

MASTER TERMS AND CONDITIONS

Effective as of [1 JULY 2022](#)

Mokse Pty Ltd (ACN 104 679 487) Trading As 'Excellence IT' (ABN 25 104 679 487) ("Supplier") provides bundled solutions, managed services and professional services and resells various cloud services including Microsoft cloud services, in accordance with these terms and conditions and the applicable agreement, statement of work, statement of supply or accepted proposal. The Supplier may amend or replace these terms and conditions on one month's written notice to the Customer at any time (for existing contracts the terms and conditions in place at the time that the contract was made continue to apply for that contract, unless the Customer agrees otherwise in writing). By ordering bundled solutions, managed services, professional services and/or cloud services from the Supplier, the Customer accepts the terms and conditions that apply at that time. Any additional or different terms that the Customer includes in any communication with the Supplier will not be binding on the Supplier or included in any Contract unless expressly agreed upon in writing by the Supplier.

1.1 In these terms and conditions, and in any Accepted Proposal or Statement of Work:

"Accepted Proposal" means a Proposal that has been accepted in writing by the Customer, as varied by any Confirmed Changes;

"Bundle Agreement" means an agreement called a 'bundle agreement', 'business bundle agreement' or is called by a name that includes the word 'bundle', which includes a combined services offering from the Supplier;

"Cloud Services" means cloud services that the Supplier is authorized to resell and includes the Microsoft Cloud Services;

"Combined Bundle" is the combined bundle of Services provided to the Customer under a Bundle Agreement;

"Confidential Information" means any information disclosed in confidence to one party by the other party including without limitation the Customer Data, whether of a business, financial, technical or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:

- (a) on receipt by the recipient party, in the public domain or which subsequently enters the public domain without any breach of the Contract;
- (b) on receipt by the recipient party, already known by that party (otherwise than as a result of disclosure by the other party);
- (c) at any time after the date of receipt by the recipient party, received in good faith by the recipient party from a third party;
- (d) required by law to be disclosed by the recipient party;

“Confirmed Change” means a change to Professional Services that is carried out under clause 9.2(a) or a Change Request that is approved by the Customer under clause 9.5;

“Contract” means:

- (a) for Combined Bundles, these terms and conditions and the Bundle Agreement together with all its attachments and appendices;
- (b) for Managed Services, these terms and conditions and a Statement of Work for Managed Services;
- (c) for Cloud Services, these terms and conditions and a Statement of Supply;
- (d) for Professional Services, these terms and conditions and:
 - i. the relevant Small Task request; or
 - ii. the relevant Accepted Proposal; or
 - iii. the relevant Statement of Work for Professional Services.

“Customer” means the organisation identified as the customer in the Accepted Proposal or Statement of Work or the organisation on whose behalf a Small Task is requested;

“Customer Data” means the Customer’s data including all text, sound, video or image files and the Customer’s software;

“Customer Materials” has the meaning given to that term in clause 6.5;

“Data Protection Laws” means any and all laws relating to Personal Data (including data security, protection, privacy or the processing of Personal Data), and includes any statutory modification or re-enactment of such laws for the time being in force;

“Deliverables” means deliverables to be provided by the Supplier to the Customer under an Accepted Proposal or Statement of Work which includes the results of the provision of Professional Services, as varied by any Confirmed Changes (and excludes Cloud Services which are supplied, where applicable, subject to the relevant Statement of Work for Cloud Supply);

“Estimate” has the meaning given to that term in clause 9.4;

“Force Majeure Event” means any war, riot, third party strike, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party;

“Intellectual Property” means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property;

“Managed Services” means managed services to be provided by the Supplier to the Customer under a Statement of Work;

“Microsoft Customer Agreement” means the applicable Microsoft Customer Agreement (which is an agreement between Microsoft and the Customer) which the Customer must accept prior to provision of Microsoft Cloud Services by the Supplier to the Customer;

“Microsoft Cloud Services” means Microsoft cloud services that the Supplier is authorized to resell;

“Personal Data” means any information relating to an identified or identifiable natural person, or any equivalent definition in relevant data protection or privacy laws (including the GDPR) in force at the relevant time;

“Personal Data Breach” means unauthorised access to, unauthorised disclosure of, or loss of, Personal Data (being Personal Data that is Processed by the Supplier under this Agreement), or any equivalent definition in relevant data protection or privacy laws;

“Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, and ‘Process’ and ‘Processed’ has/have a corresponding meaning, or any equivalent definition in relevant data protection or privacy laws;

“Professional Services” means any professional services (that are not provided as part of Managed Services), to be provided by the Supplier to the Customer as a Small Task or under an Accepted Proposal or a Statement of Work, as varied by any Confirmed Changes;

“Proposal” means a document issued by the Supplier to the Customer which defines Professional Services and/or Deliverables to be provided to the Customer (if the Proposal becomes an Accepted Proposal) and includes an estimate or quote for provision of those Professional Services and/or Deliverables, a work order, a proposal, a work order or other form of document (noting that ‘Statement of Work is separately defined);

“Services” means all or any of the following, as appropriate in the context: Cloud Services, Managed Services or Professional Services, or any other services provided by the Supplier that are expressed as being subject to these Master Terms and Conditions;

“Site Improvement” means improvements which the Supplier requires be made to the Technical Environment prior to Services commencing;

“Site Readiness Date” means the date on which the Supplier (at its discretion) confirms to the Customer in writing, after completion of a Technical Site Assessment, and following any subsequent Site Improvements (where applicable), that the Customer’s Technical Environment is ready for supply of the proposed Services (being the Services identified in the written notification);

“Small Task” means any request for Professional Services made by the Customer to the Supplier (whether by telephone, email or otherwise) where:

- (a) the Customer does not request a Proposal or Statement of Work and the Supplier anticipates that the Professional Services will take the Supplier four hours or less to complete; or
- (b) the parties agree that a Proposal or Statement of Work is otherwise not required;

“Statement of Work” means a document titled ‘statement of work’ and prepared using the Supplier’s usual form of statement of work and signed by both parties, as varied by any Confirmed Changes;

“Technical Environment” means the aspects of the Customer’s IT environment that are relevant for the supply of the proposed Services, which may include, for example, user devices and applications, servers and network components;

“Technical Site Assessment” means an assessment undertaken by the Supplier or its nominee to determine whether the Technical Environment is ready for commencement of the proposed Services;

“Third Party Products” means products and services, including cloud services, supplied by third party vendors and includes but is not limited to the Cloud Services;

“Working Day” means a day other than a Saturday, Sunday or public holiday in Victoria, Australia.

1.2 Interpretation

- (a) In these terms and conditions, reference to the plural includes reference to the singular, and vice versa.
- (b) Headings inserted in these terms and conditions are for convenience of reference only and do not affect the interpretation of these terms and conditions.

2 Term

- 2.1 Each Contract will commence on the date that the relevant Proposal becomes an Accepted Proposal or the date that the Statement of Work is signed by both parties (as applicable), unless the Accepted Proposal or Statement of Work specifies an alternative commencement date.
- 2.2 Each Contract will continue for the term (if any) specified in the relevant Statement of Work or Accepted Proposal unless terminated under clause 18 or under the termination provisions (if any) in the relevant Statement of Work.
- 2.3 In the case of Bundle Agreements, subject to the parties’ rights of earlier termination under the Bundle Agreement, on expiration of the initial term or any renewal term of the Bundle Agreement, the Bundle Agreement will automatically renew for a further renewal term (of the duration specified in the Bundle Agreement) unless either party provides six weeks’ notice in writing to the other party that it does not wish the Bundle Agreement to renew in which case the Bundle Agreement will terminate on expiration of the initial term or then current renewal term (as applicable).

3 Order of precedence

- 3.1 Subject to the order of precedence specified in a Bundle Agreement, unless expressly specified otherwise in these terms and conditions, if there is any inconsistency between:
 - (a) these terms and conditions; and
 - (b) an Accepted Proposal or Statement of Work,these terms and conditions will take precedence.

4 **Managed Services**

- 4.1 Except in the case of Combined Bundles (for which a Bundle Agreement applies and must be signed by both parties), the Customer will notify the Supplier if it wishes to purchase Managed Services from the Supplier and the Supplier will then issue a Statement of Work for Managed Services. A Contract is made for supply of the Managed Services if and when the Statement of Work is signed by both parties.

5 **Cloud Supply**

- 5.1 Except in the case of Combined Bundles (for which a Bundle Agreement applies and must be signed by both parties), the Customer will notify the Supplier if it wishes to purchase Cloud Services from the Supplier and the Supplier will then issue a Statement of Work for supply of Cloud Services. A Contract is made for supply of the Cloud Services if and when the Statement of Work is signed by both parties.
- 5.2 All Microsoft Cloud Services are supplied subject to the Customer accepting the Microsoft Customer Agreement directly with Microsoft (the relevant Microsoft Customer Agreement is made available to the Customer by the Supplier). All other Cloud Services (non-Microsoft) are supplied subject to the relevant third party supplier's agreement or terms and conditions.

6 **Professional Services**

- 6.1 The Customer may at any time request the Supplier to provide professional services that are generally available from the Supplier.
- 6.2 On receiving a request for professional services from the Customer under clause 6.1, the Supplier will:
- (a) in the case of Small Tasks, provide the Professional Services at the Supplier's applicable standard rates, provided that for any Small Task the Supplier may (at its discretion) issue a Proposal to be signed by the Customer prior to the work commencing;
 - (b) in all other cases, issue a Proposal or draft Statement of Work.
- 6.3 A Contract is made for supply of the relevant Professional Services:
- (a) in the case of Small Tasks (and without limiting clause 6.4), when the Supplier commences supply of the requested Professional Services;
 - (b) if and when a Proposal is accepted in writing by the Customer (and so becomes an Accepted Proposal); or
 - (c) if and when a Statement of Work is signed by both parties.
- 6.4 If the Supplier cannot provide the requested professional services for whatever reason, the Supplier will notify the Customer accordingly.
- 6.5 The Supplier may require access to and/or the use of certain software, information and other things owned by the Customer or owned or licensed to the Customer by the Customer's

suppliers ("Customer Materials") in performing the Professional Services and certain Customer Materials may be provided to the Supplier to be incorporated into or used in the development of the Deliverables. The Customer represents and warrants to the Supplier that the Customer has all requisite authority to permit the Supplier to access and use the Customer Materials as required and that such access and use will not infringe any third party's intellectual property rights.

6.6 Unless expressly agreed otherwise in writing, where specific timing applies for performance of Professional Services or supply of Deliverables, that timing is extended if:

- (a) a delay by the Customer causes the Supplier to be delayed in performance of Professional Services or supply of Deliverables; and
- (b) the Supplier notifies the Customer of the delay or likelihood of delay as soon as this becomes apparent and provides updated timing details (with such evidence as may be reasonably required by the Customer).

6.7 Where there is a change in the Customer personnel involved in a Contract for Professional Services, and such change in personnel results in delays for the Supplier in performing its obligations under that Contract, the Supplier may on notice to the Customer amend the timing for supply of the Professional Services and Deliverables to take account of that change.

7 **Provision of Combined Bundles, Managed Services and Professional Services**

7.1 The Supplier will provide Combined Bundles, Managed Services and Professional Services to the Customer:

- (a) with reasonable skill and care;
- (b) within the agreed timeframes (if any);
- (c) in accordance with:
 - i. the relevant Contract;
 - ii. currently accepted principles and practices applicable to the provision of the Managed Services or Professional Services (as applicable);
 - iii. all applicable laws; and
 - iv. the reasonable instructions of the Customer.

7.2 Without limiting any other provision of a Contract, the Supplier has no liability for deficiencies in Combined Bundles, Managed Services, Professional Services or Deliverables provided to the Customer that result from the acts or omissions of the Customer or which result from provision of the Combined Bundle (or any part of it), Managed Services, Professional Services or Deliverables in accordance with Customer's instructions.

8 **Professional Services - Customer's obligations**

8.1 The Customer will, for all Contracts for Professional Services:

- (a) act reasonably and make reasonable decisions bearing in mind any time constraints specified in the applicable Accepted Proposal or Statement of Work;

- (b) make all decisions and where applicable run acceptance testing, in accordance with the timing in the applicable Accepted Proposal or Statement of Work, subject to performance by the Supplier;
- (c) make available to the Supplier in a timely manner (and in accordance with any timeframes which the Customer has agreed to) all facilities and all assistance, including personnel, information, services and equipment reasonably required by the Supplier;
- (d) where required to provide data to the Supplier, provide that data in a format suitable for import and otherwise as reasonably requested by the Supplier;
- (e) meet all of the Customer's obligations as specified in these terms and conditions and in any applicable Accepted Proposal or Statement of Work;
- (f) provide the Supplier with such access to its systems as reasonably required by the Supplier; and
- (g) undertake frequent and adequate backups of the application data (or ensure that these are undertaken). The Customer should ensure that backups are always completed, as well as ensuring the backups are secure and checking that they can be successfully restored.

9 Professional Services - variations and change requests

- 9.1 If the Customer requires any variation to the Deliverables or Professional Services, or any other aspect of an Accepted Proposal or Statement of Work in respect of Professional Services, the Customer will make a request to the Supplier, in writing, with relevant details.
- 9.2 On receipt of a request under clause 9.1, the Supplier will:
 - (a) if the request involves four hours' work or less, confirm to the Customer in writing that the Supplier will action the request. All work undertaken in carrying out the request will be charged to the Customer at the Supplier's then current standard hourly rates; or
 - (b) if the request involves more than four hours' work advise the Customer that the Customer must submit a change request in respect of the request under clause 9.3, in which case clauses 9.3 – 9.6 (inclusive) apply.
- 9.3 The Customer may request a change to or in respect of the Deliverables or Professional Services or any other aspect of an Accepted Proposal or Statement of Work by issuing to the Supplier a written change request, which if required by the Supplier will be written using the Supplier's change request form ("Change Request").
- 9.4 On receipt from the Customer of a Change Request, the Supplier will provide an estimate to the Customer for the Change Request ('Estimate') and notify the Customer of the likely impact on the timing of the work. All work carried out by the Supplier in preparing an Estimate will be charged to the Customer at the Supplier's then current standard rates,

subject to a minimum charge of one hour which will apply to each Change Request received from the Customer.

9.5 The Customer has ten Working Days (unless stated otherwise in the Estimate) within which to accept the Estimate (and so confirm that the Customer wishes the Supplier to proceed with the Change Request) and acceptance must be in writing issued to the Supplier.

9.6 All communications under this clause 9 may be issued by email.

10 Pricing and payment

10.1 Subject to clause 10.2, the pricing for supply of Combined Bundles, Managed Services, Professional Services and Cloud Services is specified or referenced in the applicable Contract.

10.2 For Professional Services, unless otherwise agreed in an Accepted Proposal or Statement of Work:

- (a) all Professional Services are provided on a time and materials basis and the Supplier's standard rates apply;
- (b) the Supplier will invoice the Customer on a monthly basis one month in advance and payment must be made by the due date on the invoice

The Supplier's standard rates apply (as set out in the Accepted Proposal or Statement of Work or if not set out there are available on request from the Supplier).

10.3 For Professional Services, all reasonable accommodation, travel and other expenses incurred in performing the Professional Services and providing the Deliverables will be charged to the Customer provided that such expenses are identified and agreed in advance. Expenses will be invoiced on a monthly basis by the Supplier.

10.4 Subject to clause 10.5, the Customer must pay all invoices in full without set-off or deduction of any kind.

10.5 If the Customer wishes to dispute an invoice, it must notify the Supplier in writing within 7 days of the date of the invoice and provide details of the dispute. The Customer may withhold payment of the disputed part of an invoice only and must pay that part (or any amount subsequently agreed or determined to be the correct amount owing) promptly on resolution of the dispute.

10.6 Without limiting any other remedies available to the Supplier for late payment or failure to pay any amount due, if any amount due is not paid by the Customer by the due date, the Supplier may:

- (a) charge the Customer interest calculated at 3% per month on the balance of the amount due by the Customer from the due date until payment is received in full by the Supplier; and/or
- (b) charge the Customer all collection costs reasonably incurred by the Supplier in collection of the amount outstanding (including solicitor and/or collection agency fees); and/or

- (c) charge an account management fee of \$25/month; and/or
 - (d) on 3 Working Days' notice in writing, suspend the Combined Bundle, Managed Services, Cloud Services, Professional Services and Deliverables until the outstanding amount is paid in full.
- 10.7 Subject to an applicable Bundle Agreement, unless otherwise specified in the relevant Statement of Work (and in the case of Professional Services, in the relevant Accepted Proposal where applicable), the Supplier may increase its pricing for Managed Services and its standard hourly rates for Professional Services from time to time subject to the following:
- (a) prices in each case will not be increased more often than once every 12 months;
 - (b) one month's notice in writing will be given for any price increase and no single increase will be greater than 10% of the amount payable at the time for the relevant Managed Services or hourly rates.

Pricing for Cloud Services is as specified in the relevant Statement of Work.

11 Customer Data

- 11.1 Subject to clause 11.2, the Supplier will access the Customer Data only as required in the performance of the relevant Contract.
- 11.2 The Supplier will only access the Customer Data and disclose the Customer Data to law enforcement or government authorities to the extent required by law. If a request for Customer Data is made by a law enforcement agency or government authority, the Supplier will redirect the request to the Customer or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, the Supplier will notify the Customer of the request as soon as practically possible.
- 11.3 The Customer will, as and to the extent required by law, notify individual users of the Cloud Services, that their data may be disclosed to law enforcement or other government authorities (if a request is made by law enforcement or other government authorities). It is the Customer's responsibility to obtain consent from individual users to the potential for disclosure under this clause.
- 11.4 Nothing in this Agreement transfers ownership of the Customer Data to the Supplier.

12 Personal Data and Data Protection

- 12.1 The Customer consents to the Processing of Personal Data by the Supplier for the purposes of the applicable Contract. Before providing Personal Data to the Supplier, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable Data Protection Laws.
- 12.2 To the extent permitted by applicable law, Personal Data collected by the Supplier under a Contract may be transferred, stored and processed in the State(s) and/or country (or countries) in which the Supplier maintains facilities or any other country in which the Supplier's contractors or service providers (including for example Microsoft and other third party vendors) maintain facilities.

12.3 In the event of any Personal Data Breach, the Supplier will comply with its obligations, including notification obligations, (if any), under applicable Data Protection Laws.

13 Confidential Information

13.1 Each party agrees to:

- (a) hold in confidence all Confidential Information disclosed to it by the other party and disclose that information to its directors, employees and contractors only to the extent required in the performance of the Contract;
- (b) ensure that all Confidential Information is protected at all times from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.

13.2 A party may disclose the other party's Confidential Information if and to the extent required by law if it first notifies the other party of the obligation to disclose the Confidential Information, provided that a party is not required to notify the other party under this clause if it is not legally permitted to do so or if the timing within which the party is required by law to disclose the Confidential Information does not permit notification to the other party.

14 Intellectual property

14.1 The Supplier (or its licensors) owns the Intellectual Property in the means, methods, processes and know-how that the Supplier uses to provide Managed Services and the Professional Services (and to create the Deliverables) or to otherwise perform the Supplier's obligations under each Contract.

14.2 For Managed Services, subject to any third party Intellectual Property rights, the Supplier owns any Intellectual Property arising as a result of the Managed Service.

14.3 For Cloud Supply, for the purposes of intellectual property provisions refer to:

- (a) the Microsoft Customer Agreement, in respect of Microsoft Cloud Services; and
- (b) the relevant third party supplier's agreement or terms and conditions, in respect of all other Cloud Services (non-Microsoft).

14.4 For Professional Services, unless agreed otherwise in an Accepted Proposal or a Statement of Work or otherwise agreed in writing and subject to clause 14.5, the Customer will own the Intellectual Property in the Deliverables on payment in full for those Deliverables.

14.5 The Supplier retains ownership of the Intellectual Property in any of the Supplier's pre-existing library code (if any) used to create or incorporated into the Deliverables. The Supplier grants the Customer a non-exclusive licence to use the Intellectual Property referred to in this clause to the extent required for the Customer to make use of the Professional Services and Deliverables, and otherwise give effect to a Contract for Professional Services. This licence will survive the termination of a Contract for Professional Services.

14.6 The Customer or its licensors (as applicable) will retain any Intellectual Property rights that the Customer or its licensors (respectively) own in Customer Materials.

15 Personnel

15.1 The Supplier will not change or re-assign personnel that are known by the Customer to be working on a Contract or which have been identified by name to the Customer, without notifying the Customer.

15.2 A situation may arise where one of the Supplier's staff members does not work well with one of the Customer's staff members or contractors. If this arises, the party first aware of the issue will raise this with the other party and the Supplier will promptly discuss ways to resolve the issue and restore a favourable working relationship.

16 Warranty by Supplier

16.1 The Supplier warrants that it has the ability to perform the agreed Managed Services and Professional Services and that all services will be performed with due care and skill by people that have the requisite skills, expertise and competency.

16.2 The Supplier will perform the Managed Services and Professional Services to the generally accepted standards of professionalism within the Supplier's industry. The Supplier will assign personnel to perform the Managed Services and Professional Services that have the requisite skills, expertise and competency for the project or task.

16.3 In the case of Professional Services, if a Deliverable includes the production of a document, the Supplier will produce that document from the information available. However, the Supplier cannot warrant the contents, accuracy or use of such information as the Supplier relies on information provided by the Customer and third parties.

16.4 Except as expressly provided in a Contract, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

17 Warranty by the Customer

17.1 The Customer warrants that it has all requisite right, power and authority to enter into each Contract.

18 Termination of Contract

18.1 Either party may terminate a Contract at any time without cause on giving thirty days' notice in writing to the other party provided that:

- (a) for Combined Bundles, Managed Services and Cloud Services, where a fixed term applies the termination will not be effective until expiration of that fixed term (the Customer may choose to terminate early and pay for the remainder of the term);
- (b) for Professional Services, if any work is outstanding under the Contract, the termination will only be effective on completion and payment in full by the

Customer of all work under the Accepted Proposal or Statement of Work. The Customer may waive the requirement that the Supplier complete all work but must pay all amounts under the Contract as if that waiver had not been given.

- 18.2 Either party may terminate a Contract immediately (or with effect from any later date that it may nominate) by written notice to the other party if:
- (a) one or more Insolvency Events occurs in relation to that other party. For the purposes of this clause, 'Insolvency Event' means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):
 - i. a receiver, manager or liquidator is appointed over the party's undertaking or assets or the party enters into any assignment, composition or arrangement with its creditors; or
 - ii. the party is unable to pay its debts when due or is deemed unable to pay its debts under any law or suspends payment to its creditors.
 - (b) the other party commits a material breach of any of its obligations under the Contract and fails to remedy that breach within thirty days of prior written notice of such breach. For the purposes of this clause 18.2 (b), non-payment by the Customer for a period of 30 days or more after due date of any undisputed invoice constitutes a material breach by the Customer.

19 **Consequences of termination**

- 19.1 On termination of a Contract, in addition to any other consequences of termination included in the relevant Bundle Agreement, Accepted Proposal or Statement of Work and without limiting either party's rights or remedies:
- (a) each party will, on request, return the other's Confidential Information in its possession or control in respect of that Contract;
 - (b) all amounts owed to the Supplier under the Contract which accrued before termination will be due and payable in accordance with the payment terms in that Contract;
 - (c) the Supplier will deliver to the Customer all Deliverables paid for by the Customer.
- 19.2 On any termination of a Contract, all clauses which by their nature survive termination, will survive the termination.

20 **Liability**

- 20.1 This limitation does not apply to claims by the Customer for bodily injury or damage to real property or tangible personal property for which the Supplier may be legally liable.
- 20.2 The Supplier's liability under a Contract is limited to direct loss only, to the amount paid to the Supplier under that Contract in the three month period preceding the event giving rise to the loss.

20.3 In no event is the Supplier liable for any indirect loss or for any loss of profits, lost savings, loss of data, business interruption, incidental or special damages, or for any consequential loss. In addition, the Supplier is not liable for any damages claimed by the Customer based on any third party claim, including, but not limited to, any claim in negligence. In no event is the Supplier liable for any damages caused (whether directly or indirectly) by the Customer's failure to perform its responsibilities under the Contract.

21 Dispute Resolution

21.1 In the event of any dispute arising between the parties in relation to a Contract, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 21.

21.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.

21.3 If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.

22 Non-Solicitation

22.1 Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party's personnel (including employees and contractors). This clause will apply from commencement of the first Contract between the parties and will continue until there has been no Contract between the parties for a continuous period of twelve months (and if there is subsequently a Contract between the parties the non-solicitation period will re-commence).

23 Notices

23.1 Any notice or other communication in connection with a Contract must be:

- (a) marked for the attention of the primary contact person and delivered or sent to the address of the other party by prepaid post or email, as set out in the relevant Accepted Proposal or Statement of Work.

23.2 Notices or other communications are deemed received:

- (a) if delivered by hand, on delivery;
- (b) if delivered by post:
 - i. on the third Working Day following posting if sent and received within Victoria, Australia; and
 - ii. on the tenth day following posting if posted interstate or internationally; or

- (c) if sent by email, on sending the email provided that no email is successfully sent if the sender receives any type of delivery notification failure and provided further that the onus is on the sender to ensure that the email has been successfully received by the recipient.

24 Force majeure

- 24.1 Either party may suspend its obligations to perform under a Contract if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.
- 24.2 Where a party's obligations have been suspended pursuant to clause 24.1 for a period of 30 days or more, the other party may immediately terminate the Contract by giving notice in writing to the other party.

25 General

- 25.1 Assignment: Neither the Customer nor the Supplier may assign its rights under a Contract without the prior written consent of the other party.
- 25.2 Contractors: The Supplier may perform its obligations under a Contract by the use of the Supplier-selected independent contractors.
- 25.3 Other agreements: Subject to clauses 13 and 14, nothing in these terms and conditions prevents the Supplier from entering into similar agreements with others or from providing Services and Deliverables which are similar to the Services and Deliverables provided under a Contract.
- 25.4 Survival: All clauses of these terms and conditions, which by their nature survive the termination of a Contract will do so.
- 25.5 Entire agreement: Each Contract constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of that Contract.
- 25.6 Further assurances: The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by the Contract.
- 25.7 Amendments: Except as specifically provided, no amendment to a Contract will be effective unless it is in writing and signed by both parties.
- 25.8 Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other available right or remedy.
- 25.9 Partial invalidity: If any provision of a Contract or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Contract and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

25.10 Relationship of the Parties: The parties agree that the Supplier is an independent contractor to the Customer and that nothing in these terms and conditions or any Contract constitutes a partnership, joint venture or relationship of employer and employee between the parties. Neither party may:

- (a) act or hold itself out as an agent or representative of the other party; or
- (b) assume or create any obligations on behalf of the other party.

26 **Governing Law**

26.1 Each Contract is governed by the laws of the State of Victoria, Australia. The parties hereby submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.