

**REAPIT PTY LIMITED (ACN 161 147 404)**

**AND**

The Customer

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**SOFTWARE LICENCE AND  
TECHNICAL SUPPORT AGREEMENT**

**Version Date: 9th September 2016**

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# **SOFTWARE LICENCE AND TECHNICAL SUPPORT**

## **AGREEMENT**

### **PARTIES:**

1 'The Company': REAPIT PTY LIMITED (ACN 161 147 404) whose registered office is at c/o BSA Partnership PTY Limited, Level 15, 461 Bourke Street, Melbourne, Victoria 3000.

2 'The Customer': as appears in the Order Form

### **RECITAL:**

- A. The Company is the owner of the Licenced Program Materials.
- B. The Customer has requested and the Company has agreed to grant the Customer a non-exclusive licence to use the Licenced Program as set out in the Order Form and to provide certain services to the Customer in respect of delivery of technical support and training on the terms and subject to the conditions of this Agreement.

### **OPERATIVE PROVISIONS:**

#### **1. Definitions and Interpretation**

1.1 In this Agreement unless the context otherwise requires:

'ADDITIONAL CHARGES' as set out in the Order Form means the charges at the Company's rates from time to time for work undertaken on a time and material basis

'ADMINISTRATION FEE' means the fee payable by the Customer to the Company under clause 4.1 below and as set out in the Order Form;

'ADDITIONAL SERVICES' means those services set out in the Order Form.

'AGREEMENT' means this document including any schedules and annexures, as varied in accordance with clause 14;

'AUSTRALIAN CONSUMER LAW' means schedule 2 of the Competition & Consumer Act 2010 (Commonwealth)

'COMMENCEMENT DATE' means the date of the Order Form upon which this Agreement shall commence.

'CPI' means the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne.

'DESIGNATED DATA' means the software program and templates submitted to the Company by the Customer for conversion to the format of the Licensed Program.

'DESIGNATED EQUIPMENT' means the items of computer hardware in the relevant office of the Customer and any other relevant systems including those used in the provision of Remote Access suitable for use with the Licensed Programs as set out in Schedule 1.

'DIRECT DEBIT NOTICE' means notice in writing given by the Company to the Customer of the date that a direct debit payment will be collected by the Company from the Customer.

'GST' means GST within the meaning of the GST Act.

'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (as amended).

'HOSTING SERVICE' means hosting the Customer's data.

'INSOLVENCY EVENT' means failing or being unable to pay debts as they become due; becoming bankrupt or insolvent; being subject to liquidation or

winding up; suffering the appointment of a manager, receiver, receiver and manager, administrative receiver or administrator (or any person carrying out an equivalent function); making any arrangement with or seeking protection from creditors; or being subject to any application or process giving rise to the above.

'INTELLECTUAL PROPERTY RIGHTS' means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

'LICENCE' means the non-exclusive licence granted by clause 3 below on the terms and subject to the conditions of this Agreement.

'LICENCE FEE' means the monthly fee referred to in the Order Form and which is for the Licence and Services.

'LICENCED PROGRAMS' means the software programs in object code form identified by title in the Order Form including any New Release or add on of the same made or issued pursuant to clause 7 below.

'LICENCED PROGRAM MATERIALS' means the Licensed Programs and the Program Documentation.

'NEW RELEASE' means any improved modified or corrected version of any of the Licensed Programs or Program Documentation from time to time issued by the Company pursuant to clause 7 below.

'ORDER FORM' means the Order Form signed by the Customer in which the Customer agrees to be bound by this Agreement.

'PROGRAM DOCUMENTATION' means the instruction manuals user guides and other information to be made available to the Customer from time to time during this Agreement by the Company at its discretion in either printed or machine readable form to the Customer.

'REMOTE ACCESS' means the provision by the Customer of the ability for the Company to remotely access the Customer's server or such part of any third party

computer infrastructure or interface used by the Customer for the hosting of its applications or processes (in the event that the Customer is providing its own Hosting Service).

'SERVICES' means the provision by the Company of all services pursuant to this Agreement.

'SOURCE CODES' means the data processing and interface definitions and instructions that are directly prepared by the Company's programmers for compilation into the Company's software products.

'TECHNICAL SUPPORT' means the provision of such categories of technical support in accordance with clause 8 below as shall be specified in respect of each of the Licensed Programs in the Order Form.

'USE' means the copying or transmission of the Licensed Programs or (where in machine readable form) the Program Documentation into temporary memory or permanent storage on the Designated Equipment for the processing of the instructions contained in the Licensed Programs or (as the case may be) the Program Documentation in accordance with the terms of this Agreement.

'USER' means an employee consultant agent or contractor of the Customer or any other person company or entity working for or providing services to the Customer in any capacity who has an active log-on title to use the Licensed Programs.

'WORKING DAY' means the hours 9am to 5.30pm Monday through Friday but excluding a day other than a Saturday, a Sunday or a public holiday within the meaning of the Public Holidays Act 1993 (Vic) and the period from 24<sup>th</sup> December to 1<sup>st</sup> January inclusive.

'WORKING HOUR' means an hour during a Working Day in Victoria, Australia.

1.2 The headings in this Agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

1.3 Unless the context otherwise requires:

- 1.3.1 references to the Company and the Customer include their permitted successors and assigns;
  - 1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted;
  - 1.3.3 references to one gender includes a reference to the other genders; and
  - 1.3.4 references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.4 Words in the singular include the plural and those in the plural include the singular.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors or permitted assigns.

## **2. Customer's obligations**

### **2.1 The Customer shall:**

- 2.1.1 pay all sums due, including the Licence Fee, to the Company under this Agreement on the due date and without any deduction or set off ;
- 2.1.2 co-operate in all matters relating to this Agreement with the Company;
- 2.1.3 provide in a timely manner such information as the Company may request and ensure that all such information is accurate in all material respects;
- 2.1.4 make available such facilities at the Customer's office as the Company shall reasonably require in order to discharge its obligations hereunder including without limitation adequate work space storage and office furniture and equipment;
- 2.1.5 take all reasonable precautions to protect the health and safety of the Company's employees, agents, contractors and sub-contractors and any other person working for the Company while in the Customer's office;

- 2.1.6 ensure that each of its employees consultants agents and contractors (or any other person working for it) who use the Licensed Programs are Users within the meaning of this Agreement;
- 2.1.7 ensure that its network and systems comply with any relevant specifications provided in Schedule 1;
- 2.1.8 be solely responsible for procuring and maintaining its Designated Equipment, network connections and telecommunications links from its systems to any third party's data centres, and all problems, conditions, delays delivery failures and all loss or damage arising from or relating to the Customer's Designated Equipment, network connections or telecommunications links or caused by the internet;
- 2.2 If the Company's performance of its obligations are prevented or delayed by any act or omission of the of the Customer the Customer shall be liable to pay the Company on demand all reasonable costs, charges or losses sustained or incurred by it (including without limitation any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property and loss of opportunity to deploy resources elsewhere) subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 2.3 The Customer shall not, without the written consent of the Company, at any time from the date of this Agreement to the expiry of 12 months from termination of this Agreement employ or use the services of, in any capacity, any employee or contractor of the Company.
- 2.4 Any consent given by the Company in accordance with clause 2.3 shall be subject to the Customer paying to the Company a sum equivalent to 1 x the current gross annual remuneration of the Company's employee or contractor.
- 2.5 The Customer warrants and undertakes to the Company that it has full power and authority to enter into this Agreement.

## **PART 1 - SOFTWARE LICENCE AND TECHNICAL SUPPORT**

### 3. **Grant of licence and provision of services**

3.1 The Company in consideration of the payment by the Customer of sums due pursuant to this Agreement, including the Licence Fee, shall for the duration of the Agreement:

3.1.1 grant to the Customer a non-exclusive licence to Use the Licensed Programs (and where appropriate the Program Documentation) upon the Designated Equipment only and to possess and refer to the Program Documentation; and

3.1.2 provide such additional services as may be agreed from time to time..

3.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### 4. **Licence Fee**

4.1 The Licence Fee (plus GST) as set out in the Order Form and the cost of any Services, Additional Services and the Administration Fee and any increase in such fees shall be

(i) invoiced by the Company monthly in advance;

(ii) payable by the Customer the later of 5 Working Days after the date of the invoice or the 1<sup>st</sup> (or first working day) of the following month;

(iii) payable by direct debit.

4.2 Without prejudice to any other right or remedy the Company may have, if the Customer fails to pay the Company on the due date the Company may:

4.2.1 charge interest on such sum from the due date for payment at the annual rate fixed by section 2 of the Penalty Interest Rates Act 1983 accruing on a daily basis and being compounded quarterly until payment is made whether before or after any judgment; and



- 4.2.2 suspend the Licence and Services until payment has been made in full. Time for payment shall be of the essence of the Agreement.
- 4.3 The Licence Fee to the end of the first month shall be calculated pro rata from the Commencement Date to the end of the calendar month.
- 4.4 Subject to clause 4.5 below the Company shall be permitted to increase the Licence Fee and the Additional Charges (together the 'Fees') once during each 12 month period from the Commencement Date on the following basis:
- 4.4.1 the Company gives the Customer not less than 28 days' notice of any increase in the Fees;
- 4.4.2 subject to clauses 4.5 below for a period of three (3) years commencing on the Commencement Date the Fees will be increased by no more than the percentage increase of the CPI + 2% calculated by reference to the latest 12 months CPI figures available at the date that the notice is issued pursuant to clause ('Available CPI Figures') save where the average percentage increase in the Available CPI Figures was greater than 5% per annum for the preceding 3 months in which case the Company shall increase the Fees by up to the percentage increase in CPI + 3% calculated by reference to the Available CPI Figures.
- 4.5 The Licence Fee is calculated by reference to the number of active Users and will be billed monthly in advance.
- 4.6 Any additional User of the Customer which uses the Licensed Programs Materials will be charged the same Licence Fee as a User as appropriate..

## **5 Delivery Installation testing and acceptance**

- 5.1. The Company shall deliver and install The Licenced Programs electronically or such other method as the Company may in its absolute discretion determine onto the Designated Equipment.
- 5.2. If the Customer fails to provide the Company with access, including Remote Access, data, including the Designated Data, or hardware including the

Designated Equipment that it requires in order to proceed to deliver the Licensed Program Materials on the Commencement Date after receiving 56 days written notice from the Company (by first class post, facsimile or e-mail or other electronic means in accordance with clause 25), the Company in its absolute discretion shall be entitled to:

5.2.1 terminate this Agreement with immediate effect; or

5.2.2 specify to the Customer such revised Commencement Date as it shall in its reasonable opinion think fit; and

5.2.3 in either event the Customer shall be charged for the time spent by the Company (from the Commencement Date to the date of expiry of the notice served in accordance with this clause 5.2) at the rate of \$300.00 per hour or part thereof.

5.4 The Customer shall be deemed to have accepted the Licensed Program Materials with effect from the day following the Commencement Date.

5.5 When the Company stores the Customer's data on servers controlled by the Company then the Company will backup the data on servers to flat data files and provide the Customer with access to download these backups upon request at an agreed fee for each download.

## **6 Data Processing**

6.1 The Company agrees that in relation to personal data processed in connection with this Agreement it shall process such personal data in accordance with the Privacy Act 1988 (Cth) and any other applicable data protection legislation.

## **7 New Releases**

7.1 The Company may from time to time issue New Releases to the Customer which the Customer shall accept.

7.2 The Company shall retain title and copyright to and all and any Intellectual Property Rights in the Licensed Programs together with all New Releases whether

commissioned by the Customer or others or otherwise. The Customer agrees and acknowledges that nothing in this Agreement assigns any Intellectual Property Rights in the Licensed Program Materials or any other Intellectual Property Right which are owned by the Company to the Customer.

- 7.3 The Company will supply at the request of the Customer (without payment of an additional Licence Fee ) an add on to the Licensed Programs so that the data stored on the Licensed Programs (including pictures of the properties for sale or to let) can be converted and uploaded on to the Customer's web site and other specified property portal and search web sites in a number of specified standard formats. The list of supported property portal and web sites and upload formats is available from the Company.
- 7.4 The add on to the Licensed Programs for uploading to other web sites or portals or in other formats will incur an Additional Charge which will be notified to the Customer prior to its provision.

## **8 Technical support**

- 8.1 With effect from the Commencement Date and for the duration of this Agreement the Company shall provide in respect of each of the Licensed Programs Technical Support via the support portal.
- 8.2 The response time for Technical Support shall be during the Working Day and the Company shall use its best endeavours to respond within 4 Working Hours of receipt of a request;
- 8.3 Technical Support shall not include the diagnosis and rectification of any fault which the Company in its absolute discretion considers results from:
- 8.3.1 the improper use operation or neglect of either the Licensed Program Materials or the Designated Equipment where the same causes the Licensed Programs to fail to perform;

- 8.3.2 the modification of the Licensed Programs or their merger (in whole or in part) with any other software by any person other than by the Company where the same causes the Licensed Programs to fail to perform;
  - 8.3.3 the use of the Licensed Programs on equipment other than the Designated Equipment (save in accordance with clause 10);
  - 8.3.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by the Company, in writing;
  - 8.3.5 any repair adjustment alteration or modification of the Licensed Programs by any person other than the Company without the Company's prior written consent;
  - 8.3.6 any breach by the Customer of any of its obligations under any maintenance agreement with any person or company in respect of the Designated Equipment which directly or indirectly causes the Licensed Program to malfunction or cease to function;
  - 8.3.7 the use of the Licensed Programs for a purpose for which they were not designed;
  - 8.3.8 data being rekeyed from another software product into the Company's format by the Customer at such low level of accuracy that it causes the Licensed Programs to fail to perform.
- 8.4 The Company shall at its sole discretion upon request by the Customer provide Technical Support notwithstanding that the fault results from any of the circumstances described in clause 8.3 above. The Company shall in such circumstances be entitled to levy Additional Charges in the manner set out in clause 8.6 below;
- 8.5 Without prejudice to clause 8.4 above the Company shall be entitled to levy reasonable Additional Charges in the manner set out in clause 8.6 below if Technical Support is provided in circumstances where any reasonably skilled and

competent data processing operator would have judged the Customer's request to have been unnecessary;

8.6 The Customer shall provide the Company with Remote Access to the Licensed Program Materials in each of the Customer's Users for the purposes of Technical Support. If for any reason Remote Access is not available the Company shall be entitled to levy Additional Charges in respect of any travel costs and disbursements incurred by the Company and for the time spent going to and from the Customer's offices for the purpose of Technical Support. Clause 8.7 will not apply where Remote Access is not available for any reason outside the Company's control;

8.7 The Customer acknowledges and permits the Company's right to remotely monitor the usage and performance of the Licenced Programs.

## **9 Property and confidentiality in the Licenced Program Materials**

9.1 The Licensed Program Materials contain confidential information relating to the Company and all copyright trade marks and other Intellectual Property Rights in the Licensed Program Materials including any New Release are the exclusive property of the Company.

9.2 The Customer shall not:

9.2.1 reverse compile, copy or adapt the whole or any part of the Licenced Program Materials and shall not make any back up copies of the Licenced Program Materials whether in connection with its lawful use or otherwise;

9.2.2 save solely for the purposes expressly permitted by and in accordance with Section 47C of the Copyright Act 1968 (Cth) copy adapt or reverse compile the whole or any part of the Licensed Program Materials;

9.2.3 assign transfer sell lease rent charge or otherwise deal in or encumber the Licenced Program Materials or use the Licenced Program Materials on behalf of any third party or make available the same to any third party;

9.2.4 remove or alter any copyright or other proprietary notice on any of the Licenced Program Materials;

- 9.2.5 sub-licence, assign, novate or otherwise part with the benefit or burden of this Agreement in whole or in part;
- 9.2.6 allow the Licenced Program Materials to become the subject of any charge, lien, security interest for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA") or encumbrance;
- 9.2.7 deal in any other manner with any or all of its rights and obligations under this Agreement.

9.3 The Customer shall:

- 9.3.1 keep confidential the Licensed Program Materials and limit access to the same to those of its employees agents and sub-contractors who either have a need to know or who are engaged in the Use of the Licensed Programs (including where appropriate the Program Documentation);
- 9.3.2 reproduce on any copy (whether in machine readable or human readable form) of the Licensed Program Materials the Company's copyright and trade mark notices;
- 9.3.3 notify the Company immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Licensed Program Materials by any person;
- 9.3.4 notify the Company immediately if the Licensed Program Materials or any part thereof are made available to any office of the Customer that is not in the Order Form and pay for the broadening of the scope of the licences granted under this Agreement to cover the unauthorised use, an amount equal to the Licence Fee which the Company would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorized use on the date when such use commenced together with interest at the rate provided for in clause 4.2 to the date of payment;

9.3.5 without prejudice to the foregoing take all such other reasonable steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights of the Company.

9.4 The Customer shall inform all relevant employees agents and sub-contractors that the Licenced Program Materials constitute confidential information of the Company and that all Intellectual Property Rights therein are the property of the Company and the Customer shall take all steps as shall be reasonably necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause 9.

9.5 The Customer shall permit the Company to inspect and have access to any premises (and to the computer equipment, including the Designated Equipment, located there) at or on which the Software is being kept or used, and have access to any records kept by the Customer in connection with this Agreement, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that the Company provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

## 10 **Additional Services**

10.1 The Company may, at its sole discretion provide additional services to the Customer which shall constitute Additional Services and which shall be charged at a cost to be agreed between the parties. Additional Services which are provided by the Company to the Customer are chargeable at the Additional Charges rate and will be costed by the Company and approved by the Customer before the Additional Service is provided.

## 11 **Warranty**

11.1 Without prejudice to the foregoing the Company does not warrant that that the operation of the Licensed Programs (including where in machine-readable form the Program Documentation) will be uninterrupted or error free or that they will work on the Designated Equipment.

11.2 The Customer accepts responsibility for the selection of the Designated Equipment and of the Licensed Program Materials and acknowledges that the Licensed Program Materials have not been developed to meet the individual requirements of the Customer.

## **PART 2**

### **12 Liability**

12.1 Save for any terms, conditions, guarantees, warranties, indemnities or other rights which may arise under the Australian Consumer Law or other legislation and which cannot be excluded, and subject to any rights the Customer may have under the Australian Consumer Law and as otherwise stated in this Agreement, to the extent permitted by applicable law all implied conditions warranties terms and undertakings statutory common law or otherwise which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract in respect of the Licensed Program Materials and the provision of the Services or Additional Services or otherwise are hereby excluded.

12.2 The Licensed Program Materials come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Licensed Program Materials repaired or replaced if the Licensed Program Materials fail to be of acceptable quality and the failure does not amount to a major failure. Save for any terms, conditions, guarantees, warranties, indemnities or other rights which may arise under the Australian Consumer Law or other legislation and which cannot be excluded, clause 15 sets out the Company's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of:

12.2.1 any breach of its contractual obligations arising under this Agreement; and

12.2.2 any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement



## **13 Limitation of liability**

13.1 To the maximum extent permitted by law, the maximum aggregate liability of the Company arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the equivalent of the aggregate paid by the Customer to the Company in the 6 months ending with the date of the breach or representation.

13.2 The Company indemnifies, and must hold harmless, the Customer and its respective directors, officers, employees and contractors ('Indemnified Persons') against any loss, damage, cost or expense suffered or incurred by any of the Indemnified Persons arising out of any claim or allegation relating to any:

13.2.1 injury to, or death of a natural person in connection with this Agreement;  
or

13.2.2 loss of or damage to tangible property, caused by the Company or any of its personnel.

13.3 The Customer indemnifies, and must hold harmless, the Company and its respective directors, officers, employees and contractors ('Indemnified Persons') against any loss, damage, cost or expense suffered or incurred by any of the Indemnified Persons arising out of any claim or allegation relating to any:

13.3.1 injury to, or death of a natural person in connection with this Agreement;  
or

13.3.2 loss of or damage to tangible property, caused by the Customer or any of its personnel.

13.4 Clause 13.1 does apply to the liability of the Company under the indemnities in this clause.

## **14 Variation**

14.1 The Company may amend the terms of this Agreement from time to time as it sees fit. Details of the date on which the terms were last changed appear on the first page of this Agreement.

## 15 **Training**

The Company will provide online training resources for the Customer. For the avoidance of doubt the Company may also provide other training delivery methods at their discretion.

## 16 **Intellectual property rights indemnity**

16.1 The Company will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Licensed Program Materials by the Customer under the terms of this Agreement infringes the patent copyright registered design or trade mark rights of said third party (an 'Intellectual Property Infringement') provided that the Customer:

16.1.1 gives notice to the Company of any Intellectual Property Infringement forthwith upon becoming aware of the same;

16.1.2 so far as the Customer is able to do so the Customer gives the Company the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Company; and

16.1.3 acts in accordance with the reasonable instructions of the Company and gives to the Company such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.

16.2 The Company shall reimburse the Customer its reasonable costs incurred in complying with the provisions of clause 16.1 above.

16.3 The Company shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under this Agreement.

16.4 In the event of an Intellectual Property Infringement the Company shall be entitled at its own expense and option either to:

16.4.1 procure the right for the Customer to continue using the Licensed Program Materials;

16.4.2 make such alterations modifications or adjustments to the Licensed Program Materials so that they become non-infringing without incurring a material diminution in performance or function;

16.4.3 replace the Licensed Program Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

16.5 If the Company in its reasonable judgement is not able to exercise any of the options set out in clauses 16.4.1, 16.4.2 or 16.4.3 above within 60 days of the date it received notice of the Intellectual Property Infringement then the Customer without prejudice to any other rights or remedies it may have hereunder or at law shall be entitled to terminate this Agreement by 28 days' notice upon the Company. Upon any such termination the provisions of clause 23.4 below (but not 23.5) shall apply.

16.6 The provisions of clause 12 above shall not apply to this clause 16.

## 17 **Confidentiality**

17.1 Subject to 17.5 (below) each of the parties hereto undertakes to the other during the term of this Agreement and thereafter to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this

Agreement and each of the parties shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information save that which is:

17.1.1 already in its possession other than as a result of a breach of this clause;

17.1.2 in the public domain other than as a result of a breach of this clause; or

17.1.3 required to be disclosed by virtue of the order of the court, Government department or regulatory body, or by any other operation of law.

17.2 Each of the parties shall take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 17.1 above by its employees agents and sub-contractors.

17.3 The Company shall be entitled to use the Customer's data for the purpose of statistical analysis but shall not publish any report or document that identifies the information used in preparation of the analysis.

17.4 The terms of this Agreement are confidential and may not be disclosed by the Customer to any person or corporate body (other than for obtaining professional legal or other accounting advice) without the prior written consent signed by a Director of the Company.

17.5 The terms of this Agreement are confidential and may not be disclosed by the Company to any person or corporate body (other than for obtaining professional legal or other accounting advice) without the prior written consent signed by a Director or in the case of the Customer being a Partnership a Partner of the Customer.

## **18 Duration of Agreement**

18.1 This Agreement shall continue until terminated in accordance with the provisions of clause 21 below.

## **19 Changes in numbers of Users**

19.1 The Customer will activate a new User inside the portal and the Customer shall incur the additional Licence Fee in relation to the new User as set out in clause 4.5 from the installation of the Licensed Programs.

## 20 **Customer's representatives**

20.1 The person identified on the Order Form shall act as the sole contact point and channel of communication for the provision by the Company of the Services during the currency of this Agreement. The Customer shall forthwith inform the Company of any change in the identity of any such person(s) or department.

## 21 **Termination and Escrow**

21.1 This Agreement may be terminated:

21.1.1 by the Customer giving to the Company not less than six months notice (the "Notice Period") at any time to expire after three years of the Commencement Date (such notice shall not be valid if at the date of giving notice the Company has raised invoices for payment by the Customer that have not been paid and only at the date of cleared funds in the Company Bank Account shall the date of the notice be set and become effective) or by the Company giving to the Customer not less than six months notice to expire any time after three years of the Commencement Date. At the termination date the Customer shall return any Source Codes in its possession;

21.1.2 forthwith by the Company if the Customer fails to pay the Licence Fee, or any Additional Charges due hereunder;

21.1.3 forthwith by a party if the other commits any material breach of any term of this Agreement (other than one falling within 21.1.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to remedy the same;

21.1.4 forthwith by a party if the other shall suffer an Insolvency Event;

21.1.5 where the Customer, during the six months preceding the date fixed for the termination notice to start under clause 21, reduces the number of Users, then for the duration of the Notice Period the Customer will pay the higher of

21.1.5.1 the Licence Fee it was paying six months prior to the date it gives notice; and

21.1.5.2 the highest Licence Fee which would have been payable by the Customer during the first 24 months of this Agreement.

21.2 In the event of any termination of this Agreement pursuant to clause 21.1.2 the Customer shall be liable for a sum equal to the amount which would have been due had six months written notice been given by either party.

21.3 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## 22 **Gross Up**

22.1 All sums payable by the Customer under this Agreement must be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law. If any deductions or withholdings are required by law to be made from any sums payable under this Agreement the Customer must pay to the Company such additional sums as will after the deduction or withholding has been made ensure the Company receives the same amount as it would have received if there had been no such requirement to make a deduction or withholding.

## 23 **Force Majeure**

23.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire,

strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, failure of a utility service or telecommunications network, act of God, war, civil commotion, malicious damage, requirements or regulations of any civil or military authority (an 'Event of Force Majeure').

23.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

23.3 If a default due to an Event of Force Majeure shall continue for more than 12 weeks then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

## 24 **Waiver**

24.1 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## 25 **Notices**

25.1 Any notice request instruction or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by hand or by registered post and by facsimile to a party at the address in Australia and facsimile number set out in the Order Form or such other address as one party may from time to time designate by written notice to the other. Email shall not be accepted.

25.2 Any such notice request instruction or other document shall be deemed to have been received by the addressee two Working Days following the date of dispatch if the notice or other document is sent by registered post plus facsimile, or simultaneously with the delivery or transmission if sent by hand or if given by

facsimile plus e-mail or other electronic means provided that it is dispatched within a Working Day and at least one hour prior to the end of the Working Day, provided always that any notice sent by facsimile e-mail or other electronic means shall also be sent by first class post.

## **26 Invalidity and severability**

26.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## **27 Entire agreement**

27.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter.

27.2 The Company shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this Agreement other than those representations agreements statements or undertakings confirmed by a duly authorised representative of the Company in writing or expressly incorporated or referred to in this Agreement.

27.3 The Customer accepts that the Licensed Program Materials were not designed and produced to its individual requirements and that it was responsible for their selection.

## **28 Successors**



28.1 This Agreement shall be binding upon and enure for the benefit of the successors in title of the parties hereto.

## 29 **Assignment and sub-licensing**

29.1 The Customer shall not be entitled to assign or otherwise transfer this agreement nor any of its rights or obligations hereunder nor sub-licence the use (in whole or in part) of the Licenced Program Materials without the prior written consent of the Company.

29.2 The Company may at any time sub-licence, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided that it gives written notice of the same to the Customer.

## 30 **GST**

All sums payable under this Agreement are exclusive of GST for which the Customer shall be responsible and any GST arising in respect of any supply made hereunder shall be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefor.

## 31 **Law**

31.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria, Australia. Any dispute which may arise between the parties concerning this Agreement or claim arising out of or in connection with this Agreement shall be determined as follows:

31.1.1 If the dispute shall be of a technical nature concerning the functions or capabilities of the Licensed Programs or any similar or related matter then such dispute shall be referred for final settlement to an expert nominated jointly by the parties or, failing such nomination within 14 days after either party's request to the other therefor, recommended at the request of either party by the Australian Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His or her decision shall (in the absence of clerical or manifest error) be final and binding on the Parties

and the fees for the expert for so acting shall be borne by the Parties as he or she shall award.

31.1.2 In any other case the dispute shall be determined by the Victoria Courts and the parties hereby submit to the exclusive jurisdiction of the said Courts for such purpose.

## SCHEDULE 1

### Designated Equipment

The following recommendations are correct at the Commencement Date but the Company cannot be held responsible if the Customer does not upgrade to newer supported versions of third party software or hardware released with the efflux of time or when the recommended software is no longer supported.

#### Company Minimum Specification

##### PC requirements

- 3 GB Ram or greater
- 2 GHz dual-core processor or greater
- Office Internet speed requirements
- Download: 2 Mbps per every 5 users
- Upload: 0.6 Mbps per every 5 users

##### PC Software

##### Supported Operating Systems

The Company's software supports all currently supported Microsoft desktop/server operating systems, review information on [Microsoft products and their support expiration dates](#).

##### Productivity

The company's software programs have been tested with the following versions of Microsoft Office:

- Office 2007
- Office 2010 (Office 2010 Starter is not supported)
- Office 2013
- Office 365 (web based only version is not supported)

The Company requires an installed version of Office on the user machines i.e. Office 2013 connected to Office 365 Exchange Online.

Each user will require an unique email address.

Web browsers

- Internet Explorer at latest release for your Operating system