally made available by Supplier during the Term.

### **4 Access to Solution**

- 4.1 The Customer, or at the Customer's direction, the Supplier, will supply unique Logon IDs to each of the Authorised Users nominated by the Customer.
- 4.2 Subject to clause 4.4, the Customer may from time to time request to change the persons nominated as Authorised Users.
- 4.3 The Customer will provide a list of the Authorised Users to the Supplier on request by the Supplier.
- 4.4 The total number of Authorised Users must not exceed the Maximum Number of Authorised Users unless the Supplier agrees otherwise.
- 4.5 The Supplier may refuse to supply a particular person with a Logon ID, or cancel a particular Logon ID or direct the Customer to do either of the same, at any time for reasonable cause. Reasonable cause includes but is not limited to the Logon ID being assigned to any person other than an authorised representative of the Customer, a person who is employed by or providing access to the Solution to a competitor, or any person whom the Supplier reasonably believes is otherwise compromising the rights of the Supplier. Where the Supplier decides to take action directly to refuse supply of or to cancel a Logon ID, the Supplier will make all reasonable efforts to notify the Customer in advance of denial or cancellation and will in all cases provide the Customer with its reasons for such denial or cancellation.

- 4.6 The Customer acknowledges and agrees that:
- (a) it is responsible for ensuring that each of the Authorised Users comply with the Customer's obligations under this Agreement , including without limitation the restrictions on copying of the Solution as set out in clause 12;
  - (b) it must make all reasonable efforts to ensure the Authorised Users do not disclose their Logon IDs to anyone else;
  - (c) the Customer will be responsible for any use whatsoever of the Solution through all Logon IDs issued to Customer;
  - (d) a breach of this Agreement by an Authorised User or any person provided with a Logon ID by an Authorised User will constitute a breach by the Customer.
- 4.7 The Customer must immediately notify the Supplier if any Logon ID should be cancelled.

## **5 Acceptance of Solution and Implementation Services**

- 5.1 The Customer accepts the Solution on the Commencement Date.
- 5.2 The Supplier will provide the Implementation Services as set out in the Purchase Order. The Customer acknowledges that where the scope of Implementation Services required varies from that agreed in the Purchase Order, the Supplier may impose an Additional Charge.
- 5.3 The Customer acknowledges that in the case of a Customer Hosted Solution, the Implementation Services do not include, and the Supplier will not be responsible for, integrating the Solution with any existing systems or procedures of the Customer, except as may be separately agreed in writing between the parties.

## **6 New Versions**

- 6.1 The Supplier will advise the Customer of all updates and new versions of the Solution as they are generally made available. During the Term, any updates to or new versions of the Solution are made available without additional charge (other than Annual Fee) to the Customer. In the event that any updates or new versions contain Additional Modules, these Additional Modules may be acquired by the Customer for a fee as advised by the Supplier. Once acquired by the Customer, relevant Additional Modules will be Solution for the purposes of this Agreement.
- 6.2 Where the Customer acquires an update or new version of the Solution, the Supplier's obligation to provide Support Services will apply to the update or new version, without additional charge (other than the Annual Fee) if no Additional Modules are contained in the update or new version. If, in the case of a Customer Hosted Solution, the Customer elects not to obtain the update or new version, the Supplier will continue to provide the

Support Services for the current version for twelve (12) months or until a further update or new version is released (whichever occurs first) (“Superseded Version Support Period”). Following the expiry of the Superseded Version Support Period, the Supplier may, without obligation and in its sole discretion, continue to provide Support Services but in no event will these include bug fixes or code patches.

- 6.3 An update or new version may require the Solution Computer Requirements to be updated by the Supplier, in which case the Supplier will notify the Customer of the updated requirements.

## **7 Support Services and Additional Services**

- 7.1 Subject to payment of the Annual Fee the Supplier will provide the Support Services and use commercially reasonable endeavors to achieve the Support Levels throughout the Term, but shall not be liable to the Customer for any failure to achieve any Support Level. The Supplier will also provide such other Additional Services as may be requested by the Customer and agreed by Supplier from time to time, at an Additional Charge.

- 7.2 The Customer acknowledges and agrees that the Solution and the Associated Website will not always be available due to updates, maintenance and the inherent nature of the Internet. Supplier is not responsible for any interference with the Customer’s use of the Solution arising from or attributable to the Internet.

- 7.3 In the event that:

- (a) the Solution is altered by anyone other than Supplier or its authorized agent (other than due to the Customer’s acquisition of an update or new version) or, in the case of a Customer Hosted Solution, the Support Site is moved to a location which the Supplier determines in its sole discretion to be unacceptably remote or distant ; or
- (b) the Solution is substituted by the Supplier for a new software platform (in which case three (3) months prior notice will be provided of any substitution of the platform),

the Supplier may at its option,

- (i) terminate this Agreement pursuant to clause 20.2(e);
- (ii) continue the licence to the Customer but terminate the Support Services in whole or part (including changing the Support Services to offering remote support in the case of a change to the Support Site); or
- (iii) continue both the licence and the Support Services without any change but subject to clause 7.4.

- 7.4 In the event that the Supplier elects to continue providing Support Services pursuant to clause 7.3, the Supplier will notify the Customer of any variation in the Annual Fee due to

the impact of the relevant event on the Supplier's costs.

## **8 Customer Warranties and Undertakings**

8.1 The Customer undertakes that it:

- (a) will not modify, adapt, translate or alter the Solution, merge all or any part of it with any other software program, or create any derivative works based on the Solution, without the Supplier's prior written consent, and on such terms as required by the Supplier should consent be given;
- (b) will not make any unauthorised copies of the Solution and in the case of a Customer Hosted Solution, will only make such copies as are reasonably required for back up and security purposes; with the Customer keeping accurate records of any such copying;
- (c) will ensure that any attachment, link, file or other material uploaded or otherwise incorporated within the Solution by it, is free of any virus or malicious code;
- (d) will not other than as expressly allowed under the terms of this Agreement:
  - (i) reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Solution;
  - (ii) interfere with or attempt to defeat, disable or avoid any lawful copy protection or other security mechanism incorporated in or related to the Solution;
  - (iii) rent, lease, distribute, provide or otherwise make the Solution available to any third party, whether on an outsourcing, service bureau or other basis;
  - (iv) use the Solution or any derived information or reports in any manner, or for any purpose, that is unlawful or in any manner that violates any right of the Supplier;
  - (v) restrict or inhibit any other user licensed by the Supplier from using the Solution;
  - (vi) transmit during access to the Solution anything that contains, or may contain, a virus or other property that may be contaminating or destructive to the Solution;
  - (vii) interfere with or disrupt the Associated Websites or any services provided thereon or thereby, or any servers or networks connected to the Associated Websites, or fail to comply with any requirements, procedures, policies or regulations of networks connected to the Associated Websites;

- (viii) use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, “data mine”, or in any way reproduce or circumvent the navigational structure or presentation of the Solution.
- 8.2 The Customer warrants that it has not relied on any representation made by the Supplier which has not been expressly stated in this Agreement.
- 8.3 The Customer acknowledges and agrees that the Solution does not check for anomalies and incorrect data being processed and as such a failure to follow the Associated Documentation could result in erroneous data being produced by the Solution. The Customer acknowledges and agrees that it is solely responsible for determining the accuracy of any data, report, information, extract or other output generated by it from the Solution including where any such output has been made available to a third party, whether directly or indirectly and in any form, and that the Supplier shall have no liability to the Customer or any third party for any loss, cost, damage or liability arising in connection with any output generated by the Solution.
- 8.4 The Customer undertakes to apply whatever protective measures are commercially reasonable and within its control, including without limitation, maintenance of fire walls, internal network security and virus scanning of all software installations, including of the Solution. The Customer acknowledges and agrees that it is responsible for all loss, damage and costs caused by viruses other than to the extent the loss, damage and costs arose directly from a failure by the Supplier to comply with Supplier’s applicable obligations under this Agreement.
- 8.5 The Customer warrants that, to the extent any Customer Data includes Personal Information, the Customer has complied with all applicable privacy laws in any relevant jurisdiction and has consented to the Supplier transferring any such Personal Information across borders to the extent required for the performance of this Deed.
- 8.6 The Customer undertakes that it will not without the prior written consent of the Supplier, directly or indirectly employ or offer, or cause a third party to offer on its behalf, employment or a contract of service to any of the Supplier’s personnel (whether employees or subcontractors). This restriction will apply for the duration of this Agreement and for a period of 12 months thereafter. This restriction does not apply to offers to personnel who have responded independently to general solicitations not specifically targeting them (such as newspaper advertisements and internet postings).
- 8.7 The Customer acknowledges and agrees that while the Solution may be used in connection with the preparation and/or lodgement of forms, reports and other documentation with government authorities, the Customer is solely responsible for any such forms, reports, documentation and lodgements made via or using the Solution. Among other things, the Customer is solely responsible for ensuring that any lodgement:

- (a) is made on time; and
- (b) is received by the relevant authority (for example, by ensuring that it receives acknowledgment of receipt from the relevant authority).

## **9 Supplier Warranties and Undertakings**

9.1 The Supplier warrants that:

- (a) it has the right and authority to grant the licence to the Customer;
- (b) the Solution and the Associated Documentation may be used by the Customer on the terms of this Agreement without infringing any rights of any third party;
- (c) it will use commercially reasonable endeavors to ensure that the Solution will perform free of Inherent Defects;
- (d) the performance of the Services will not infringe any rights of any third parties, excluding to the extent the infringement arises in connection with any materials provided by the Customer in the Specifications and where the Supplier was not aware of and could not reasonably be expected to have known of the existence of any such third party rights, or otherwise as a result of the Supplier following any direction of the Customer; and
- (e) it will provide the Services using reasonable care and skill in a manner consistent with industry standards and practices applicable to the Services.

9.2 The Customer's sole and exclusive remedy for any breach by the Supplier of the warranties set out in:

- (a) clauses 9.1(a), (b) and (d) is the recovery of loss under the indemnity set out in clause 13;
- (b) clause 9.1(c) is the rectification of the Inherent Defect in accordance with the Support Services; and
- (c) clause 9.1(e) is the re-performance of the relevant Services.

9.3 The Supplier does not warrant that:

- (a) the Solution is error or defect free;
- (b) the use of the Solution will be uninterrupted;
- (c) the Solution or any products or results from its use will meet the Customer's requirements or be fit for any purpose;

- (d) the Solution will be compatible with any existing systems or procedures of the Customer (in the case of a Customer Hosted Solution), except as may be separately agreed in writing between the parties;
- (e) the Solution will provide any functions not identified in the Associated Documentation;
- (f) the figures, data, reports, information or other outputs generated by the Solution will be technically correct or accurate.

9.4 Except as expressly set forth in this agreement and to the extent permitted by law, neither party makes any other warranty, express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The Supplier disclaims all warranties whether express, implied, statutory or other (including all warranties arising from course of dealing, usage or trade practice). Without limiting the foregoing, the Supplier makes no warranty of any kind that the Solution or Associated Documentation, or any other Supplier or third-party goods, services, technologies or materials (including any software), or any products or results of the use or any of them, will meet the Customer's or other person's requirements, operate without interruption, achieve any intended result, be compatible or work with any other goods, services, technologies or materials (including any software, hardware, system or network) except if and to the extent expressly set out in the Associated Documentation, or be secure, accurate, complete, free of harmful code or error free. Any third party software incorporated in the Solution (including any Open Source Software) is provided "as is" and any representation or warranty of or concerning any of them is strictly between the Customer and the third-party owner or distributor of such software.

9.5 If any condition or warranty is implied into this Agreement under the Competition and Consumer Act 2010 (Cth) or any equivalent State or Territory legislation and cannot be excluded, the liability of the Supplier for breach of the condition or warranty will be limited in the discretion of the Supplier to one or more of the following:

- (a) in the case of goods, any one or more of the following:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again



## **10 Payment of Annual Fee**

- 10.1 Unless otherwise stated in the Purchase Order, the Customer will pay the first Annual Fee to the Supplier on the Commencement Date.
- 10.2 Unless otherwise stated in the Purchase Order, should this Agreement be renewed pursuant to clause 1.2, the Customer will pay the Annual Fee to the Supplier on the first anniversary of the Commencement Date and on each subsequent anniversary of the Commencement Date. The Annual Fee is payable in advance of the year to which it applies. The Supplier reserves the right to increase the Annual Fee on the first anniversary of the Commencement Date and on each subsequent anniversary of the Commencement Date. Subject to clause 10.4, the parties agree that any increases in the Annual Fee will be on the basis that:
- (a) in years two (2) and three (3) following the Commencement Date, any increase will not exceed the greater of the Consumer Price Index (All Groups Australia) published by the Australian Bureau of Statistics (or equivalent index in the event the preceding index ceases to be published) for the last published quarter in the calendar year immediately preceding the relevant year or 5%, whichever is greater;
  - (b) in year four (4) any increase will be based on a market review;
  - (c) in subsequent years following the conclusion of year four, any increase in the first two years will be governed by clause 10.2(a) and there will be a review every three years in accordance with clause 10.2(b).
- 10.3 Thirty (30) days prior to the end of the Term, the Supplier will notify the Customer of any change to the Annual Fee.
- 10.4 In addition to its rights under clause 10.2, the Supplier reserves the right to vary the Annual Fee at any time where the Customer acquires an Additional Module or where there has otherwise been a change in the Use Profile.
- 10.5 If the Customer, acting reasonably and in good faith, disputes the whole or any portion of the invoice submitted by the Supplier, the Customer will (within seven (7) days of receipt of the invoice) pay the portion of the amount stated in the invoice which is not in dispute and will notify the Supplier in writing of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the Customer will pay the amount finally resolved within 10 days of such resolution.
- 10.6 Unless otherwise specified in this Agreement, the Customer will pay the Supplier within 30 days of receiving an invoice from the Supplier.

## **11 Taxes**

All fees and charges payable under this Agreement exclude all relevant Taxes including without limitation any applicable goods and services tax, value added tax, sales tax or consumption tax which will be separately itemized as required on the invoices. The Supplier is responsible for payment of all such Taxes to the applicable authorities. Any relevant Taxes will be charged by the Supplier at the prevailing rate at the date of the invoice or when the Services are supplied or licence granted by the Customer, whichever is the earlier. The Customer will pay to the Supplier any Taxes imposed on the Supplier in connection with, or as an outcome of, this Agreement. Each such invoice will be provided in a format and within the time frames as may be required by applicable laws or regulations from time to time.

## **12 Copying and Intellectual Property**

- 12.1 Other than as permitted by law for the purpose of making a back-up copy, the Customer will not copy or reproduce the Solution by any means or form, without the prior written consent of the Supplier.
- 12.2 If requested by the Supplier, the Customer will issue a notice in a form approved by the Supplier to all Authorised Users, advising of the Customer's obligations pursuant to this clause 12.
- 12.3 The Customer may not for any reason remove, modify, alter or reproduce any copyright or trade mark symbol or other notice of ownership appearing on any part of the Solution.
- 12.4 Nothing in this Agreement gives the Customer any rights in any business name, copyright or trade mark owned by or licensed to the Supplier and applied to the Solution.
- 12.5 The Supplier retains all Intellectual Property Rights and other rights in the Solution and the Associated Documentation. The Supplier will own, and the Customer assigns to the Supplier, all Intellectual Property Rights in (i) any copy, translation, modification, adaptation or derivative work of the Solution or the Associated Documentation, whether provided as part of the Support Services or Additional Services or otherwise, and whether or not developed by or for the Customer, and (ii) any suggestion, ideas, enhancement requests, feedback or recommendations provided by or on behalf of the Customer, and the Customer must take any step reasonably required by the Supplier to perfect such assignment.
- 12.6 As between the Supplier and the Customer, the Customer is and shall remain the sole and exclusive owner of all right, title and interest in and to the Customer Data. The Customer licenses the Supplier and its subcontractors to use the Customer Data to the extent necessary to provide the Solution and to perform the Support Services and any Additional Services.

### **13 Intellectual Property Rights – Indemnification**

- 13.1 In the event that proceedings are commenced or threatened by an unaffiliated third party against the Customer or a Related Body Corporate (a “Claim”) alleging that the Customer’s or Related Body Corporate’s use of the Solution as expressly allowed by this Agreement constitutes an infringement of Intellectual Property Rights and subject to clauses 13.2 and 13.4, the Supplier will defend at its expense and indemnify and hold the Customer and the Related Bodies Corporate where relevant (“Indemnitees”) harmless from any Claim by paying any liabilities or damages that are finally awarded against the Indemnitees, or agreed with the Supplier in settlement, with respect to any such Claim. The Customer or Related Body Corporate, as the case may be, will provide all reasonable co- operation, information and assistance to the Supplier in the conduct of the defence of such proceedings.
- 13.2 The Supplier’s obligations under clause 13.1 are contingent on the Customer notifying the Supplier immediately in writing of the Claim and allowing the Supplier to conduct the defence and/or settlement of any such Claim.
- 13.3 Notwithstanding clause 13.2, the Customer will have the right to participate in such defence or settlement with counsel of its own selection at its sole expense.
- 13.4 Without limitation to the Supplier’s obligations under clause 13.1, if and to the extent that a Claim is made and there is a reasonable basis for the Claim, the Supplier will, at its expense and in its sole discretion:
- (a) use commercially reasonable efforts to obtain for the Customer the right to the continued use of the Solution in accordance with this Agreement; or
  - (b) use commercially reasonable efforts to replace or modify the Solution so that the alleged infringement ceases and the replacement or modified Solution provides the Customer with the substantially equivalent functionality and performance as provided for under this Agreement; or
  - (c) terminate the License to the infringing Solution and refund the portion of the Annual Fee, on a pro rata basis, in respect of the infringing Solution or portion thereof in the event the Supplier is unable to secure a continuing right to use the Solution in accordance with (a) above or the replacement or modification of the Solution in accordance with (b) above.
- 13.5 The Supplier will have no liability or obligation to indemnify the Indemnitees for any Claim based on:
- (a) the unauthorised use or modification of the Solution or the combination of the Solution (in whole or part) with any other software or equipment by the Customer if such alleged infringement would not have occurred without such use, modification or combination;
  - (b) Customer’s continuing use of the Solution after receiving notice that the Solution infringes Intellectual Property Rights of a third party;

- (c) use of a superseded version of the Solution if the infringement or violation would have been avoided or mitigated by the use of a subsequent version or update of the Solution that is provided or made available to the Customer; or
- (d) use of the Solution after the Supplier has provided the Customer with a suitable replacement or modification in accordance with clause 13.4(b).

13.6 This clause sets out the entire liability of and obligations of the Supplier to the Customer or a Related Body Corporate, and the entire remedy of Customer and its Related Bodies Corporate, with respect to infringement or other violation of any Intellectual Property Rights of a third party.

## **14 Privacy**

If the Supplier collects, uses, discloses, transfers, stores or otherwise handles Personal Information of the Customer's or any Client's personnel while discharging its obligations under this Agreement then the Supplier acknowledges and agrees that the Supplier will comply with the Privacy Act 1988 (Cth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of such information to the extent such laws are applicable to the Supplier's use of the relevant Personal Information and cannot lawfully be excluded.

## **15 Confidentiality**

- 15.1 A party will not, except as otherwise expressly permitted by this Agreement or with the prior written consent of the other party:
- (a) disclose the other party's Confidential Information; or
  - (b) use the other party's Confidential Information for any purpose other than as necessary for the provision or receipt of the software and services contemplated by this Agreement or as otherwise required for the enjoyment of rights or the enforcement of obligations under this Agreement.
- 15.2 A party will not be in breach of clause 15.1 where it is legally compelled to disclose the other party's Confidential Information.
- 15.3 Each party will take all reasonable steps to ensure that its employees, partners, agents and any contractors engaged by it, do not make public or disclose the other party's Confidential Information.
- 15.4 Notwithstanding any other provision of this clause, a party may disclose the Confidential Information to those of its employees, partners, agents and contractors who have a need to know for the purposes of this Agreement and in which case the relevant party will take all reasonable steps to ensure that such persons are aware of these obligations of confidentiality.

## **16 Data Security and Management**

16.1 For a Customer Hosted Solution, the Customer will:

- (a) be solely responsible for the use, supervision, management and control of the Solution and Customer Data; and
- (b) ensure that the Solution and Customer Data are protected at all times from unauthorised access or use or misuse.

16.2 For a Supplier Hosted Solution, the Supplier will manage Customer Data in accordance with Schedule 1.

## **17 Subcontractors**

17.1 The use of any Subcontractors by the Supplier will not relieve the Supplier from any of its obligations under this Agreement.

17.2 Unless otherwise agreed with the Customer, the Supplier is responsible for payments due to its Subcontractors, or other third parties with which Supplier enters into agreements to perform work related to the Services.

## **18 Liability and Disclaimer**

18.1 Subject to clauses 18.2 and 18.3, the maximum aggregate liability of the Supplier under or relating to this Agreement, whether in contract or tort (including without limitation negligence) or for any other cause of action and including indemnification obligations, is limited to the Annual Fee paid or payable by the Customer during the 12 months immediately preceding the first event giving rise to liability, irrespective of the number of separate discrete events, separate causations or separate breaches by the Supplier giving rise to liability.

18.2 Except for liability resulting from Customer's breach or other violation of any Intellectual Property Rights of the Supplier, neither party's liability to the other under this Agreement, including for indemnification obligations, includes, nor will either party be liable for, any indirect, incidental, special or consequential loss or damage, or damages resulting from delay of delivery or from loss of profits, business, revenue, anticipated savings or goodwill whether arising in contract, tort (including without limitation negligence), product liability, statute or otherwise and whether or not such party has been advised or is aware of the possibility of such damages.

18.3 Without limiting clause 18.2, the Supplier is not liable:

- (a) to the extent that the Customer is responsible for an act or omission that contributed to the Customer's loss;
- (b) for any processing deficiency (in any system) that is caused (in whole or in part) by input data that is inaccurate;
- (c) for any defect or deficiency in any system or service that is not developed or

provided by the Supplier under this Agreement. That includes (without limitation) the Customer's production and legacy systems and systems that receive data from systems produced by the Supplier;

- (d) or any losses caused to the Customer as a result of the Solution being unavailable due to matters outside of the Supplier's control;
- (e) to the extent that the Solution transfers information across the internet, for any loss, corruption or leak of information caused by such transfer;
- (f) for any direct, indirect or consequential loss, damage or costs arising out of or in connection with the access by or use of the Solution by persons who are not Authorised Users;
- (g) for any inaccuracy in any data, report, information extract or other output generated by the Customer from the Solution or for any virus or malicious code contained in any attachment, link, file or other material uploaded or otherwise incorporated into the Solution by the Customer;
- (h) for any unauthorised access to the Solution via the internet or any other means.

18.4 In addition to other remedies available to the Supplier under this Agreement or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Solution will entitle the Supplier to any available equitable remedy against the Customer including injunctive relief.

## **19 Indemnity**

- 19.1 The Customer will at all times indemnify and hold the Supplier, its directors, employees and agents harmless against all loss which may be incurred by any of them arising out or in connection with:
- (a) the Customer's use, or the use by any of the Customer's Related Bodies Corporate or the Authorised Users, of the Solution; and
  - (b) any liabilities, claims, costs and expenses incurred by the Supplier in respect of any claim by a third party which is related to, arises out of, or is in any way associated with this Agreement.

## **20 Termination**

20.1 This Agreement may be terminated immediately on the happening of a terminating event by notice in writing at the option of the party which has not committed or been subject to the terminating event.

20.2 For purposes of this Agreement, the following are terminating events:

- (a) the breach by either party of any of its obligations under this Agreement where such breach is not remedied within 14 days of written notice requiring it to do so;
- (b) the appointment of any type of insolvency administrator to either party;

- (c) the entry by a party into any scheme, composition or arrangement with any of its creditors;
- (d) the merger with or takeover of a party by a third party,
- (e) any event described in this Agreement as entitling a party to terminate this Agreement;
- (f) either party ceasing or threatening to cease conducting its business in the normal manner; and
- (g) a Force Majeure event occurring, entitling a party to terminate this Agreement as set out in clause 21.

20.3 If notice is given by the Supplier to the Customer pursuant to clause 20.1 then the Supplier may also:

- (a) repossess any copies of the Solution in the possession, custody or control of the Customer;
- (b) revoke all Logon IDs granted to the Customer's Authorised Users, and otherwise prevent the Customer from accessing the Solution and the Associated Website;
- (c) retain any moneys paid;
- (d) be regarded as discharged from any further obligations under this Agreement; and
- (e) pursue any additional or alternative remedies provided at law or in equity

20.4 If notice is given by the Customer to the Supplier pursuant to clause 20.1 then subject to agreement as to the payment of an Additional Charge to the Supplier:

- (a) except to the extent the Supplier is providing the Supplier Hosted Solution in a shared client environment and it is not possible to extract or destroy the relevant information, the Supplier will return to the Customer or destroy all Customer Confidential Information that it has in its possession, except as required by law or copies made pursuant to Supplier's backup or archival processes;
- (b) the Supplier will provide all commercially reasonable assistance requested by the Customer to assist in any transition of support or migration of the Customer's data and information to another system or to alternative equipment or software

20.5 On termination of this Agreement the Customer will immediately cease to access or use the Solution, and must uninstall the Solution and return to the Supplier all copies of any Associated Documentation, except that the Customer may retain any records created by the Solution required by law to be kept and may continue to use and access any part of the Solution which is necessary to access those records. The Customer acknowledges and agrees that there may be an Additional Charge where the Supplier is required to provide continued access to the Solution, such as but not limited to hosting costs.

- 20.6 In the case of a Supplier Hosted Solution, the Customer will be entitled to read-only access to Customer data stored in the application and database for a period of thirty (30) days after termination for the purpose of facilitating transition by the Customer to an alternative system. In the event the Customer wishes to have continued read-only access to such Customer data past the expiration of thirty (30) days, the Supplier may agree to continued read-only access, subject to agreement in writing as to any Additional Charge that may be payable by the Customer.
- 20.7 Termination of this Agreement will not prejudice any claim by the terminating party as a result of any event which gives a right of termination under this clause.
- 20.8 Without limiting any of its termination rights under this clause 20, the Supplier may suspend the Customer's access to the Solution at any time upon notice to the Customer where the Supplier reasonably believes that:
- (a) the Customer has breached any material term of this Agreement, including without limitation any term in relation to payment; or
  - (b) suspension of access to the Solution is reasonably necessary for purposes relating to legal or regulatory compliance or protecting Supplier's intellectual property or proprietary rights in the Solution.

## **21 Force Majeure**

- 21.1 Neither party will be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.
- 21.2 A party affected by Force Majeure will be suspended from performing its obligations under this Agreement for the period of the delay due to Force Majeure.
- 21.3 If a delay or failure to perform its obligations due to Force Majeure exceeds sixty (60) days, either party may immediately terminate this Agreement in accordance with clause 20.

## **22 Assignment**

- 22.1 The Customer may not assign or novate this Agreement or otherwise transfer the benefit of this Agreement or an obligation, right or remedy under it, without the prior written consent of the Supplier, which consent will not be unreasonably withheld.

## **23 Notices**

- 23.1 Notices under this Agreement may be delivered by hand, by electronic mail, by mail or by facsimile transmission to the addresses specified in this Agreement.
- 23.2 Notice will be deemed given:
- (a) in the case of hand delivery, when delivered;



- (b) in the case of electronic mail, four (4) hours after the sent time (as recorded on the sender's email server) unless the sender received a notice from the recipient's email server or internet service provider that the message has not been delivered to the recipient;
- (c) in the case of posting, two (2) Business Days after dispatch;
- (d) in the case of facsimile, upon receipt of a correct and complete transmission report by the sender.

## **24 Mediation**

- 24.1 If there is a dispute relating to this Agreement, then subject to clause 24.2 the parties must submit the dispute to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given to the other party for it to be submitted to a mediator chosen by the parties or, where the parties cannot agree, to a mediator chosen by the Australian Disputes Centre (ADC). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the dispute is referred to the ADC, to the extent that they do not conflict with the provisions of this clause. If the dispute is not resolved within sixty (60) days after notice of the dispute, the mediation will terminate unless the parties otherwise agree.
- 24.2 Clause 24.1 shall not prevent a party from seeking urgent injunctive or other interlocutory relief.

## **25 Waiver**

No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party nor will any waiver of those rights operate as a waiver of any subsequent breach.

## **26 Severability**

- 26.1 If any provision of this Agreement is found to be illegal, unenforceable or otherwise invalid; then, despite that invalidity or infringement:
- (a) this Agreement will remain in full force and effect to the extent permissible under or consistent with the relevant laws; and
  - (b) that provision will be deemed to be deleted and, substituted by a valid one which in its economic effect comes so close to the invalid provision that it can be reasonably assumed that the parties would have contracted also with this new provision.

## **27 Entire Agreement**

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations (including any statement, representation, promise or undertaking that may have been made) on that subject matter.

## **28 Variation**

A provision of this Agreement or a right or obligation created under it may not be varied except in writing and signed by both parties.

## **29 Governing Law**

This Agreement will be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales.

## **30 Survival**

All rights and obligations which expressly or by their nature survive termination or expiration of this Agreement (including without limitation clauses 12-16 inclusive and clauses 18-21 inclusive) will continue in full force and effect subsequent to and notwithstanding such termination or expiration and until they are satisfied or by their nature expire.

## **31 Use Profile Information and Audit**

- 31.1 The Customer will on request by the Supplier provide the Supplier with access to all relevant information and all reasonable co-operation and assistance as may be required, to enable the Supplier to confirm that use of the Solution is in accordance with the Use Profile.
- 31.2 Should the Supplier determine that further investigation is required after requesting information under clause 31.1, the Supplier may on providing reasonable notice but only on a Business Day and at a mutually convenient time, audit the Customer's compliance with the terms and conditions of this Agreement (including without limitation, the payment of all applicable fees and adherence to the Use Profile). The Customer agrees to provide the Supplier such access and assistance as is reasonably necessary to conduct such audit and to pay the Supplier's reasonable expenses and all other amounts due to the Supplier should the Customer be found to be in breach of this Agreement.

## **32 Priority**

- 32.1 In the event of any conflict between the documents which comprise this Agreement the following order of priority will apply:
- (a) the Purchase Order;
  - (b) the Schedule/s;
  - (c) the main body of the agreement (clauses 1-33 inclusive);
  - (d) the Appendix.

### **33 Definitions and Interpretation**

33.1 In this Agreement:

**“Additional Charge”** means a charge in accordance with the Supplier’s rates applicable from time to time and agreed between the Supplier and the Customer.

**“Additional Module”** means a Software Module that is not a specified in the Purchase Order as Solution.

**“Additional Services”** means any additional services supplied by the Supplier under this Agreement as set out in Schedule 2 for which an Additional Charge is payable and which will be subject to additional terms and conditions as agreed and which excludes the Support Services and Implementation Services.

**“Agreement”** means this agreement, the Purchase Order and any Schedule and Appendix attached to this Agreement.

**“Annual Fee”** means the annual fee specified in the Purchase Order payable by the Customer to the Supplier for the use of the Solution and for the Services.

**“Appendix”** means an appendix to this Agreement.

**“Associated Documentation”** means any operating manuals or other such materials provided by Supplier relating to the Solution including but not limited to user manuals and implementation instructions including revisions but excluding all promotional or marketing materials.

**“Associated Website”** means any website that allows access to and/or use of the Solution.

**“Authorised User”** means an employee or contractor of the Customer or such other persons requiring access in order to enable the proper operation of the Solution and which have been authorised by the Customer to use the Solution.

**“Business Day”** means any day except Saturday, Sunday or a public holiday, between the hours of 8:45am and 5.15pm Australian Eastern Standard (AES) time.

**“Client”** means any client to whom the Customer or a Related Body Corporate provides services using the Solution and Clients has a corresponding meaning.

**“Commencement Date”** means the date that the Purchase Order is signed by the Customer or the date the Customer first accesses the Solution, whichever is earlier.

**“Confidential Information”** means information that is confidential to a party and includes any information:

- (a) relating to the Solution;
- (b) relating to the personnel, policies or business operations of the Supplier or the Customer;
- (c) relating to the terms of this Agreement;
- (d) of the Customer or its Clients which is inputted into the Solution and any other information derived from that information; and
- (e) of the Customer or its Clients which is provided to the Supplier for training purposes, other than information which is already in the public domain otherwise than through a breach of this Agreement.

**“Customer”** means the customer as set out in the Purchase Order and includes any Related Body Corporate.

**“Customer Data”** means the electronic data or information (including Personal Data) inputted by the Customer or Authorised Users into the Solution.

**“Customer Hosted Solution”** means where the Customer is hosting the Solution on a server other than one under the ownership or control of the Supplier.

**“Data Volumes”** means the volume of data utilizing the Solution as set out in the Purchase Order.

**“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. Such circumstances include but are not limited to acts of God, natural disaster, fire, explosion, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage, revolution or strikes.

**“Inherent Defect”** means a significant error or defect caused by a programming error other than one that is the result of:

- (a) an alteration or modification to the Solution not made by the Supplier;
- (b) use of the Solution other than in accordance with the Supplier’s directions;
- (c) use of the Solution in combination with equipment, programs or services not provided by the Supplier; or
- (d) failure by the Customer to meet its obligations under this Agreement or any other agreement relating to the Solution

**“Initial Term”** means the period of time set out in the Purchase Order or in default, a period of 12 (twelve) months from the Commencement Date.

**“Implementation Services”** means the implementation services set out in the Purchase Order (including any training set out in the Purchase Order or Schedule 2) or as otherwise agreed between the parties.

**“Intellectual Property Rights”** means intellectual property rights of every sort, whether or not registrable in any country, including intellectual property rights coming into existence after the Commencement Date, and including patents, copyright, trademarks, designs, trade secrets or other proprietary rights.

**“Logon ID”** means a username and password that enables an Authorised User to access the Solution.

**“Maximum Number of Authorised Users”** means the maximum number of Authorised Users specified in the Purchase Order.

**“Open Source Software”** means any software component that is subject to any open source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or any substantially similar licensing terms that substantially confirms to the Open Source Definition as prescribed by the Open Source Initiative.

**“Personal Information”** means information that has been provided by the Customer or its Authorised Users about an identified or reasonably identifiable individual, including without limitation, an individual’s name, address, telephone number and any other information deemed to be personal information under relevant privacy or data protection laws.

**“Purchase Order”** means the order for the purchase of Solution and associated Services placed by the Customer in accordance with this Agreement and includes any proposal documentation that has been acknowledged and accepted by the Customer.

**“Related Body Corporate”** means a related body corporate (as that term is defined in the Corporations Act 2001 (Cth)) of the Customer which is specified in the Purchase Order.

**“Schedule”** means a schedule to this Agreement.

**“Services”** means the Implementation Services, Support Services and any Additional Services.

**“Software Modules”** means the individual modules of the Solution.

**“Solution”** means the modules specified in the Purchase Order to be licensed to the Customer, including updates or new versions furnished to the Customer by the Supplier and all Associated Documentation.

**“Solution Computer Requirements”** means the specified minimum software and hardware requirements.

**“Specifications”** has the meaning as set out in Schedule 2.

**“Subcontractor”** means any entity used by the Supplier to discharge its obligations under this Agreement and that is not an employee of the Supplier.

**“Supplier”** means CCH Australia Limited ABN 95 096 903 365.

**“Supplier Hosted Solution”** means where the Supplier is hosting the Solution on servers under the ownership or control of the Supplier.

**“Support Levels”** means the levels of support set out in schedule 3.

**“Support Services”** means the support services referred to in clause 7 and Schedule 3.

**“Support Site”** means in relation to a Customer Hosted Solution, the site specified in the Purchase Order where the Supplier will attend to provide on-site Support Services.

**“Taxes”** means any taxes, duties, fees or other Government levies or charges which may be imposed in respect of the Solution, the Services or otherwise due to this Agreement but does not include taxes on income, capital gains, employee benefits or any like taxes or charges.

**“Term”** means the Initial Term and each subsequent term for which the Agreement has been extended in accordance with clause 1.2.

**“Territory”** means the territory set out in the Purchase Order or in default, Australia.

**“Use Profile”** means any attribute or measure used to define or measure the licence entitlements of the Customer as set out in the Purchase Order including but not limited to the number of Authorised Users, the Software Modules, the Related Bodies Corporate (if any) and Data Volumes, as varied from time to time.

33.2 In this Agreement, unless the context otherwise requires:

- (a) a reference to time means the time in New South Wales;
- (b) a reference to public holiday means a public holiday in the State of New South Wales;
- (c) monetary references are references to Australian currency;
- (d) obligations will apply to the officers, employees, agents and contractors of the parties;
- (e) a reference to any party includes that party's permitted successors or permitted assigns;
- (f) a reference to the singular will include the plural and vice versa.

## **SCHEDULE 1 – DATA MANAGEMENT AND SECURITY OBLIGATIONS FOR A SUPPLIER HOSTED SOLUTION**

**This Schedule sets out the Supplier’s responsibilities in the case of a Supplier Hosted Solution only. It does not apply to a Customer Hosted Solution**

- 1.1 The Supplier is responsible for establishing, maintaining, operating, reviewing and updating its Information Security Management System (**ISMS**), which encompasses organisational structure, policies, planning activities, responsibilities, practices, procedures, processes and resources used to manage information security within the Supplier’s organisation in relation to:
  - (a) the access, receipt, replication, alteration, storage, transmission, use, disclosure and destruction of Customer Data; and
  - (b) the establishment and maintenance of appropriate, reasonable technical and organisational security measures designed to:
    - (i) secure electronic communications between the Customer and the Supplier having regard to the nature of the communication;
    - (ii) protect against unauthorised or unlawful access or use or accidental loss or destruction or damage to any Customer Data;
    - (iii) protect against unauthorised access to the Solution or use thereof;
- 1.2 The Supplier will, in accordance with its standard processes:
  - (a) undertake regular monitoring, maintenance and optimization of the hosting environment;
  - (b) facilitate installation of all updates and patches and undertake all post implementation verification activities,
  - (c) provide database backups and management of data;
  - (d) conduct an annual review of its ISMS and technical and organizational security measures it has in place as required under paragraph 1.1;
  - (e) conduct annual testing (including penetration testing) of the Solution.
- 1.3 Notification and Reporting of Security Breaches in relation to Supplier Hosted Solution:
  - (a) The Supplier will implement monitoring controls and security incident controls;
  - (b) If the Supplier confirms unauthorised access to, or unauthorised disclosure of, Customer Data (**“Security Breach”**), it will:

- (i) notify the Customer of such Security Breach;
  - (ii) use commercially reasonable endeavours to identify the cause of the Security Breach;
  - (iii) use commercially reasonable endeavours to stop the cause of the Security Breach; and
  - (iv) provide the Customer with such information pertaining to the cause of and procedure for correcting the Security Breach as is legally permissible and reasonably practicable under the circumstances.
- (c) If any Customer Data is corrupted, lost or otherwise altered due to a negligent act or omission of the Supplier or the Supplier's personnel, or due to the Supplier's failure to otherwise fulfil its applicable obligations under this Agreement in relation to Customer Data, the Supplier will undertake commercially reasonable efforts to restore or procure the restoration of the Customer Data.
- (d) The Supplier shall not be liable for any Security Breach except to the extent such Security Breach arises directly as a result of a breach by the Supplier of its obligations under this Schedule 1. In no event shall any Security Breach be deemed a breach by Supplier of its confidentiality obligations under the Agreement.

#### 1.4 Use of Customer Data.

The Supplier will not use Customer Data for any purpose other than the fulfillment of the Supplier's obligations under this Agreement.

- 1.5 The Customer acknowledges and agrees that the Supplier's obligations under this Schedule 1 are not intended to override the Customer's warranties, undertakings and responsibilities in the Agreement and are subject always to the limitations on the Supplier's warranties, undertakings, responsibilities and liability under the Agreement.



## **SCHEDULE 2 –ADDITIONAL SERVICES**

**This Schedule sets out the responsibilities of the parties in relation to Additional Services.**

### **1 Additional Services**

- 1.1 The Additional Services may include Deliverables and will be provided in material accordance with the Specifications where:
- (a) “Specifications” means the specification for and description of the Additional Services with such Specifications to be provided in a form as agreed between the parties; and
  - (b) “Deliverables” means any software, documentation, reports, materials, ideas, methods, inventions, discoveries, training, review, designs or other works which are delivered to the Customer by or on behalf of the Supplier in the performance of the Additional Services.
- 1.2 Additional Services will include any Service that is not an Implementation Service or Support Service, including without limitation the following:
- (a) any specific consulting assignments as requested by the Customer;
  - (b) business process reviews;
  - (c) any form of reporting, including responses to security or system questionnaires as requested by the Customer, other than reports automatically generated by the Solution;
  - (d) where the Solution is hosted by the Customer, Infrastructure Support where “Infrastructure Support” for the purpose of this Schedule 2 includes installation support, upgrade support, hotfix support, troubleshooting and general guidance;
  - (e) correction of errors or defects other than as provided for by Schedule 3, including errors or defects caused by:
    - (i) modification, revision, variation, translation or alteration of the Solution not authorised in writing by the Supplier;
    - (ii) the use of the Solution by a person not authorised by the Supplier;
    - (iii) the use of the Solution other than in accordance with the Supplier’s directions;
    - (iv) the use of the Solution in combination with equipment, programs or services not authorised in writing by the Supplier;

- (v) the use of computer programs not licensed by the Supplier to the Customer;
- (vi) the Customer's failure to comply with this Agreement whether directly or indirectly or any other agreement relating to the Solution;
- (f) where an Authorised User seeking Support Services did not attend the required training as set out in Schedule 2 and the issue seeking to be resolved could be resolved by an Authorised User who had attended such training;
- (g) significant enhancements of the Solution;
- (h) customisation of the Solution, including incorporating new features into a Software Module;
- (i) work undertaken regarding interactions between the Solution and the Customer's hardware or other software utilised by the Customer;
- (j) reviewing and amending features of any Customer-specific customisation of the Solution or where the issue required to be resolved is specific to the Customer's environment;
- (k) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items whether or not manufactured or distributed by the Supplier;
- (l) rectification of defects other than those that are a significant error or defect caused by a programming error;
- (m) onsite attendance at the Customer's premises to perform Support Services or Additional Services.

## **2 Variation of Additional Services**

2.1 The Customer may request changes to any Additional Services which the Supplier has agreed to provide, including changes in the Specifications or Deliverables. After receiving written details of the requested changes, the Supplier will provide a response to the Customer detailing the impact of such changes including their financial implications. The parties will discuss that response and, if it is agreed to proceed with the changes, will agree the method for implementing the changes together with a suitable timetable.

**3** If a proposed variation to Additional Services which the Supplier has agreed to provide is not agreed between the parties, then the Supplier will continue to provide and the Customer will continue to receive the Additional Services as already agreed to prior to the requested variation.

## **4 Liability**

4.1 The liability for Additional Services is subject to the limitations in clause 18 of this Agreement except that for the purposes of determining the quantum of the liability in respect of the Additional Services, under clause 18.1, total cumulative liability for any breach by the Supplier regarding the provision of any Additional Services will be limited to the fee paid in regards to the Additional Services the subject of the claim.

## **5 Intellectual Property**

5.1 The Intellectual Property Rights in the Deliverables and any Supplier materials incorporated in the Deliverables or otherwise used by the Supplier in the provision of the Services will, unless agreed otherwise in writing, be and remain the sole and exclusive property of the Supplier.

5.2 The Intellectual Property Rights in any Customer materials incorporated in the Deliverables or otherwise provided by the Customer for use by Supplier in the provision of the Services will, unless agreed otherwise in writing, be and remain the sole and exclusive property of the Customer or, as appropriate, its licensor. To the extent that any Customer materials form part of any Services or Deliverables provided under this Agreement, the Customer grants to the Supplier a non- exclusive, non-transferable, fully paid-up, royalty-free and worldwide licence to use them solely for the provision of the Services.

5.3 Any third party software which is required to enable the Customer to read or use the Deliverables will be obtained by the Customer at the Customer's cost.

## **SCHEDULE 3 – SUPPORT SERVICES**

**This Schedule sets out the responsibilities of the parties in relation to Support Services**

### **1 Support Services**

- 1.1 The Supplier provides Support Services in accordance with this Agreement. Support Services are telephone or email support from the Supplier's Call Centre or the Supplier contact person between the hours of 8:45am and 5:15pm, Australian Eastern Standard (AES) time on any Business Day.
- 1.2 In consideration for the Customer paying the Annual Fee, the Supplier shall provide the following Support Services. Support Services are provided on a reasonable use basis and includes:
- (a) General queries: "How do I...?"
  - (b) Configuration or similar issues: "Why is this behaviour occurring?"
  - (c) Functional and technical troubleshooting.
  - (d) Assistance with workarounds to functional constraints.
  - (e) Assistance with reporting including simple database queries (executed through the Data Query Tool function) for non-standard reporting needs.
  - (f) Enhancement requests and usability feedback for inclusion in the Product Backlog and for proactive tracking if required.
- 1.3 The provision of Support Services will take the form of:
- (a) telephone advice;
  - (b) error correction transmitted by any electronic means;
  - (c) in the case of a Customer Hosted Solution only, and at the Customer's additional cost, on a time and materials basis, on-site attendance at the Support Site as the Supplier deems necessary, followed by such advice, programming or reconfiguration as the Supplier considers necessary; or
  - (d) such other services as the Supplier considers necessary.
- 1.4 The Supplier will be taken to have received notification of a defect or fault at the earlier of:
- (a) the time it is notified of the defect or fault by the Customer; or
  - (b) the time it otherwise becomes aware of the defect.

- 1.5 The Customer may also request additional services other than the Support Services set out in section 1.3 of this Schedule. Such services will be considered to be Additional Services coming within the operation of Schedule 2. These Additional Services will be subject to additional costs as agreed between the parties and may include without limitation the services described in Section 1 of Schedule 2.

## 2 Support Levels

- 2.1 The Supplier will use commercially reasonable efforts to meet the support levels set out below for the applicable defect/fault severity level assigned to the defect or fault by the Supplier:

Priority	Description	Return call within	Incident Resolution
1	System is unavailable (i.e. unable to access system) and there is a critical business deadline within the next 24 hours	1 hour	4 hours or constant (8 hours per day x 7 days per week basis) effort until problem is resolved
2	System is available with functional errors preventing user from working (i.e. no workaround is available)	2 hours	8 hours or constant (8 hours per day x 5 days per week basis) effort until problem is resolved
3	There is functional error but user can proceed with a workaround	24 hours	2 days or such later time as agreed to by the Supplier and the Customer (e.g.: the next scheduled release date)
4	Other enquiry (i.e.: little or no business impact)	36 hours	20 days or such later time as agreed to by the Supplier and the Customer (e.g.: the next scheduled release date)

### **3 Exclusions**

- 3.1 Support Services do not include any of the Additional Services as set out in Schedule 2.
- 3.2 The levels of support detailed in sub-clause 2.1 do not apply where the defect or fault arises from, in whole or part, an issue with the Customer's infrastructure, or otherwise from a cause outside the scope of the Support Services specified in this Schedule.

### **4 Customer Responsibilities**

- 4.1 The Customer will, if requested by the Supplier provide the Supplier with:
- (a) a documented example of the reported defect or fault wherever possible;
  - (b) a listing of output or any other data which the Supplier requires, in order to reproduce operating conditions similar to those present when any defect or fault in the Solution was discovered;
  - (c) a suitably qualified or informed representative, agent or employee to advise the Supplier on any matter within the Customer's knowledge or control which will assist the Supplier in complying with its Support Services obligations under this Agreement.
- 4.2 The Customer will ensure that the Supplier's personnel are provided with all necessary information and access to facilities reasonably required by the Supplier to enable the Supplier to comply with its Support Services obligations under this Agreement.
- 4.3 In the case of a Customer Hosted Solution, the Customer must provide the Supplier reasonable prior notice (and in any event, no less than 60 days' prior notice) in writing of any proposed change to the Support Site.