



Master Agreement

Ultimate Positioning Group Pty Ltd ACN 135 812 903

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Master Agreement

Parties

Supplier	Ultimate Positioning Group Pty Ltd ACN 135 812 903 of 33 Alison Street, Bowen Hills, Queensland, 4006
Customer	As stated in the order, purchase order or quote.
Guarantor	As stated in the order, purchase order or quote.

Background

- A From time to time, the Supplier may enter into certain arrangements with the Customer for the supply of Products and Services by the Supplier.
- B The parties have entered into this document to:
 - (i) set out the standard terms and conditions that will apply to the supply of Products and Services by the Supplier to the Customer; and
 - (ii) secure payment and the performance by the Customer of its obligations to the Supplier.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

Term	Definition
Agreement	means this document and the Terms and Conditions, as varied from time to time.
Business Day	means a day that is not a Saturday, Sunday or public holiday in Brisbane.
Financing Statement	has the meaning given to that term by the PPSA.

Term	Definition
Hire-to-Buy Conditions	means the terms and conditions set out in Annexure A.
Hire Conditions	means the terms and conditions set out in Annexure B.
Interest	means interest on any payment owing under this Agreement (which the Terms and Conditions form part of) calculated: <ul style="list-style-type: none"> (a) at the rate of 1.5% per month or, if lower, the maximum rate permitted by applicable law; and daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.
PPSA	means <i>Personal Property Securities Act 2009</i> (Cth).
PPSA Information	means any information or documents (including copies of those documents), which are in existence or may be entered into in the future, of the kind mentioned in section 275(1) PPSA.
Products	means any products provided by the Supplier to the Customer for purchase, hire or licence under the Hire-to-Buy Conditions, Hire Conditions, Purchase Conditions or Software and Services Conditions.
Purchase Conditions	means the terms and conditions set out in Annexure C.
Services	means any services provided by the Supplier to the Customer under the Hire-to-Buy Conditions, Hire Conditions, Purchase Conditions, Software and Services Conditions or Services Conditions.
Services Conditions	means the terms and conditions set out in Annexure D.
Software and Services Conditions	means the terms and conditions set out in Annexure E.
Terms and Conditions	means the: <ul style="list-style-type: none"> (a) Hire-to-Buy Conditions; (b) Hire Conditions; (c) Purchase Conditions; (d) Services Conditions; and (e) Software and Services Conditions.

1.2 Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (i) a reference to 'month' means calendar month.

2 Supply of Products and Services

2.1 Orders

- (a) From time to time, the Customer may place orders (either verbally or in writing, including by email) with the Supplier subject to this Agreement and in particular the following relevant Terms and Conditions:
 - (i) for the hire of Products and Services, the Hire Conditions;
 - (ii) for the hire of Products and Services with an option to buy, the Hire-to-Buy Conditions;
 - (iii) for the purchase of Products and Services, the Purchase Conditions;
 - (iv) for the licensing of Products and receipt of Services, the Software and Services Conditions; and
 - (v) for the receipt of Services, the Services Conditions.
- (b) The parties have entered into this document to secure payment and performance of the Customer's obligations to the Supplier under the Agreement (including its obligations under the Terms and Conditions which form part of this Agreement).

2.2 Authorisation

The Customer acknowledges and agrees that any person who places orders with the Supplier on behalf of the Customer in accordance with clause 2.1(a) is authorised to place orders on behalf of the Customer and the Customer will be bound by such orders.

3 Variations

- (a) The Supplier may at any time, by written notice to the Customer and the Guarantor, vary any part of this Agreement, including, without limitation:
 - (i) varying the Terms and Conditions which form part of this Agreement; and

- (ii) adding additional standard terms and conditions of the Supplier to form part of this Agreement.
- (b) The Customer and the Guarantor are deemed to have accepted and agreed to any variation under clause 3(a) unless it notifies the Supplier otherwise within 14 days of the date of the notice referred to in clause 3(a).

4 PPSA

4.1 Security Interest

- (a) The parties acknowledge that this Agreement (which the Terms and Conditions form part of) and the transactions contemplated by it may constitute Security Interests (which may be Purchase Money Security Interests) in the Products (and any Proceeds in relation to the Products) in favour of the Supplier.

4.2 Registration

- (a) The Customer and the Guarantor irrevocably consent to the Supplier:
 - (i) registering the Financing Statements on the Register as contemplated by this Agreement and the Terms and Conditions which form part of this Agreement; and
 - (ii) doing all other things that are necessary to secure and Perfect, and continue to secure and Perfect, the Supplier's Security Interest, to protect and preserve the Product and to realise its Security Interest.
- (b) The Customer and the Guarantor agree to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Supplier asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interests are enforceable, Perfected and otherwise effective;
 - (ii) enabling the Supplier to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interests; and
 - (iii) enabling the Supplier to exercise rights in connection with the Security Interests.
- (c) The Supplier is not required to give any notice, and the Customer waives its rights to receive any notice, under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

4.3 Notice

- (a) The Customer must notify the Supplier as soon as the Customer becomes aware of any of the following:
 - (i) if any Personal Property which does not form part of the Products becomes an Accession to the Products and is subject to a Security Interest in favour of a third party;

- (ii) if any of the Products are located or situated outside Australia or, upon request by the Supplier, of the present location or situation of the Products; or
- (iii) if the Customer parts with possession of the Products.

4.4 Customer's obligations

- (a) The Customer must not without the prior written consent of the Supplier:
 - (i) create any Security Interest or lien over any Personal Property that the Supplier has an interest in, including the Products (other than Security Interests granted in favour of the Supplier);
 - (ii) sell, lease or dispose of its interest in the Products whilst the Products are the property of the Supplier;
 - (iii) give possession of the Products to another person whilst the Products are the property of the Supplier; or
 - (iv) permit the Products to become an Accession to, Commingled with, or a Fixture to any asset or real property that is not part of the Supplier's other Personal Property or real property.
- (b) The Customer must not change its name without first giving the Supplier 15 Business Days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

4.5 Failure to comply

- (a) If the Customer fails to comply with any obligation under this document then without limiting the remedies available to the Supplier:
 - (i) upon request by the Supplier, the Customer must return the Products to the Supplier;
 - (ii) the Customer authorises the Supplier and any person authorised by the Supplier to enter premises where the Products are located to take possession of the Products; and
 - (iii) the Supplier may retain, sell or otherwise dispose of the Products.

4.6 Waiver

- (a) The Supplier agrees to the extent permitted under the PPSA, the Customer waives its rights:
 - (i) to receive notice of removal of an Accession under the PPSA; and
 - (ii) under Chapter 4 of the PPSA.

4.7 Costs

The Customer must pay all costs, expenses and other charges incurred, expended or payable by the Supplier in relation to the filing of a Financing Statement or Financing Change Statement in connection with this document.

4.8 Confidentiality

- (a) Each party agrees to keep the PPSA Information in strict confidence and not disclose that information, except in circumstances required by sections 275(7)(b) or 275(7)(e) PPSA, however, where sections 275(7)(b) or 275(7)(e) require disclosure, the party that is required to disclose the information must give all available notice to the other parties to allow those parties to legally challenge the required disclosure and agrees to take all available steps (whether required by the other parties or not) to maintain that PPSA Information in confidence.
- (b) Each party agrees not to authorise the disclosure of any PPSA Information to any third party under section 275(7)(c) PPSA or to request information under section 275(7)(d) PPSA unless the other parties to this document explicitly agree.

4.9 Definitions

In this clause 4, **Accession, Commingled, Financing Change Statement, Financing Statement, Fixture, Perfected, Personal Property, Proceeds, Purchase Money Security Interest, Security Interest** and **Verification Statement** have the respective meanings given to those terms by the PPSA.

5 Guarantee

5.1 Liability of the Guarantor

In consideration of the Supplier entering into this Agreement (which the Terms and Conditions form part of) with the Customer at the request of the Guarantor, the Guarantor:

- (a) acknowledges and agrees that he or she is jointly and severally liable with the Customer to perform the Customer's obligations under this Agreement (which the Terms and Conditions form part of);
- (b) acknowledges and agrees that he or she is jointly and severally liable with the Customer to pay all amounts owing by the Customer to the Supplier under this Agreement (which the Terms and Conditions form part of); and
- (c) is jointly and severally liable with the Customer for and indemnifies the Supplier from and against, all loss or damage (including legal costs) however caused suffered or incurred by the Supplier in connection with:
 - (i) any failure by the Customer to pay the Supplier any amounts which are owing by the Customer to the Supplier under this Agreement (which the Terms and Conditions form part of);
 - (ii) any failure by the Customer to perform any of its obligations under this Agreement (which the Terms and Conditions form part of); or
 - (iii) the Supplier being unable to recover any amounts from the Customer which are owing by the Customer to the Supplier under this Agreement (which the Terms and Conditions form part of).

5.2 Extension of liability

The Guarantor will still be liable under this Agreement (which the Terms and Conditions form part of) even if:

- (a) the Supplier gives the Customer extra time to pay any amount which is owing by the Customer to the Supplier under this Agreement (which the Terms and Conditions form part of);
- (b) the Supplier notifies the Customer that it does not have to pay any amount which is owing by the Customer to the Supplier under this Agreement (which the Terms and Conditions form part of);
- (c) the Supplier delays in taking action to enforce this Agreement (which the Terms and Conditions form part of);
- (d) this Agreement (which the Terms and Conditions form part of) is changed;
- (e) the Supplier increases the amount that is owing by the Customer under this Agreement (which the Terms and Conditions form part of);
- (f) a person who was intended to sign this Agreement (which the Terms and Conditions form part of) does not do so; or
- (g) anything else happens which would otherwise have the effect of releasing the Guarantor from this clause 5.

5.3 Priority of claims

Any claim which the Customer may have against the Customer will take priority over any competing right of the Guarantor.

6 General

6.1 Inconsistency

- (a) If there is any inconsistency between the Terms and Conditions and a clause of this document, the clause in this document prevails.
- (b) If there is any inconsistency between this document and a purchase order provided by the customer, this document overrides the purchase order and the terms and conditions of the purchase order do not apply.

6.2 Amendments

Subject to clause 3, this Document may only be amended by written agreement between all parties.

6.3 Consents

Where this Agreement (which the Terms and Conditions form part of) contemplates that the Supplier may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, the Supplier may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless this Agreement (which the Terms and Conditions form part of) expressly requires otherwise.

6.4 Assignment by Supplier

- (a) The Supplier may assign this Agreement and the Terms and Conditions which form part of this Agreement or a right under this Agreement without the consent of the Customer.
- (b) If the Supplier assigns this Agreement and the Terms and Conditions which form part of this Agreement or a right under this Agreement, it may assign the benefit of any Security Interest to the assignee without the consent of the Customer and the Customer agrees to do all things necessary to give effect to such assignment.

6.5 No assignment by Customer or the Guarantor

The Customer and the Guarantor must not assign this Agreement or a right under this Agreement.

6.6 Subcontracting

The Supplier may subcontract the performance of all or any part of the Supplier's obligations under this Agreement (which the Terms and Conditions form part of).

6.7 Time not of the essence

Time is not of the essence in the performance of obligations under this Agreement (which the Terms and Conditions form part of) except in relation to performance of payment obligations.

6.8 No agency

Unless expressly stated otherwise, this Agreement (which the Terms and Conditions form part of) does not create a relationship of employment, trust, agency or partnership between the parties.

6.9 Interest

Without limiting any other remedies available to the Supplier, if the Customer fails to pay any amount payable under this Agreement (which the Terms and Conditions form part of), the Customer must pay Interest on that amount.

6.10 Costs

The Customer is liable for, and indemnifies the Supplier from and against, all legal costs incurred by the Supplier in connection any claim or allegation by either party against the other party in connection with this Agreement (which the Terms and Conditions form part of) including any claim or allegation that either party has breached this Agreement (which the Terms and Conditions form part of).

6.11 Counterparts

This document may be signed in any number of counterparts. All counterparts together make one instrument.

6.12 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

6.13 Further assurances

Each party must do all things necessary to give effect to this document and the transactions contemplated by it.

6.14 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

6.15 Governing law and jurisdiction

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

6.16 Severability

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

Hire terms and conditions with option to buy

Background

- A The Supplier owns the Products and the Customer wishes to place orders to hire the Products and obtain Services.
- B The Customer has requested the Supplier to enter into the Master Agreement (which these terms and conditions form part of) with the Customer.
- C The Supplier agrees to supply the Products for the Hire Period and Services to the Customer on the terms of the Master Agreement (which these terms and conditions form part of).

Agreed terms

1 Ordering

- (a) Subject to payment of the Services Fee, the Supplier must endeavour to perform the Services in volumes and at times and locations acceptable to the Supplier.
- (b) Subject to payment of the Hire Fee, the Supplier hires the Products contemplated by the Quote to the Customer.
- (c) The Customer acknowledges and agrees that commencement of provision of the Services and delivery of the Products may not occur for two weeks or such longer period acceptable to the Supplier.
- (d) The Customer acknowledges and agrees that the Customer must not rely on the accuracy or reliability of the Services provided or any results given by the Products and that any such outcomes need to be verified by appropriately qualified personnel of the Customer.
- (e) The Customer must:
 - (i) provide the Supplier with access to the Customer's premises to enable the Supplier to provide the Services;
 - (ii) provide the Supplier with such information and assistance necessary to enable the Supplier to provide the Services; and
 - (iii) cooperate with the Supplier and act reasonably in connection with the Master Agreement (which these terms and conditions form part of) and receipt of the Services.
- (f) The Customer acknowledges and agrees that if the Customer does not comply with clause 1(e) then the Supplier is not obliged to endeavour to supply the Services to the Customer.
- (g) The Customer must return the Products to the Supplier by the end of the Hire Period.

2 Fees and risk

- (a) The Customer must pay the Services Fees for the Services and the Hire Fee for the Products within 30 days of the provision of those Services or the delivery of those Products by the Supplier as the case may be.
- (b) If the Supplier agrees to perform any services in addition to the Services then those services will be performed under these terms and conditions and the Customer must pay the Supplier's then current fees for those services.
- (c) The Supplier must request a third party to deliver the Products to the address nominated by the Customer at the time the Quote Acceptance is made.
- (d) The Customer bears the risk relating to the Products from the time the Quote Acceptance is accepted by the Supplier until the time the Products are returned to the Supplier.
- (e) The Customer must effect and maintain from a reputable insurance company:
 - (i) transit insurance for the Products, covering the Products from the time the Customer requests the Products until the time the Supplier delivers the Products; and
 - (ii) all risks property insurance for the Products, covering the Products from the time the Supplier delivers the Products until the time the Customer returns the Products to the Supplier,

for amounts not less than the Products' full replacement value.

(f) The Customer must:

- (i) maintain the insurance policies referred to in clause 2(e) in a form and for a policy period acceptable to the Supplier;
- (ii) if requested by the Supplier, note the Supplier's interest in the Products under the insurance policies referred to in clause 2(e); and
- (iii) if requested by the Supplier, provide the Supplier with a copy of these insurance policies and evidence of currency of the policies.

3 PPSA

- (a) The parties acknowledge that the supply of the Products under the Master Agreement (which these terms and conditions form part of):
 - (i) constitutes a Security Interest in the Products (and any Proceeds in relation to the Products) in favour of the Supplier; and
 - (ii) may constitute a Purchase Money Security Interest in the Products (and any Proceeds in relation to the Products) in favour of the Supplier.
- (b) The Supplier may allocate payments made by the Customer to the Supplier under the Master Agreement (which these terms and conditions form part of), or any other deed or agreement with the Supplier, to any obligation owed by the Customer to the Supplier.
- (c) Once the Customer takes possession of the Products, the Customer must store the Products:
 - (i) separately from other goods of the Customer, so that the Products are not mixed with those other goods; and
 - (ii) in such a way that the Products are recognisable as the property of the Supplier.
- (d) The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with the Supplier exercising its rights under this clause or attempting to do so.
- (e) The parties acknowledge and agree that the PPSA provisions set out in the Master Agreement (which these terms and conditions form part of), including confidentiality obligations also apply.

4 Option to buy

- (a) If the Customer wishes to purchase the Products:
 - (i) after the Minimum Contract Period;
 - (ii) at the end of the Hire Period; or
 - (iii) after the Minimum Contract Period ends but prior to the expiration of the Hire Period,
- the Customer must give the Supplier 90 days prior notice of its intention to purchase the Products.
- (b) If the Customer gives a notice in accordance with clause 4(a), the Customer must pay the Purchase Price to the Supplier no later than the expiry of the Hire Period.

Hire terms and conditions with option to buy

- (c) The Supplier retains title in the Products hired under the Master Agreement (which these terms and conditions form part of) until the Customer has:
- (i) given a notice to the Supplier in accordance with clause 4(a);
 - (ii) paid the Purchase Price of the Products;
 - (iii) paid any outstanding Hire Fees or Services Fees; and
 - (iv) paid all other money owed by the Customer to the Supplier.
- (d) The Customer will continue to be responsible for payment of the Hire Fees and Service Fees until such time as the Purchase Price is paid.

5 Return of Products

Unless the Customer purchases the Products pursuant to clause 4, the Customer will arrange for the Products to be returned to the Supplier by the Return Date.

6 Use of products

The Customer must only use the Products and must maintain the Products in accordance with the applicable Specification and any directions of the Supplier from time to time.

7 Warranties

The Customer represents and warrants, and it is a condition of the Master Agreement (which these terms and conditions form part of), that:

- (a) all information provided by the Customer or on the Customer's behalf to the Supplier is accurate and is not, whether by omission of information or otherwise, misleading;
- (b) the Customer has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into the Master Agreement (which these terms and conditions form part of);
- (c) the Customer did not rely upon any representation made to the Customer by the Supplier or any Related Body Corporate of the Supplier (if any) prior to entry into the Master Agreement (which these terms and conditions form part of); and
- (d) any premises at which the Services are to be provided will be safe and secure for the Supplier's personnel.

8 Confidential information

The Customer agrees to keep the Services Fees for the Services and the Hire Fee for the Products confidential.

9 Liability

9.1 Limitation

- (a) Subject to clauses 9.2 and 9.3, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) is limited to resupply of the relevant Products for a period equal to the Hire Period or reperformance of the relevant Services.
- (b) The limitation set out in clause 9.1(a) is an aggregate limit for all claims, whenever made.
- (c) Any claim by the Customer against the Supplier for loss or damage however caused (including by the negligence of the Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) must be made within one month of the Customer becoming entitled to make the claim and any claim not made within one month is absolutely barred.

9.2 Consequential Loss

Subject to clause 9.3, for clarity the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with the Master Agreement (which these terms and conditions form part of).

9.3 Competition and Consumer Act

If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Supplier in connection with the Master Agreement (which these terms and conditions form part of) and the Supplier's liability failing to comply with that guarantee cannot be excluded but may be limited, clauses 9.1, 9.2, 10 and 11(b) do not apply to that liability and instead the Supplier's liability for such failure is limited to (at the Supplier's election), in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

10 Indemnity

The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:

- (a) any breach of the Master Agreement (which these terms and conditions form part of) by the Customer;
- (b) any damage to the Products;
- (c) destruction of the Products;
- (d) loss of the Products;
- (e) any claim by a third party against the Supplier in connection with receipt of the Services or Products supplied to the Customer under the Master Agreement (which these terms and conditions form part of);
- (f) any use of the Products other than in accordance with the Specification;
- (g) personal injury or death of any person (including any employee of the Customer or the Supplier) in connection with receipt of the Services or the use of the Products;
- (h) damage to property in connection with receipt of the Services or the use of the Products; or
- (i) any act or omission of the Customer, its officers, employees or agents.

11 Intellectual property rights and rebranding

- (a) The Customer acknowledges and agrees that nothing in the Master Agreement (which these terms and conditions form part of) grants the Customer any intellectual property rights (including copyright, trade marks, patents and designs) of the Supplier.
- (b) Subject to clause 9.3, the Customer acknowledges and agrees that the Supplier does not give any express or implied warranties in relation to the Products or the Services including any warranties in relation to:
 - (i) use of the Products or Services; or
 - (ii) exercise of any rights granted to the Customer under this agreement,not infringing any third party's intellectual property rights (including copyright, trade marks, patents and designs).
- (c) The Customer:
 - (i) must not reverse engineer the Products;
 - (ii) acknowledges and agrees that the Products are not defect free, and that the Products may contain defects

Hire terms and conditions with option to buy

that cause them to malfunction or not operate in the manner contemplated by any applicable Specification;

- (iii) must immediately notify the Supplier if the Customer suspects that the Products infringe or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) and take any action required by the Supplier in connection with that infringement; and
 - (iv) acknowledges and agrees that if the Supplier suspects that the Products infringe or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) then the Supplier may modify or replace the Products with alternative products or require the Customer to cease using the Products.
- (d) If the Products include any software:
- (i) subject to the Customer paying the Hire Fee in accordance with clause 2(a), the Supplier grants the Customer a non-exclusive, non-transferable licence of copyright in the software in Australia for the Hire Period that the Supplier is authorised to license to:
 - (A) install and run the software for the purpose of using the Products; and
 - (B) make a reasonable number of copies of the software for backup purposes;
 - (ii) the Customer must not sublicense the rights granted under clause 11(d)(i) or use the software except in the manner permitted under clause 11(d)(i);
 - (iii) the Customer must not decompile or otherwise reverse engineer the software;
 - (iv) unless specified in the Quote the Customer is responsible for installation of the software;
 - (v) the Customer acknowledges and agrees that the Supplier is not obliged to provide any upgrades or updates to the software;
 - (vi) the Customer acknowledges and agrees that the software is not error free, and that the software may contain errors that cause it to malfunction or not operate in the manner contemplated by any applicable Specification;
 - (vii) the Customer must immediately notify the Supplier if the Customer suspects that the software infringes or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) and take any action required by the Supplier in connection with that infringement; and
 - (viii) if the Supplier suspects that the software infringes or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) then the Supplier may modify or replace the software with alternative software or require the Customer to cease using the software.
- (e) The Customer must not remove a Supplier Mark from a Product or represent that the Products are associated with any registered or unregistered trade mark other than a Supplier Mark.

12 Term and termination

12.1Term

The hire commences on the Commencement Date and continues for the Hire Period unless terminated earlier in accordance with this clause 12.

12.2Termination for breach

If:

- (a) the Customer commits a breach of the Master Agreement (which these terms and conditions form part of); or
- (b) an Insolvency Event occurs in relation to the Customer,

then the Supplier may terminate the Master Agreement (which these terms and conditions form part of) by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.

12.3Termination for convenience

The Supplier may terminate the Master Agreement (which these terms and conditions form part of) at any time by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.

12.4Waiver and acknowledgement

- (a) The Customer expressly waives any rights it may have to terminate the Master Agreement (which these terms and conditions form part of).
- (b) The Customer acknowledges that the Supplier may terminate the Master Agreement (which these terms and conditions form part of) under this clause 12 without considering the impact of the termination on the Customer.

12.5After termination or expiry

- (a) On termination or expiry of the Master Agreement (which these terms and conditions form part of) accrued rights or remedies of a party are not affected and the licence granted under clause 11(d)(i).
- (b) Termination of the Master Agreement (which these terms and conditions form part of) will not affect clauses 2(d), 2(e), 2(f), 6, 9 and 10 and any other clause of the Master Agreement (which these terms and conditions form part of) which is expressly or by implication intended to come into force or continue after termination.

13 Force majeure

The Supplier will not be:

- (a) in breach of the Master Agreement (which these terms and conditions form part of) as a result of; or
- (b) liable for,

any failure or delay in the performance of the Supplier's obligations under the Master Agreement (which these terms and conditions form part of) to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Customer.

14 Taxes

- (a) The Customer must pay all stamp duty, taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed, levied, assessed or payable in Australia or overseas in connection with the Master Agreement (which these terms and conditions form part of).
- (b) Except under clause 14(c), the consideration for a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) does not include GST.
- (c) If a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the GST Act Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Master

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Agreement (which these terms and conditions form part of) for that Supply); and

- (ii) the GST Act Supplier must give the GST Act Recipient a Tax Invoice for the Supply.
- (d) If either party has the right under the Master Agreement (which these terms and conditions form part of) to be reimbursed or indemnified by another party for a cost incurred in connection with the Master Agreement (which these terms and conditions form part of), that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (e) In clauses 14(b), 14(c) and 14(d):
 - (i) **GST Act Recipient** has the meaning given to 'Recipient' in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (ii) **GST Act Supplier** means the entity making the Supply; and
 - (iii) other capitalised terms that are not defined in clause 15.1 have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

15 Definitions and interpretation

15.1 Definitions

In these terms and conditions:

Bankruptcy Act	means <i>Bankruptcy Act 1966</i> (Cth).
Commencement Date	means the date of the Quote Acceptance.
Consequential Loss	means consequential loss, indirect loss, loss of revenues, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
Customer	means the customer shown on the Quote.
Force Event	<p>Majeure means any occurrence or omission outside a party's control and includes:</p> <ul style="list-style-type: none"> (a) a physical natural disaster including fire, flood, lightning or earthquake; (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (c) epidemic or quarantine restriction; (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; (f) law taking effect after the date of the Master Agreement (which these terms and conditions form part of); (g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or

- the party's subcontractors; and
- (h) failure of a third party to deliver the Products to the Customer.

Hire Fee	in respect of a Product means the hire fee and cost of delivery for that Product specified in the Quote.
Hire Period	means the hire period specified in the Quote, if any.
Insolvency Event	<p>means any of the following events concerning a party, unless the events take place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval:</p> <ul style="list-style-type: none"> (a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act) is appointed to, or over, any of the property or undertaking of the party; (b) if the party becomes bankrupt; (c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the party; (d) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act; (e) if the party is unable to pay its debts when they become due and payable; (f) if the party ceases to carry on business; or (g) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.
Master Agreement	means the master agreement entered into between the parties (which these terms and conditions form part of).
Minimum Contract Period	means the minimum period from the Commencement Date before the Customer may elect to purchase the Products.
Personal Property	means personal property to which the PPSA applies.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
Proceeds	has the meaning given to that term by the PPSA.
Products	means the products described in the Quote.
Purchase Price	means the price agreed between the parties at the relevant time.
Quote	means the quote provided by the Supplier to the Customer (verbal or in writing which includes by email) of the particulars of the hire arrangement.
Quote Acceptance	means the acceptance of the Quote by the Customer, either verbally or in writing (which includes acceptance by email).
Related Body	has the meaning given to that term by

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Corporate	section 9 <i>Corporations Act 2001</i> (Cth).
Return Date	means the date on which the Products are to be returned to the Supplier by the Customer as set out in the Quote (or such other date as agreed in writing between the parties).
Security Interest	in relation to any Products that are Personal Property, has the meaning given to the term Security Interest by the PPSA.
Services	means the services described in the Quote and any additional services contemplated by clause 2(b).
Services Fees	in respect of Services means the fees for those Services specified in the Quote or contemplated by clause 2(b) and any expenses incurred by the Supplier in accordance with the Supplier's policies in the course of the provision of the Services.
Specification	means the specification provided to the Customer by the Supplier in respect of each Product (if any), as amended by the Supplier from time to time.
Supplier	means the supplier specified in the Quote.
Supplier Mark	means any registered or unregistered trade mark owned by, licensed to or nominated by the Supplier from time to time.

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Background

- A The Supplier owns the Products and the Customer wishes to place orders to hire the Products and obtain Services.
- B The Customer has requested the Supplier to enter into the Master Agreement (which these terms and conditions form part of) with the Customer.
- C The Supplier agrees to supply the Products for the Hire Period and Services to the Customer on the terms of the Master Agreement (which these terms and conditions form part of).

Agreed terms

1 Ordering

- (a) Subject to payment of the Services Fee, the Supplier must endeavour to perform the Services in volumes and at times and locations acceptable to the Supplier.
- (b) Subject to payment of the Hire Fee, the Supplier hires the Products contemplated by the Quote to the Customer.
- (c) The Customer acknowledges and agrees that commencement of provision of the Services and delivery of the Products may not occur for two weeks or such longer period acceptable to the Supplier.
- (d) The Customer acknowledges and agrees that the Customer must not rely on the accuracy or reliability of the Services provided or any results given by the Products and that any such outcomes need to be verified by appropriately qualified personnel of the Customer.
- (e) The Customer must:
 - (i) provide the Supplier with access to the Customer's premises to enable the Supplier to provide the Services;
 - (ii) provide the Supplier with such information and assistance necessary to enable the Supplier to provide the Services; and
 - (iii) cooperate with the Supplier and act reasonably in connection with the Master Agreement (which these terms and conditions form part of) and receipt of the Services.
- (f) The Customer acknowledges and agrees that if the Customer does not comply with clause 1(e) then the Supplier is not obliged to endeavour to supply the Services to the Customer.
- (g) The Customer must return the Products to the Supplier by the end of the Hire Period.

2 Fees and risk

- (a) The Customer must pay the Services Fees for the Services and the Hire Fee for the Products within 30 days of the provision of those Services or the delivery of those Products by the Supplier as the case may be.
- (b) If the Supplier agrees to perform any services in addition to the Services then those services will be performed under these terms and conditions and the Customer must pay the Supplier's then current fees for those services.
- (c) The Supplier must request a third party to deliver the Products to the address nominated by the Customer at the time the Quote Acceptance is made.
- (d) The Customer bears the risk relating to the Products from the time the Quote Acceptance is accepted by the Supplier until the time the Products are returned to the Supplier.
- (e) The Customer must effect and maintain from a reputable insurance company:

- (i) transit insurance for the Products, covering the Products from the time the Customer requests the Products until the time the Supplier delivers the Products; and
- (ii) all risks property insurance for the Products, covering the Products from the time the Supplier delivers the Products until the time the Customer returns the Products to the Supplier,

for amounts not less than the Products' full replacement value.

- (f) The Customer must:
 - (i) maintain the insurance policies referred to in clause 2(e) in a form and for a policy period acceptable to the Supplier;
 - (ii) if requested by the Supplier, note the Supplier's interest in the Products under the insurance policies referred to in clause 2(e); and
 - (iii) if requested by the Supplier, provide the Supplier with a copy of these insurance policies and evidence of currency of the policies.

3 PPSA

- (a) The parties acknowledge that the supply of the Products under the Master Agreement (which these terms and conditions form part of):
 - (i) constitutes a Security Interest in the Products (and any Proceeds in relation to the Products) in favour of the Supplier; and
 - (ii) may constitute a Purchase Money Security Interest in the Products (and any Proceeds in relation to the Products) in favour of the Supplier.
- (b) The Supplier may allocate payments made by the Customer to the Supplier under the Master Agreement (which these terms and conditions form part of), or any other deed or agreement with the Supplier, to any obligation owed by the Customer to the Supplier.
- (c) Once the Customer takes possession of the Products, the Customer must store the Products:
 - (i) separately from other goods of the Customer, so that the Products are not mixed with those other goods; and
 - (ii) in such a way that the Products are recognisable as the property of the Supplier.
- (d) The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with the Supplier exercising its rights under this clause or attempting to do so.
- (e) The parties acknowledge and agree that the PPSA provisions set out in the Master Agreement (which these terms and conditions form part of), including confidentiality obligations also apply.

4 Return of products

The Customer will arrange for the Products to be returned to the Supplier by the Return Date.

5 Use of products

The Customer must only use the Products and must maintain the Products in accordance with the applicable Specification and any directions of the Supplier from time to time.

6 Warranties

The Customer represents and warrants, and it is a condition of the Master Agreement (which these terms and conditions form part of), that:

- (a) all information provided by the Customer or on the Customer's behalf to the Supplier is accurate and is not,

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whether by omission of information or otherwise, misleading;

- (b) the Customer has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into the Master Agreement (which these terms and conditions form part of);
- (c) the Customer did not rely upon any representation made to the Customer by the Supplier or any Related Body Corporate of the Supplier (if any) prior to entry into the Master Agreement (which these terms and conditions form part of); and
- (d) any premises at which the Services are to be provided will be safe and secure for the Supplier's personnel.

7 Confidential information

The Customer agrees to keep the Services Fees for the Services and the Hire Fee for the Products confidential.

8 Liability

8.1 Limitation

- (a) Subject to clauses 8.2 and 8.3, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) is limited to resupply of the relevant Products for a period equal to the Hire Period or reperformance of the relevant Services.
- (b) The limitation set out in clause 8.1(a) is an aggregate limit for all claims, whenever made.
- (c) Any claim by the Customer against the Supplier for loss or damage however caused (including by the negligence of the Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) must be made within one month of the Customer becoming entitled to make the claim and any claim not made within one month is absolutely barred.

8.2 Consequential Loss

Subject to clause 8.3, for clarity the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with the Master Agreement (which these terms and conditions form part of).

8.3 Competition and Consumer Act

If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Supplier in connection with the Master Agreement (which these terms and conditions form part of) and the Supplier's liability failing to comply with that guarantee cannot be excluded but may be limited, clauses 8.1, 8.2, 9 and 10(b) do not apply to that liability and instead the Supplier's liability for such failure is limited to (at the Supplier's election), in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

9 Indemnity

The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:

- (a) any breach of the Master Agreement (which these terms and conditions form part of) by the Customer;
- (b) any damage to the Products;
- (c) destruction of the Products;
- (d) loss of the Products;

- (e) any claim by a third party against the Supplier in connection with receipt of the Services or Products supplied to the Customer under the Master Agreement (which these terms and conditions form part of);
- (f) any use of the Products other than in accordance with the Specification;
- (g) personal injury or death of any person (including any employee of the Customer or the Supplier) in connection with receipt of the Services or the use of the Products;
- (h) damage to property in connection with receipt of the Services or the use of the Products; or
- (i) any act or omission of the Customer, its officers, employees or agents.

10 Intellectual property rights and rebranding

- (a) The Customer acknowledges and agrees that nothing in the Master Agreement (which these terms and conditions form part of) grants the Customer any intellectual property rights (including copyright, trade marks, patents and designs) of the Supplier.
- (b) Subject to clause 8.3, the Customer acknowledges and agrees that the Supplier does not give any express or implied warranties in relation to the Products or the Services including any warranties in relation to:
 - (i) use of the Products or Services; or
 - (ii) exercise of any rights granted to the Customer under the Master Agreement (which these terms and conditions form part of),not infringing any third party's intellectual property rights (including copyright, trade marks, patents and designs).
- (c) The Customer:
 - (i) must not reverse engineer the Products;
 - (ii) acknowledges and agrees that the Products are not defect free, and that the Products may contain defects that cause them to malfunction or not operate in the manner contemplated by any applicable Specification;
 - (iii) must immediately notify the Supplier if the Customer suspects that the Products infringe or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) and take any action required by the Supplier in connection with that infringement; and
 - (iv) acknowledges and agrees that if the Supplier suspects that the Products infringe or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) then the Supplier may modify or replace the Products with alternative products or require the Customer to cease using the Products.
- (d) If the Products include any software:
 - (i) subject to the Customer paying the Hire Fee in accordance with clause 2(a), the Supplier grants the Customer a non-exclusive, non-transferable licence of copyright in the software in Australia for the Hire Period that the Supplier is authorised to license to:
 - (A) install and run the software for the purpose of using the Products; and
 - (B) make a reasonable number of copies of the software for backup purposes;
 - (ii) the Customer must not sublicense the rights granted under clause 10(d)(i) or use the software except in the manner permitted under clause 10(d)(i);
 - (iii) the Customer must not decompile or otherwise reverse engineer the software;

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- (iv) unless specified in the Quote the Customer is responsible for installation of the software;
- (v) the Customer acknowledges and agrees that the Supplier is not obliged to provide any upgrades or updates to the software;
- (vi) the Customer acknowledges and agrees that the software is not error free, and that the software may contain errors that cause it to malfunction or not operate in the manner contemplated by any applicable Specification;
- (vii) the Customer must immediately notify the Supplier if the Customer suspects that the software infringes or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) and take any action required by the Supplier in connection with that infringement; and
- (viii) if the Supplier suspects that the software infringes or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) then the Supplier may modify or replace the software with alternative software or require the Customer to cease using the software.
- (e) The Customer must not remove a Supplier Mark from a Product or represent that the Products are associated with any registered or unregistered trade mark other than a Supplier Mark.

11 Term and termination

11.1 Term

The hire commences on the Commencement Date and continues for the Hire Period unless terminated earlier in accordance with this clause 11.

11.2 Termination for breach

If:

- (a) the Customer commits a breach of the Master Agreement (which these terms and conditions form part of); or
- (b) an Insolvency Event occurs in relation to the Customer,

then the Supplier may terminate the Master Agreement (which these terms and conditions form part of) by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.

11.3 Termination for convenience

The Supplier may terminate the Master Agreement (which these terms and conditions form part of) at any time by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.

11.4 Waiver and acknowledgement

- (a) The Customer expressly waives any rights it may have to terminate the Master Agreement (which these terms and conditions form part of).
- (b) The Customer acknowledges that the Supplier may terminate the Master Agreement (which these terms and conditions form part of) under this clause 11 without considering the impact of the termination on the Customer.

11.5 After termination or expiry

- (a) On termination or expiry of the Master Agreement (which these terms and conditions form part of) accrued rights or remedies of a party are not affected and the licence granted under clause 10(d)(i).
- (b) Termination of the Master Agreement (which these terms and conditions form part of) will not affect clauses 2(d),

2(e), 2(f), 4, 8 and 9 and any other clause of the Master Agreement (which these terms and conditions form part of) which is expressly or by implication intended to come into force or continue after termination.

12 Force majeure

The Supplier will not be:

- (a) in breach of the Master Agreement (which these terms and conditions form part of) as a result of; or
- (b) liable for,

any failure or delay in the performance of the Supplier's obligations under the Master Agreement (which these terms and conditions form part of) to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Customer.

13 Taxes

- (a) The Customer must pay all stamp duty, taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed, levied, assessed or payable in Australia or overseas in connection with the Master Agreement (which these terms and conditions form part of).
- (b) Except under clause 13(c), the consideration for a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) does not include GST.
- (c) If a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the GST Act Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Master Agreement (which these terms and conditions form part of) for that Supply); and
 - (ii) the GST Act Supplier must give the GST Act Recipient a Tax Invoice for the Supply.
- (d) If either party has the right under the Master Agreement (which these terms and conditions form part of) to be reimbursed or indemnified by another party for a cost incurred in connection with the Master Agreement (which these terms and conditions form part of), that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (e) In clauses 13(b), 13(c) and 13(d):
 - (i) **GST Act Recipient** has the meaning given to 'Recipient' in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (ii) **GST Act Supplier** means the entity making the Supply; and
 - (iii) other capitalised terms that are not defined in clause 14.1 have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

14 Definitions and interpretation

14.1 Definitions

In these terms and conditions:

Bankruptcy Act	means <i>Bankruptcy Act 1966</i> (Cth).
Commencement Date	means the date of the Quote Acceptance.
Consequential Loss	means consequential loss, indirect loss, loss of revenues, loss of reputation, loss of

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profits, loss of actual or anticipated savings, loss of bargain, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.

Corporations Act

means *Corporations Act 2001* (Cth).

Customer

means the customer shown on the Quote.

Force Event

Majeure

means any occurrence or omission outside a party's control and includes:

- (a) a physical natural disaster including fire, flood, lightning or earthquake;
- (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (c) epidemic or quarantine restriction;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (f) law taking effect after the date of the Master Agreement (which these terms and conditions form part of);
- (g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and
- (h) failure of a third party to deliver the Products to the Customer.

Hire Fee

in respect of a Product means the hire fee and cost of delivery for that Product specified in the Quote.

Hire Period

means the hire period specified in the Quote, if any.

Insolvency Event

means any of the following events concerning a party, unless the events take place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act) is appointed to, or over, any of the property or undertaking of the party;
- (b) if the party becomes bankrupt;
- (c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the party;
- (d) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;
- (e) if the party is unable to pay its debts when they become due and payable;
- (f) if the party ceases to carry on

business; or

- (g) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Master Agreement

means the master agreement entered into between the parties (which these terms and conditions form part of).

Personal Property

means personal property to which the PPSA applies.

PPSA

means the *Personal Property Securities Act 2009* (Cth).

Proceeds

has the meaning given to that term by the PPSA.

Products

means the products described in the Quote.

Quote

means the quote provided by the Supplier to the Customer of (verbal or in writing, which includes by email) the particulars of the hire arrangement.

Quote Acceptance

means the acceptance of the Quote by the Customer, either verbally or in writing (which includes acceptance by email).

Related Corporate Body

has the meaning given to that term by section 9 *Corporations Act 2001* (Cth).

Return Date

means the date on which the Products are to be returned to the Supplier by the Customer as set out in the Quote (or such other date as agreed in writing between the parties).

Security Interest

in relation to any Products that are Personal Property, has the meaning given to the term Security Interest by the PPSA.

Services

means the services described in the Quote and any additional services contemplated by clause 2(b).

Services Fees

in respect of Services means the fees for those Services specified in the Quote or contemplated by clause 2(b) and any expenses incurred by the Supplier in accordance with the Supplier's policies in the course of the provision of the Services.

Specification

means the specification provided to the Customer by the Supplier in respect of each Product (if any), as amended by the Supplier from time to time.

Supplier

means the supplier specified in the Quote.

Supplier Mark

means any registered or unregistered trade mark owned by, licensed to or nominated by the Supplier from time to time.

Terms and conditions – purchase of products and services

Background

- A The Customer wishes to place orders to purchase Products and Services.
- B The Customer has requested the Supplier to enter into the Master Agreement (which these terms and conditions form part of) with the Customer.
- C If the Supplier accepts an order to purchase Products and Services, the Supplier agrees to supply those Products and Services to the Customer on the terms of the Master Agreement (which these terms and conditions form part of).

Agreed terms

1 Ordering

- (a) The Customer has ordered the Services and the Products by giving the Supplier the executed Quote Acceptance and the Supplier notified the Customer that the Supplier has accepted the Quote Acceptance.
- (b) The Supplier must endeavour to perform the Services in volumes and at times and locations acceptable to the Supplier.
- (c) Subject to payment of the Purchase Price:
 - (i) the Supplier sells to the Customer the Products contemplated by the Quote; and
 - (ii) the Customer buys the Products specified in the Quote for the Purchase Price.
- (d) The Customer acknowledges and agrees that commencement of provision of the Services and delivery of the Products may not occur for two weeks or such longer period acceptable to the Supplier from time to time.
- (e) The Customer acknowledges and agrees that the Customer must not rely on the accuracy or reliability of the Services provided or any results given by the Products and that any such outcomes need to be verified by appropriately qualified personnel of the Customer.
- (f) The Customer must:
 - (i) provide the Supplier with access to the Customer's premises to enable the Supplier to provide the Services;
 - (ii) provide the Supplier with such information and assistance necessary to enable the Supplier to provide the Services; and
 - (iii) cooperate with the Supplier and act reasonably in connection with the Master Agreement (which these terms and conditions form part of) and receipt of the Services.
- (g) The Customer acknowledges and agrees that if the Customer does not comply with clause 1(f) then the Supplier is not obliged to endeavour to supply the Services to the Customer.

2 Fees and risk

- (a) The Customer must pay the Fees for the Services and the Purchase Price for the Products within 30 days of the provision of those Services and delivery of those Products by the Supplier.
- (b) If the Supplier agrees to perform any services in addition to the Services then those services will be performed under the Master Agreement (which these terms and conditions form part of) and the Customer must pay the Supplier's then current fees for those services.
- (c) The Supplier must request a third party to deliver the Products to the address nominated by the Customer at the time the relevant order is made under clause 1(a).

- (d) The Customer bears the risk relating to the Products from the time the Quote Acceptance is accepted by the Supplier.

3 PPSA

- (a) The Supplier retains title in the Products delivered under the Master Agreement (which these terms and conditions form part of) until the Customer has paid both:
 - (i) the Purchase Price of the Products; and
 - (ii) all other money owed by the Customer to the Supplier.
- (b) The Supplier and Customer acknowledge and agree that this clause:
 - (i) secures the Purchase Price of the Products; and
 - (ii) creates a Purchase Money Security Interest in the Products.
- (c) The Supplier and Customer further acknowledge and agree that the Master Agreement (which these terms and conditions form part of) may also create a Security Interest in the Products that is not a Purchase Money Security Interest.
- (d) The Supplier may allocate payments made by the Customer to the Supplier under the Master Agreement (which these terms and conditions form part of), or any other deed or agreement with the Supplier, to any obligation owed by the Customer to the Supplier.
- (e) Once the Customer takes possession of the Products, the Customer must store the Products:
 - (i) separately from other goods of the Customer, so that the Products are not mixed with those other goods; and
 - (ii) in such a way that the Products are recognisable as the property of the Supplier.
- (f) The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with the Supplier exercising its rights under this clause or attempting to do so.
- (g) The parties acknowledge and agree that the PPSA provisions contained in the Master Agreement (including confidentiality obligations) also apply to the transactions contemplated by this document.

4 Use of products

The Customer must only use the Products in accordance with the applicable Specification and any directions of the Supplier from time to time.

5 Warranties

- (a) The parties acknowledge and agree that the manufacturer of the Products may offer a limited warranty of up to two years in relation to the Products subject to conditions.
- (b) The Customer represents and warrants, and it is a condition of the Master Agreement (which these terms and conditions form part of), that:
 - (i) all information provided by the Customer or on the Customer's behalf to the Supplier is accurate and is not, whether by omission of information or otherwise, misleading;
 - (ii) the Customer has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into the Master Agreement (which these terms and conditions form part of);
 - (iii) the Customer did not rely upon any representation made to the Customer by the Supplier or any Related Body Corporate of the Supplier (if any) prior to entry into the Master Agreement (which these terms and conditions form part of); and

Terms and conditions – purchase of products and services

- (iv) any premises at which the Services are to be provided will be safe and secure for the Supplier's personnel.

6 Confidential information

The Customer agrees to keep the Fees for the Services and the Purchase Price of the Products confidential.

7 Liability

7.1 Limitation

- (a) Subject to clause 7.2 and 7.3, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) is limited to resupply of the relevant Products or reperformance of the relevant Services.
- (b) The limitation set out in clause 7.1(a) is an aggregate limit for all claims, whenever made.
- (c) Any claim by the Customer against the Supplier for loss or damage however caused (including by the negligence of the Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) must be made within one month of the Customer becoming entitled to make the claim and any claim not made within one month is absolutely barred.

7.2 Consequential Loss

Subject to clause 7.3, for clarity the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with the Master Agreement (which these terms and conditions form part of).

7.3 Competition and Consumer Act

If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Supplier in connection with the Master Agreement (which these terms and conditions form part of) and the Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 7.1, 7.2 and 8 do not apply to that liability and instead the Supplier's liability for such failure is limited to (at the Supplier's election), in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

8 Indemnity

The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:

- (a) any breach of the Master Agreement (which these terms and conditions form part of) by the Customer;
- (b) any claim by a third party against the Supplier in connection with receipt of the Services or Products supplied to the Customer under the Master Agreement (which these terms and conditions form part of);
- (c) any use of the Products other than in accordance with the Specification;
- (d) personal injury or death of any person (including any employee of the Customer or the Supplier) in connection with receipt of the Services or the use of the Products;
- (e) damage to property in connection with receipt of the Services or the use of the Products; or
- (f) any act or omission of the Customer, its officers, employees or agents.

9 Intellectual property rights and rebranding

- (a) The Customer acknowledges and agrees that nothing in the Master Agreement (which these terms and conditions form

part of) grants the Customer any intellectual property rights (including copyright, trade marks, patents and designs) of the Supplier.

- (b) Subject to clause 7.3, the Customer acknowledges and agrees that the Supplier does not give any express or implied warranties in relation to the Products or the Services including any warranties in relation to:

- (i) use of the Products or Services; or

- (ii) exercise of any rights granted to the Customer under the Master Agreement (which the terms and conditions form part of),

not infringing any third party's intellectual property rights (including copyright, trade marks, patents and designs).

- (c) The Customer:

- (i) must not reverse engineer the Products;

- (ii) acknowledges and agrees that the Products are not defect free, and that the Products may contain defects that cause them to malfunction or not operate in the manner contemplated by any applicable Specification;

- (iii) must immediately notify the Supplier if the Customer suspects that the Products infringe or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) and take any action required by the Supplier in connection with that infringement; and

- (iv) acknowledges and agrees that if the Supplier suspects that the software infringes or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) then the Supplier may modify or replace the Products with alternative products or require the Customer to cease using the Products.

- (d) If the Products include any software:

- (i) subject to the Customer paying the Purchase Price in accordance with clause 2(a), the Supplier grants the Customer a non-exclusive, non-transferable licence of copyright in the software in Australia that the Supplier is authorised to licence to:

- (A) install and run the software for the purpose of using the Products; and

- (B) make a reasonable number of copies of the software for backup purposes;

- (ii) the Customer must not sublicense the rights granted under clause 9(d)(i) or use the software except in the manner permitted under clause 9(d)(i);

- (iii) the Customer must not decompile or otherwise reverse engineer the software;

- (iv) unless specified in the Quote the Customer is responsible for installation of the software;

- (v) the Customer acknowledges and agrees that the Supplier is not obliged to provide any upgrades or updates to the software;

- (vi) the Customer acknowledges and agrees that the software is not error free, and that the software may contain errors that cause it to malfunction or not operate in the manner contemplated by any applicable Specification;

- (vii) the Customer must immediately notify the Supplier if the Customer suspects that the software infringes or may infringe any third party's intellectual property rights (including copyright, trade marks, patents and designs) and take any action required by the Supplier in connection with that infringement; and

- (viii) if the Supplier suspects that the software infringes or may infringe any third party's intellectual property

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rights (including copyright, trade marks, patents and designs) then the Supplier may modify or replace the software with alternative software or require the Customer to cease using the software.

- (e) The Customer must not remove a Supplier Mark from a Product or represent that the Products are associated with any registered or unregistered trade mark other than a Supplier Mark.

10 Term and termination

10.1 Term

The supply commences on the Commencement Date and continues until the Supplier is of the opinion that the Products and Services have been provided to the Customer unless terminated earlier in accordance with this clause 10.

10.2 Termination for breach

If:

- (a) the Customer commits a breach of the Master Agreement (which these terms and conditions form part of); or
- (b) an Insolvency Event occurs in relation to the Customer,

then the Supplier may terminate the Master Agreement (which these terms and conditions form part of) by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.

10.3 Termination for convenience

The Supplier may terminate the Master Agreement (which these terms and conditions form part of) at any time by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.

10.4 Waiver and acknowledgement

- (a) The Customer expressly waives any rights it may have to terminate the Master Agreement (which these terms and conditions form part of).
- (b) The Customer acknowledges that the Supplier may terminate the Master Agreement (which these terms and conditions form part of) under this clause 10 without considering the impact of the termination on the Customer.

10.5 After termination or expiry

- (a) On termination or expiry of the Master Agreement (which these terms and conditions form part of) accrued rights or remedies of a party are not affected.
- (b) Termination of the Master Agreement (which these terms and conditions form part of) will not affect clauses 4, 7, 8 and 9 and any other clause of the Master Agreement (which these terms and conditions form part of) which is expressly or by implication intended to come into force or continue after termination.

11 Force majeure

The Supplier will not be:

- (a) in breach of the Master Agreement (which these terms and conditions form part of) as a result of; or
- (b) liable for,
any failure or delay in the performance of the Supplier's obligations under the Master Agreement (which these terms and conditions form part of) to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Customer.

12 Taxes

- (a) The Customer must pay all stamp duty, taxes, duties,

government charges and other taxes of a similar nature (including fines, penalties and interest) imposed, levied, assessed or payable in Australia or overseas in connection with the Master Agreement (which these terms and conditions form part of).

- (b) Except under clause 12(c), the consideration for a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) does not include GST.
- (c) If a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the GST Act Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Master Agreement (which these terms and conditions form part of) for that Supply); and
 - (ii) the GST Act Supplier must give the GST Act Recipient a Tax Invoice for the Supply.
- (d) If either party has the right under the Master Agreement (which these terms and conditions form part of) to be reimbursed or indemnified by another party for a cost incurred in connection with the Master Agreement (which these terms and conditions form part of), that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (e) In clauses 12(b), 12(c) and 12(d):
 - (i) **GST Act Recipient** has the meaning given to 'Recipient' in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (ii) **GST Act Supplier** means the entity making the Supply; and
 - (iii) other capitalised terms that are not defined in clause 13.1 have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13 Definitions and interpretation

13.1 Definitions

In these terms and conditions:

Accession	has the meaning given to that term in the PPSA.
Bankruptcy Act	means <i>Bankruptcy Act 1966</i> (Cth).
Commencement Date	means the date of the Quote Acceptance.
Consequential Loss	means consequential loss, indirect loss, loss of revenues, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
Customer	means the customer shown on the Quote.
Fees	in respect of Services means the fees for those Services specified in the Quote or contemplated by clause 2(b) and any expenses incurred by the Supplier in accordance with the Supplier's policies in the course of the provision of the Services.
Force Majeure	means any occurrence or omission outside a

Terms and conditions – purchase of products and services

Event	<p>party's control and includes:</p> <ul style="list-style-type: none"> (a) a physical natural disaster including fire, flood, lightning or earthquake; (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (c) epidemic or quarantine restriction; (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; (f) law taking effect after the date of the Master Agreement (which these terms and conditions form part of); (g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and (h) failure of a third party to deliver the Products to the Customer. 	<p>Purchase Price</p> <p>in respect of a Product means the purchase price and cost of delivery for that Product specified in the Quote.</p> <p>Quote</p> <p>means the quote provided by the Supplier to the Customer of (verbal or in writing, which includes by email) the particulars of the supply.</p> <p>Quote Acceptance</p> <p>means the acceptance of the Quote by the Customer, either verbally or in writing (which includes acceptance by email).</p> <p>Related Body Corporate</p> <p>has the meaning given to that term by section 9 <i>Corporations Act 2001</i> (Cth).</p> <p>Security Interest</p> <p>in relation to any Products that are Personal Property, has the meaning given to the term Security Interest by the PPSA.</p> <p>Services</p> <p>means the services described in the Quote and any additional services contemplated by clause 2(b).</p> <p>Specification</p> <p>means the specification provided to the Customer by the Supplier in respect of each Product (if any), as amended by the Supplier from time to time.</p> <p>Supplier</p> <p>means the supplier specified in the Quote.</p> <p>Supplier Mark</p> <p>means any registered or unregistered trade mark owned by, licensed to or nominated by the Supplier from time to time.</p>
Insolvency Event	<p>means any of the following events concerning a party, unless the events take place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval:</p> <ul style="list-style-type: none"> (a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the <i>Corporations Act</i>) is appointed to, or over, any of the property or undertaking of the party; (b) if the party becomes bankrupt; (c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the party; (d) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act; (e) if the party is unable to pay its debts when they become due and payable; (f) if the party ceases to carry on business; or (g) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition. 	
Master Agreement	means the master agreement entered into between the parties (which these terms and conditions form part of).	
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).	
Products	means the products described in the Quote.	
Purchase Money Security Interest	has the meaning given to that term by the PPSA.	

Background

- A The Customer wishes for Supplier to provide the Services.
- B The parties have agreed that Supplier is to provide the Services to the Customer on the terms of the Master Agreement (which these terms and conditions form part of).

Agreed terms

1 Supply of the Services

1.1 Supply

- (a) The Customer may from time to time place a request with Supplier for Services.
- (b) Subject to the Customer paying the Fees in accordance with clause 3, if Supplier notifies the Customer that it accepts a Request then Supplier must endeavour to provide the Services to the Customer in volumes acceptable to Supplier.
- (c) For clarity, Supplier may elect not to accept a Request.
- (d) Supplier may provide any data that forms part of the Deliverables to the Customer in a format acceptable to Supplier.

1.2 Customer requirements

The Customer must:

- (a) provide Supplier with access to the Customer's premises and the necessary facilities and equipment to enable Supplier to provide the Services;
- (b) provide Supplier with a safe and secure working environment at the Customer's premises in accordance with all applicable workplace health and safety laws;
- (c) provide Supplier, in a format and manner acceptable to Supplier, with the Customer Data and any other material, information and assistance (including site calibrations and relevant software versions) necessary to enable Supplier to provide the Services; and
- (d) cooperate with Supplier and act reasonably in connection with the Master Agreement (which these terms and conditions form part of) and receipt of the Services.

1.3 Acknowledgement

The Customer acknowledges and agrees that:

- (a) any timeframes provided by Supplier to the Customer in relation to particular Services are an estimate only, and are not binding on Supplier;
- (b) if the Customer does not comply with clause 1.2 then Supplier is not obliged to supply the Services to the Customer;
- (c) Supplier, in entering into the Master Agreement (which these terms and conditions form part of), is relying on the warranties and on the representations in or under the Master Agreement (which these terms and conditions form part of); and
- (d) Supplier is relying on the accuracy and completeness of the Customer Material in performing the Services.

2 Warranties

2.1 Intellectual property warranty

The Customer represents and warrants that use of the Customer Material will not infringe the Intellectual Property Rights or other rights of any third party.

2.2 Accuracy and reliance warranties

The Customer represents and warrants, and it is a condition of the Master Agreement (which these terms and conditions form part of), that:

- (a) all information and Customer Material provided by the Customer or on the Customer's behalf to Supplier is complete and accurate and is not, whether by omission of information or otherwise, misleading;
- (b) the Customer has not withheld from Supplier any document, information or other fact material to the decision of Supplier to enter into the Master Agreement (which these terms and conditions form part of); and

- (c) the Customer did not rely upon any representation made to the Customer by Supplier or any Related Body Corporate of Supplier (if any) prior to entry into the Master Agreement (which these terms and conditions form part of).

2.3 Acknowledgement

The Customer acknowledges that Supplier is relying on the representations and warranties of the Customer in this clause 2 in entering into the Master Agreement (which these terms and conditions form part of).

3 Fees

3.1 Fees

- (a) The Customer must pay the Fees and Expenses to Supplier in the manner contemplated by the Quote.
- (b) If there is a dispute about whether a Fee, Expense or other amount contemplated by the Master Agreement (which these terms and conditions form part of) is payable or available, the Customer must not withhold the amount in dispute.
- (c) The Fees may change during the Term in the manner contemplated by the Quote.

3.2 Invoices

- (a) Supplier must invoice the Customer from time to time for the Fees and Expenses.
- (b) The Customer must pay an invoice issued under clause 3.2(a) within 14 days after the date of issue of the invoice.

3.3 Deferral of performance

If the Customer fails to pay the Fees and Expenses in accordance with the Master Agreement (which these terms and conditions form part of), without limiting any other remedies available to Supplier, Supplier may defer performance of all Services until the outstanding Fees and Expenses are paid.

4 Term and termination

4.1 Term

The provision of the Services commences on the Commencement Date and continues until terminated in accordance with this clause 4.

4.2 Termination for breach

- (a) If:
- (i) the Customer commits a breach of the Master Agreement (which these terms and conditions form part of); or
 - (ii) an Insolvency Event occurs in relation to the Customer,
- then Supplier may terminate the Master Agreement (which these terms and conditions form part of) by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.
- (b) If Supplier:
- (i) commits a material breach of the Master Agreement (which these terms and conditions form part of) that has a material and adverse affect on the Customer; and
 - (ii) fails to remedy that breach within 60 days of receiving written notice from the Customer requiring that Supplier remedy that breach,

then the Customer may terminate the Master Agreement (which these terms and conditions form part of) by written notice to Supplier in which case the Master Agreement (which these terms and conditions form part of) will terminate immediately.

4.3 Termination for convenience

- (a) Subject to clause 4.3(b) either party may terminate the Master Agreement (which these terms and conditions form part of) at any time by one month's written notice to the other party.
- (b) If the Customer terminates the Master Agreement (which these terms and conditions form part of) under clause 4.3(a), the

Services terms and conditions

Customer must pay to Supplier the costs (as notified by Supplier to the Customer), which have or will be incurred by Supplier in connection with accepted Requests, including staffing costs.

4.4 Waiver and acknowledgement

- (a) The Customer expressly waives any rights it may have to terminate the Master Agreement (which these terms and conditions form part of) other than as contemplated by clauses 4.2(b) or 4.3.
- (b) The Customer acknowledges that Supplier may terminate the Master Agreement (which these terms and conditions form part of) under this clause 4 without considering the impact of the termination on the Customer.

4.5 After termination

On termination of the Master Agreement (which these terms and conditions form part of):

- (a) accrued rights or remedies of a party are not affected; and
- (b) the Customer must deliver to Supplier any of Supplier's Confidential Information or other property in the Customer's care, custody or control.

4.6 Survival

Termination of the Master Agreement (which these terms and conditions form part of) will not affect clauses 4.5, 5.1, 5.3, 6, 7 or 8 or any provision of the Master Agreement (which these terms and conditions form part of) which is expressly or by implication intended to come into force or continue on or after the termination.

5 Intellectual property

5.1 Licence of Supplier material

- (a) Subject to the Customer paying the Fees in accordance with the Master Agreement (which these terms and conditions form part of), Supplier grants to the Customer a non-exclusive, licence to use each Deliverable solely for the purpose for which it was provided to the Customer.
- (b) The licence granted under clause 5.1(a) does not include the right to sublicense to third parties.

5.2 No assignment

Subject to clause 5.1(a), nothing in the Master Agreement (which these terms and conditions form part of) grants the Customer any Intellectual Property Rights or other rights in any Supplier Material.

5.3 Licence of customer material

- (a) The Customer grants to Supplier a non-exclusive, irrevocable, global licence to exercise the Intellectual Property Rights in any Customer Material in connection with Supplier providing Services to the Customer including by modifying and using the Customer Material.
- (b) The licence granted under clause 5.3(a) includes the right to sublicense to third parties.

6 Confidential information

6.1 Obligations of confidence

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by the Master Agreement (which these terms and conditions form part of), any Confidential Information of the other party provided to or obtained by that party prior to or after entry into the Master Agreement (which these terms and conditions form part of).

6.2 Exclusions

The obligations of confidence in clause 6.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (ii) before disclosing any information, gives a reasonable amount

of written notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence;

- (b) that is in the public domain otherwise than as a result of a breach of the Master Agreement (which these terms and conditions form part of) or other obligation of confidence; or
- (c) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

6.3 Restriction on disclosure

Each party may use and disclose Confidential Information of the other party only:

- (a) with the prior written consent of the other party; or
- (b) to that party's directors, agents, related bodies corporate, third party service providers, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under the Master Agreement (which these terms and conditions form part of).

7 Limitation of liability

7.1 Exclusion

Supplier is not liable for any loss or damage, however caused, in connection with any misleading, inaccurate or incomplete Customer Material, and any rectification work required due to misleading, inaccurate or incomplete Customer Material must be the subject of a new Request.

7.2 Limitation

- (a) Subject to clauses 7.1, 7.3 and 7.5, any liability of Supplier for any loss or damage, however caused (including by the negligence of Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) is limited to the lesser of:
 - (i) at Supplier's option, Supplier resupplying the relevant Services or refunding the Fees attributable to those Services to the Customer; and
 - (ii) \$10,000.
- (b) The limitation set out in clause 7.2(a) is an aggregate limit for all claims, whenever made.

7.3 Consequential loss

- (a) Subject to clause 7.5, Supplier is not liable for any Consequential Loss however caused (including by the negligence of Supplier), suffered or incurred by the Customer in connection with the Master Agreement (which these terms and conditions form part of).
- (b) Consequential Loss in clause 7.3 means:
 - (i) indirect loss;
 - (ii) consequential loss;
 - (iii) loss of revenues;
 - (iv) loss of reputation;
 - (v) loss of profits;
 - (vi) loss of bargain;
 - (vii) loss of actual or anticipated savings;
 - (viii) lost opportunities, including opportunities to enter into arrangements with third parties; and
 - (ix) loss or corruption of data.

7.4 Seriousness or nature

For clarity, and without limiting clauses 7.1 and 7.3, the parties agree that clauses 7.1 and 7.3 are to apply in connection with a breach of the Master Agreement (which these terms and conditions form part of), anticipated breach of the Master Agreement (which these terms and conditions form part of) and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

7.5 Liability for consumer guarantees

If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by the Supplier in connection with the Master Agreement (which these terms and conditions form part of), and Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 7.1, 7.3 and 8.1 do not apply to that liability and instead Supplier's liability for such breach is limited to, in the case of a supply of goods, Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, Supplier supplying the services again or paying the cost of having the services supplied again.

8 Indemnity

8.1 Customer indemnity

The Customer is liable for, and indemnifies Supplier from and against, all loss or damage (including legal costs) incurred or suffered by Supplier however caused in connection with:

- (a) any breach of the Master Agreement (which these terms and conditions form part of) by the Customer;
- (b) any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with the Customer Material;
- (c) use of the Supplier Material by the Customer;
- (d) any misleading, inaccurate or incomplete Customer Material; or
- (e) any allegation or claim by a third party in connection with the Services.

8.2 Continuing obligation

Each indemnity contained in the Master Agreement (which these terms and conditions form part of) is a continuing obligation notwithstanding:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and it is not necessary for Supplier to incur expense or make payment before enforcing or making a claim under an indemnity.

9 Change Control

- (a) The Customer may, from time to time, propose amendments to the Services by giving written notice to Supplier.
- (b) Supplier may accept or reject an amendment proposed under clause 9(a).
- (c) If Supplier accepts a change proposed under clause 9(a), Supplier must provide the Customer with written notice of the increased Fees due to the proposed change to the Services.
- (d) The Customer may elect to accept or reject the increased Fees notified under clause 9(c) by written notice to Supplier.
- (e) If the Customer accepts the increased Fees in relation to amendments proposed under clause 9(a) those Fees and the proposed amendments will apply to the Master Agreement (which these terms and conditions form part of) from the date of that written notice.

10 Representatives

- (a) The Customer Representative will represent the Customer for the day to day purposes of the Master Agreement (which these terms and conditions form part of).
- (b) Supplier Representative will represent Supplier for the day to day purposes of the Master Agreement (which these terms and conditions form part of).

11 Force majeure

Supplier will not be:

- (a) in breach of the Master Agreement (which these terms and conditions form part of) as a result of; or
- (b) liable for,

any failure or delay in the performance of Supplier's obligations under the Master Agreement (which these terms and conditions form part of) to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Customer.

12 Costs and taxes

- (a) Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of the Master Agreement (which these terms and conditions form part of).
- (b) The Customer must pay all stamp duty (including penalties and interest) assessed or payable in connection with the Master Agreement (which these terms and conditions form part of).
- (c) Subject to clause 13, the Customer must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of the Master Agreement (which these terms and conditions form part of).

13 GST

- (a) In this clause 13:
 - (i) '**GST Act Supplier**' means the entity making the Supply; and
 - (ii) other capitalised terms used that are not defined in clause 14.1 have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Except under this clause 13, the consideration for a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) does not include GST.
- (c) If a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Master Agreement (which these terms and conditions form part of) for that Supply); and
 - (ii) the GST Act Supplier must give the **Recipient** a Tax Invoice for the Supply.
- (d) If either party has the right under the Master Agreement (which these terms and conditions form part of) to be reimbursed or indemnified by another party for a cost incurred in connection with the Master Agreement (which these terms and conditions form part of), that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

14 Definitions and interpretation

14.1 Definitions

In these terms and conditions:

Commencement Date	means the date of the Quote Acceptance.
Confidential Information	of a party means the terms of the Master Agreement (which these terms and conditions form part of) and any information: <ul style="list-style-type: none"> (a) relating to the business and affairs of that party; (b) relating to the customers, clients, employees, sub contractors or other persons doing business with that party; (c) which is by its nature confidential; (d) which is designated as confidential by that party; or (e) which the other party knows or ought to know, is confidential,

Services terms and conditions

	and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of Supplier, includes Supplier Material.				debt agreement under part IX <i>Bankruptcy Act 1966</i> (Cth);
Consequential Loss	has the meaning given in 7.3(b).				(c) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act;
Corporations Act	means <i>Corporations Act 2001</i> (Cth).				(d) the person ceases to carry on business; or
Customer	means the customer specified in the Quote.				(e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.
Customer Data	means the data that Supplier notifies the Customer that Supplier requires in connection with performing the Services.				
Customer Material	means the Customer Data and any material provided by or to which access is given by the Customer to Supplier for the purposes of the Master Agreement (which these terms and conditions form part of) including documents, data, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trade marks, logos, schedules and data stored by any means.	Intellectual Property Rights			means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.
Customer Representative	means the customer representative set out in the Quote.	Master Agreement			means the master agreement entered into between the parties (which these terms and conditions form part of).
Deliverable	means a deliverable provided to the Customer by Supplier in the course of the Services.	Quote			means the quote provided by the Supplier to the Customer of (verbal or in writing, which includes by email) the particulars.
Expenses	means any expenses incurred by Supplier in connection with the Services, including consumables, travel, accommodation and meals.	Quote Acceptance			means the acceptance of the Quote by the Customer, either verbally or in writing (which includes acceptance by email).
Fees	mean the fees specified in the Quote.	Related Body Corporate			has the meaning given to that term by section 9 Corporations Act.
Force Majeure Event	means any occurrence or omission outside a party's control and includes: <ul style="list-style-type: none"> (a) a physical natural disaster including fire, flood, lightning or earthquake; (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (c) epidemic or quarantine restriction; (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; (f) failure of a third party service provider to Supplier; (g) law taking effect after the date of the Master Agreement (which these terms and conditions form part of); and (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors. 	Request			means a request contemplated by clause 1.1(a).
		Services			means the services specified in the Quote.
		Supplier			means the supplier specified in the Quote.
		Supplier Material			means the Deliverables and any material provided by or to which access is given by Supplier to the Customer for the purposes of the Master Agreement (which these terms and conditions form part of) including documents, data, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.
		Supplier Representative			means Supplier representative set out in the Quote.
		Term			means the term contemplated by clause 4.1.
Insolvency Event	in the context of a person means: <ul style="list-style-type: none"> (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person; (b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X <i>Bankruptcy Act 1966</i> (Cth) or a 				

Software and services terms and conditions

Background

- AThe Customer wishes for the Supplier to license the Software and provide the Services.
- BThe parties have agreed that the Supplier is to license the Software and provide the Services to the Customer on the terms of the Master Agreement (which these terms and conditions form part of).

Agreed terms

1Supply of the Software and the Services

1.1Supply

Subject to the Customer paying the Fees, the Supplier must endeavour to provide the Services to the Customer in volumes acceptable to the Supplier.

1.2Customer requirements

- (a)The Customer must:

(i)provide the Supplier with such information and assistance necessary to enable the Supplier to provide the Software and the Services;

(ii)provide any Customer Data requested by the Supplier in a form acceptable to the Supplier;

(iii)provide the Supplier with access to the Customer’s premises where required by the Supplier;

(iv)have all resources necessary to receive the Software and the Services, including hardware, software, telecommunications resources and internet access acceptable to the Supplier;

(v)comply with the recommendations of the Supplier from time to time in relation to the Customer’s network and use of the Software; and

(vi)cooperate with the Supplier, act reasonably and follow the Supplier’s directions in connection with the Master Agreement (which these terms and conditions form part of) and receipt of the Software and the Services.
- (b)The Customer acknowledges and agrees that:

(i)if the Customer does not comply with clause 1.2(a) then the Supplier is not required to endeavour to supply the Software and the Services to the Customer; and

(ii)if the Customer does not have the minimum hardware and software recommended by the Supplier, the Customer’s ability to receive the Software and the Services may be diminished.

1.3Resupply

The Customer must not resupply the Software or the Services to any third party and must only use the Software and the Services for its own benefit.

1.4Service Levels

Any service levels nominated by the Supplier are non-binding targets only and the Supplier is not required to meet the service levels.

1.5Acknowledgement

- (a)The Customer acknowledges and agrees that:

(i)any timeframes provided by the Supplier to the Customer in relation to the Software and the Services are estimates only and are not binding on the Supplier;

(ii)the Customer must not rely on the accuracy of the data and will gain independent verification before relying on such data; and

(iii)the Software and provision of the Services may not be available from time to time.

1.6Prohibited conduct

The Customer must not:

- (a)perform any illegal or unlawful acts in connection with receipt or

use of the Software and the Services; or

- (b)use the Software and the Services in any manner that is unacceptable to the Supplier.

1.7Suspension

Without limiting any other remedy the Supplier may have under the Master Agreement (which these terms and conditions form part of) or at law, the Supplier may suspend the Customer’s use of the Software and the Services at any time, including if the Supplier suspects that the Customer is in breach of the Master Agreement (which these terms and conditions form part of).

2Other Services

2.1Additional Services

- (a)If requested by the Customer, the Supplier may agree to perform services in addition to the Services (including installation of the Software on a Device, support services or customisations or enhancements to the Software).
- (b)For clarity, the Supplier may elect not to provide any Additional Services.

2.2Training

The Supplier may from time to time provide training to the Customer in relation to the Software.

3Licence of Software

3.1Licence

- (a)Subject to the Customer paying the Fees, the Supplier grants the Customer a non-exclusive, non-transferable licence for the Term in the Territory to:

(i)run and install the Software on the Devices; and

(ii)receive the Services,

for the Permitted Purpose.
- (b)The licence contemplated by clause 3.1(a) includes the right to allow Related Bodies Corporate of the Customer to use the Software and receive the Services in the manner contemplated by clause 3.1(a).

3.2Software versions

The Customer must:

- (a)use the latest version of the Software; and
- (b)not install Upgrades in any order other than the order in which the Upgrades were released by the Supplier.

3.3Infringement exceptions

The parties agree that although copyright in the Software is not infringed in the circumstances contemplated by sections 47D, 47E and 47F *Copyright Act 1968* (Cth), the Customer agrees not to:

- (a)decompile, disassemble or reverse engineer the whole or any part of the Software;
- (b)use the Software other than as expressly permitted under clause 3.1;
- (c)make any modification to the Software;
- (d)merge all or any part of the Software with any other software.

4PPSA warranties and acknowledgments

- (a)Clause 4 shall apply if the Supplier believes that the document or a transaction in connection with it is or contains a Security Interest or a Purchase Money Security Interest in favour of the Supplier.
- (b)For the purposes of clause 4, the capitalised terms not otherwise defined in the Master Agreement (which these terms and conditions form part of) have the meaning given to them in the PPSA.
- (c)The parties acknowledge and agree that the Supplier has a Security Interest in the Software as security for the Supplier’s

Software and services terms and conditions

title in the Software licensed to the Customer under the Master Agreement (which these terms and conditions form part of) and for the Customer's obligation to pay the Fees as required by the Master Agreement (which these terms and conditions form part of).

- (d) The Customer must not grant or allow another to hold a Security Interest in:
- (i) the Software;
 - (ii) the Proceeds of the Software; or
 - (iii) any Devices to which the Software are installed or affixed.
- (e) The parties acknowledge and agree that the PPSA provisions contained in the Master Agreement (including which these terms and conditions form part of) also apply.

5 Warranties

5.1 Customer Material warranty

The Customer represents and warrants that use of the Customer Material by the Supplier in accordance with the Master Agreement (which these terms and conditions form part of) will not infringe the Intellectual Property Rights or other rights of any third party.

5.2 Accuracy and reliance warranties

The Customer represents and warrants, and it is a condition of the Master Agreement (which these terms and conditions form part of), that:

- (a) all information provided by the Customer or on the Customer's behalf to the Supplier is accurate and is not, whether by omission of information or otherwise, misleading;
- (b) the Customer has not withheld from the Supplier any document, information or other fact material to the decision of the Supplier to enter into the Master Agreement (which these terms and conditions form part of); and
- (c) the Customer did not rely upon any representation made to the Customer by the Supplier or any Related Body Corporate of the Supplier (if any) prior to entry into the Master Agreement (which these terms and conditions form part of).

5.3 Repeating warranties

The representations made and warranties given in this clause 4 are regarded as repeated each day during the Term with respect to the facts and circumstances then subsisting.

5.4 Acknowledgement

Subject to clause 10(e), the Customer acknowledges and agrees that:

- (a) the Software and the Services will not be error free;
- (b) the Supplier makes no representation and gives no warranty that use of the Software or receipt of the Services or Additional Services will not infringe the Intellectual Property Rights or other rights of any third party; and
- (c) the Supplier makes no representation and gives no warranty that the Software, the Services or the Additional Services will be free from defects, fit for any particular purpose or function in accordance with the Documentation.

6 Fees

6.1 Fees

- (a) The Customer must pay the Fees to the Supplier.
- (b) If there is a dispute about whether a Fee or other amount contemplated by the Master Agreement (which these terms and conditions form part of) is payable or available, the Customer must not withhold the amount in dispute.
- (c) The Fees may change during the Term in the manner contemplated by the Quote.

6.2 Invoices

- (a) The Supplier must invoice the Customer from time to time for the Fees.
- (b) The Customer must pay an invoice issued under clause 6.2(a)

within 14 days after the date of issue of the invoice.

6.3 Suspension of performance

If the Customer fails to pay the Fees in accordance with the Master Agreement (which these terms and conditions form part of) then, without limiting any other remedies available to the Supplier, the Supplier may suspend performance of all or any part of the Services and the Additional Services and suspend operation of the Software on the Devices until the outstanding Fees are paid.

7 Term and termination

7.1 Term

The supply and license commences on the Commencement Date and continues for the Initial Period and each Rollover Period unless terminated earlier in accordance with this clause 6.

7.2 Termination for breach

- (a) If:
 - (i) the Customer commits a breach of the Master Agreement (which these terms and conditions form part of); or
 - (ii) an Insolvency Event occurs in relation to the Customer,then the Supplier may terminate the Master Agreement (which these terms and conditions form part of) by written notice to the Customer in which case the Master Agreement (which these terms and conditions form part of) will terminate on the date specified in that written notice or, if no date is specified, immediately.
- (b) If the Supplier:
 - (i) commits a material breach of a fundamental term of the Master Agreement (which these terms and conditions form part of) that has a material and adverse effect on the Customer; and
 - (ii) fails to remedy that breach within 60 days of receiving written notice from the Customer requiring that the Supplier remedy that breach,

then the Customer may terminate the Master Agreement (which these terms and conditions form part of) by written notice to the Supplier in which case the Master Agreement (which these terms and conditions form part of) will terminate immediately.

7.3 Termination for convenience

- (a) The Supplier may terminate the Master Agreement (which these terms and conditions form part of) at any time by written notice to the Customer.
- (b) The Customer may terminate the Master Agreement (which these terms and conditions form part of) by one month's written notice given to the Supplier at any time after the expiry of the Initial Period.

7.4 After termination

On termination of the Master Agreement (which these terms and conditions form part of):

- (a) accrued rights or remedies of a party are not affected;
- (b) the licence contemplated by clause 3.1 ceases and the Customer must cease using the Software;
- (c) the Customer must deliver to the Supplier any of the Supplier's Confidential Information or other property in the Customer's care, custody or control; and
- (d) the Supplier may delete or destroy any Customer Material in its possession.

7.5 Survival

Termination or expiry of the Master Agreement (which these terms and conditions form part of) will not affect clauses 4, 7.3(a), 8.2, 9, 10, 11 or any provision of the Master Agreement (which these terms and conditions form part of) which is expressly or by implication intended to come into force or continue on or after the termination.

8 Intellectual property

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8.1 No assignment

Except as contemplated by clause 3.1, nothing in the Master Agreement (which these terms and conditions form part of) grants to the Customer any Intellectual Property Rights or other rights of the Supplier.

8.2 Licence of Customer Material

- (a) The Customer grants to the Supplier a non-exclusive, irrevocable, perpetual, global licence to exercise the Intellectual Property Rights in the Customer Material:
 - (i) in connection with the Supplier providing the Services and the Additional Services to the Customer; and
 - (ii) for benchmarking purposes.
- (b) The licence granted under clause 8.2(a) includes the right to sublicense to third parties.

8.3 No use of Supplier's marks

The Customer must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trade marks or logos of the Supplier except with the prior written consent of the Supplier.

8.4 Use of Customer name

The Supplier may use the Customer's name and trade mark on the Supplier's website and advertising or promotional material, and may disclose that the Customer is a customer of the Supplier.

9 Confidential information

9.1 Obligations of confidence

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by the Master Agreement (which these terms and conditions form part of), any Confidential Information of the other party provided to or obtained by that party prior to or after entry into the Master Agreement (which these terms and conditions form part of).

9.2 Exclusions

The obligations of confidence in clause 9.1 do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (ii) before disclosing any information, gives a reasonable amount of written notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence;
- (b) that is in the public domain otherwise than as a result of a breach of the Master Agreement (which these terms and conditions form part of) or other obligation of confidence; or
- (c) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

9.3 Restriction on disclosure

- (a) Each party may use and disclose Confidential Information of the other party only:
 - (i) with the prior written consent of the other party; or
 - (ii) to that party's directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under the Master Agreement (which these terms and conditions form part of).
- (b) If either party discloses Confidential Information under clause 9.3(a), that party must ensure that such information is kept confidential by the person to whom it is disclosed and is only used for the purposes of the exercise of rights or the performance of obligations under the Master Agreement (which these terms and conditions form part of).

9.4 Injunctive relief

Each party acknowledges that:

- (a) the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the other party, and that monetary damages would be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of this clause 9.

10 Limitation of liability

- (a) Subject to clauses 10(c) and 10(e), any liability of the Supplier for loss or damage however caused (including by the negligence of the Supplier), suffered by the Customer in connection with the Master Agreement (which these terms and conditions form part of) is limited to the Fees paid by the Customer in the 12 months prior to the Customer first suffering loss in connection with the Master Agreement (which these terms and conditions form part of).
- (b) The limitation set out in this clause 9 is an aggregate limit for all claims, whenever made.
- (c) Subject to clause 10(e), the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with the Master Agreement (which these terms and conditions form part of).
- (d) Except as contemplated by clause 10(e), nothing in the Master Agreement (which these terms and conditions form part of) is intended to limit any rights of the Customer under the *Competition and Consumer Act 2010* (Cth).
- (e) If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Supplier in connection with the Master Agreement (which these terms and conditions form part of) and the Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 10(a) and 10(c) do not apply to that liability and instead the Supplier's liability for such failure is limited to (at the Supplier's election):
 - (i) in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or
 - (ii) in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

11 Indemnity

11.1 Customer indemnity

The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:

- (a) the Customer's use of the Software or receipt of the Services or the Additional Services;
- (b) any breach of the Master Agreement (which these terms and conditions form part of) by the Customer;
- (c) personal injury or death of any person in connection with the Customer's use of the Software, the Services or the Additional Services;
- (d) any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with the Customer Material, the Software, the Services or the Additional Services; or
- (e) any claim or allegation that the exercise of the rights contemplated by clause 8.2 infringe the Intellectual Property Rights or other right of any third party.

11.2 Continuing obligation

Each indemnity contained in the Master Agreement (which these terms and conditions form part of) is a continuing obligation notwithstanding:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and it is not necessary for the Supplier to incur expense or make payment before enforcing or making a claim under an indemnity.

12 Representatives

- (a) The Supplier Representative will represent the Supplier for the day to day purposes of the Master Agreement (which these terms and conditions form part of).
- (b) The Customer Representative will represent the Customer for the day to day purposes of the Master Agreement (which these terms and conditions form part of).

13 Force majeure

The Supplier will not be:

- (a) in breach of the Master Agreement (which these terms and conditions form part of) as a result of; or
- (b) liable for,

any failure or delay in the performance of the Supplier's obligations under the Master Agreement (which these terms and conditions form part of) to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Customer.

14 Costs and taxes

14.1 Stamp duty

The Customer must pay all stamp duty (including penalties and interest) assessed or payable in connection with the Master Agreement (which these terms and conditions form part of).

14.2 Other taxes

Subject to clause 14, the Customer must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of the Master Agreement (which these terms and conditions form part of).

15 GST

- (a) Any words capitalised in this clause 14 and not already defined in clause 16 have the meaning given to those words in the GST Act.
- (b) Except under this clause 14, the consideration for a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) does not include GST.
- (c) If a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Master Agreement (which these terms and conditions form part of) for that Supply); and
 - (ii) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) For clarity, the GST payable under clause 14(c) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
- (e) If either party has the right under the Master Agreement (which these terms and conditions form part of) to be reimbursed or indemnified by another party for a cost incurred in connection with the Master Agreement (which these terms and conditions form part of), that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be

claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

- (f) Where a Supply made under or in connection with the Master Agreement (which these terms and conditions form part of) is a Progressive or Periodic Supply, clause 14(c) applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

16 General

- (a) The laws of Queensland, Australia govern the Master Agreement (which these terms and conditions form part of).
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- (c) Where the Master Agreement (which these terms and conditions form part of) contemplates that the Supplier may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, the Supplier may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless the Master Agreement (which these terms and conditions form part of) expressly requires otherwise.
- (d) The Customer must not assign, in whole or in part, or novate the Customer's rights and obligations under the Master Agreement (which these terms and conditions form part of) without the prior written consent of the Supplier.
- (e) The Supplier may assign its interest under the Master Agreement (which these terms and conditions form part of).
- (f) Time is not of the essence in the performance of obligations under the Master Agreement (which these terms and conditions form part of) except in relation to performance of payment obligations.
- (g) Unless expressly stated otherwise, the Master Agreement (which these terms and conditions form part of) does not create a relationship of employment, trust, agency or partnership between the parties.
- (h) Each provision of the Master Agreement (which these terms and conditions form part of) will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- (i) The Master Agreement (which these terms and conditions form part of) represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (j) The Supplier may subcontract the performance of all or any part of the Supplier's obligations under the Master Agreement (which these terms and conditions form part of).
- (k) A right under the Master Agreement (which these terms and conditions form part of) may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- (l) Without limiting any other remedies available to the Supplier, if the Customer fails to pay any amount payable under the Master Agreement (which these terms and conditions form part of), the Customer must pay Interest on that amount.
- (m) The Customer must comply with all applicable laws in connection with the use of the Software and receipt of the Services and the Additional Services.

17 Definitions and interpretation

17.1 Definitions

In these terms and conditions:

Additional Services means the additional services contemplated by clause 2.1.

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Commencement Date	means the date of the Quote Acceptance.	
Confidential Information	<p>of a party means the terms of the Master Agreement (which these terms and conditions form part of) and any information:</p> <ul style="list-style-type: none"> (a) relating to the business and affairs of that party; (b) relating to the customers, clients, employees, sub contractors or other persons doing business with that party; (c) which is by its nature confidential; (d) which is designated as confidential by that party; or (e) which the other party knows or ought to know, is confidential, <p>and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of the Supplier, includes the Software, the Supplier Material and the Fees.</p>	<ul style="list-style-type: none"> (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; (f) law taking effect after the date of the Master Agreement (which these terms and conditions form part of); (g) disruption or unavailability of the internet; (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and (i) failure of a third party service provider to the Supplier to provide services, including hosting services.
Consequential Loss	<p>means:</p> <ul style="list-style-type: none"> (a) consequential loss; (b) indirect loss; (c) loss of revenues; (d) loss of reputation; (e) loss of profits; (f) loss of bargain; (g) loss of actual or anticipated savings; (h) lost opportunities, including opportunities to enter into arrangements with third parties; and (i) loss or corruption of data. 	<p>GST Act means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).</p> <p>GST Act Supplier means the entity making the Supply.</p> <p>Initial Period means the initial period specified in the Quote.</p> <p>Insolvency Event in the context of a person means:</p> <ul style="list-style-type: none"> (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person; (b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X <i>Bankruptcy Act 1966</i> (Cth) or a debt agreement under part IX <i>Bankruptcy Act 1966</i> (Cth); (c) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act; (d) the person ceases to carry on business; or (e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).	
Customer	means the customer specified in the Quote.	
Customer Data	means any data provided by the Customer to the Supplier when using the Services.	
Customer Material	means the Customer Data and any material provided by or to which access is given by the Customer to the Supplier for the purposes of the Master Agreement (which these terms and conditions form part of) including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, trade marks, logos, schedules and data stored by any means.	
Customer Representative	means the customer representative specified in the Quote.	
Device	means the device contemplated by the Quote.	
Documentation	means any documentation provided by the Supplier to the Customer in connection with the Software, the Services or the Additional Services.	<p>Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.</p>
Fees	means the fees specified in the Quote.	
Force Majeure Event	<p>means any occurrence or omission outside a party's control and:</p> <ul style="list-style-type: none"> (a) a physical natural disaster including fire, flood, lightning or earthquake; (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (c) epidemic or quarantine restriction; (d) ionising radiation or contamination by radioactivity from any nuclear waste 	<p>Interest means interest on any payment owing under the Master Agreement (which these terms and conditions form part of) calculated:</p> <ul style="list-style-type: none"> (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate

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- permitted by applicable law; and
- (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant interest.

Master Agreement	means the master agreement entered into between the parties (which these terms and conditions form part of).
Permitted Purpose	means the permitted purpose specified in the Quote.
Progressive or Periodic Supply	means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.
PPSA	means <i>Personal Property Securities Act 2009</i> (Cth).
Quote	means the quote provided by the Supplier to the Customer of (verbal or in writing, which includes by email) the particulars of the supply and license.
Quote Acceptance	means the acceptance of the Quote by the Customer, either verbally or in writing (which includes acceptance by email).
Related Body Corporate	has the meaning given to that term by section 9 Corporations Act.
Related Bodies Corporate	has the meaning given to it in the Corporations Act.
Rollover Period	means: <p>(c) the period equal to the rollover period specified in the Quote from the expiry of the Initial Period; and</p> <p>(d) each subsequent period of that length.</p>
Services	means the services specified in the Quote.
Software	means the software specified in the Quote, as modified and configured in accordance with the Master Agreement (which these terms and conditions form part of), including any Upgrades.
Supplier	means the supplier specified in the Quote.
Supplier Representative	means the supplier representative specified in the Quote.
Supplier Material	means any material provided by or to which access is given by the Supplier to the Customer for the purposes of the Master Agreement (which these terms and conditions form part of) including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means and includes the Software.
Term	means the term contemplated by clause 7.1.
Territory	means the country of Australia.
Upgrades	means any update or upgrade to the Software made available to the Customer by the Supplier under the Master Agreement (which these terms and conditions form part of).