

RIB CX STANDARD– GENERAL TERMS AND CONDITIONS

The below terms and conditions apply to the Customer's use of the Supplier Product as detailed in the applicable Quote:

1. Definitions and Interpretation

For these General Terms and Conditions:

"Acceptance Testing" means the testing performed to determine if the Product is capable of functioning in a manner compatible with the Customer's systems and applications (and Project Collaborator's systems and applications, if applicable).

"ACL" means Schedule 2 to the Competition and Consumer Act 2010 (Cth) or the corresponding provisions of the fair trading legislation.

"Agreement" has the meaning given to that term in clause 2.1.

"Agreement Start Date" means the date specified as Agreement Start Date in the Quote.

"Anti-Corruption Law" means all applicable laws which prohibit the conferring of any gift, payment or other benefit on any person or any officer, employee, agent or advisor of such person including but not limited to the French "Sapin II" Law, the United States' Foreign Corrupt Practices Act, and the United Kingdom Bribery Act or which prohibit money laundering, tax evasion or the facilitation thereof.

"API Fee" means the fee for the licence to use the application programming interface specified in the Fee Schedule.

"Archive Phase" means the Customer has "read-only" access to the Internet Service.

"Archiving Rate" means the fee as defined in the Fee Schedule which pertains to the Archive Phase.

"Business Day" means any day, other than a Saturday, Sunday or recognised public holiday in the State in which the Customer Premises are located.

"CCA" means the *Competition and Consumer Act 2010 (Cth)*.

"CoE" means centre of excellence.

"CoE Consulting Service" means those services specified in clause 3.5.

"CoE Consulting Fee" means the fee for the CoE Consulting Service specified in the Fee Schedule.

"Claim" means any claim, demand or proceeding arising out of any cause of action (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action).

"Confidential Information" means all confidential, non-public, commercially sensitive or proprietary information, regardless of how the information is stored or delivered, that is disclosed by a party (**Disclosing Party**) to any other party (**Receiving Party**) or otherwise exchanged between the parties before, on or after the date of this Agreement, and designated by the Disclosing Party as confidential or which the Receiving Party knows, or ought to know, is confidential and includes the terms of this Agreement; and without limiting the preceding it, includes:

- information relating to the Personnel, policies or business strategies of Supplier; and
 - Customer Data,
- but does not include information that: existed within the public domain prior to disclosure to the Recipient Party or without any

Information; or that becomes publicly known other than as a result of a breach by the Receiving Party of its obligations of confidentiality; was lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party and is not subject to any obligations of confidentiality at the time of disclosure; was lawfully disclosed to the Receiving Party by a third party without any obligations of confidentiality to the Disclosing Party; or was developed by a party on its own without reference to the other party's Confidential of a breach of this Agreement or applicable law.

"Consequential Loss" means (a) any Loss suffered by a party as a result of a breach of this Agreement or another act or omission which cannot reasonably be considered to arise directly and naturally from that breach, act or omission; and (b) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss or damage to or corruption of data, loss of value of equipment, loss of goodwill, loss of or damage to reputation, loss of opportunity or expectation loss.

"Customer Data" means all data, information, records, files and materials provided by the Customer or by a nominee of the Customer to Supplier or stored in the Product and includes user-generated content of the Customer.

"Customer Premises" means the address specified for the Customer in the Quote.

"Disclosing Party" has the meaning given in the definition of Confidential Information.

"Documentation" means any presentation material, brochures, emails, online help or other materials authored or owned by Supplier relating to the Services (including the Product).

"Export Service" means the export by the Supplier of Customer Data from the Internet Service.

"Export Fee" is a fee for Export Service as defined in the Fee Schedule of the Quote and payable in accordance with clause 10.4.

"Fee Schedule" means the Fee, Invoice and Payment Schedule as described in the Quote.

"Force Majeure" means an event beyond the reasonable control of a party to this Agreement and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement including acts or omissions of third party network operators or suppliers, lightning, storm, flood, fire, earthquake, forces of nature, acts of God, war, terrorism, riot, insurrection, civil disorders, rebellions or revolution, strike or other industrial action, explosion, blockade, lockout, ionizing radiation, changes in law taking effect after the Agreement Start Date.

"GST" means the goods and services tax as provided for by the GST Law.

"GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Harmful Code" means any computer code that is intended or known to be harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised disclosure or destruction or corruption of data including viruses, worms, spyware, adware, keyloggers, trojans, and any new types of programmed threats that may be classified.

of equipment, products technology, processes, methods or techniques;

- copyright (including future copyright and moral rights) in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
- confidential information, trade secrets and trade and service marks; and
- proprietary rights under the Circuit Layouts Act 1989 (Cth).

“Intellectual Property Rights” means all intellectual property rights and related rights, anywhere in the world, registered or unregistered, including:

- patents, know-how, inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including (without limitation) developments or improvements

“Internet” means the international network of data networks utilizing the TCP/IP communications protocol.

“Internet Service” means the provision of access to the Product Website and includes any Product Modules described in the Product Module Schedule.

“Invoice and Payment Schedule” means the Fee, Invoice and Payment Schedule as described in the Quote.

“Licensing Fee” means the fee for the Internet Service that is specified in the Fee Schedule as Product Licensing Establishment Fee and Product Licensing Ongoing Fee.

“Losses” means all liabilities, losses, damages, costs and expenses suffered or incurred by any person howsoever caused, whether arising in contract or tort (including negligence) or under any statute or under any other cause of action, and Loss has a corresponding meaning.

“Personal Information” has the meaning given in the Privacy Law.

“Personnel” means in relation to a party, that party's officers, employees, directors, contractors (including sub-contractors), agents, and includes Project Collaborators.

“Privacy Law” means the *Privacy Act 1988* (Cth), any additional legislation in Australia which governs the handling of Personal Information.

“Product” means the RIB iTWO cx project management system described at (<https://au.itwox.com/manual/>).

“Product Module” means a module of the Product.

“Product Module Schedule” means a Product Module Schedule as described in the Quote.

“Product Website” means the website where the Product is implemented for use by Customer.

“Project” means the project or projects described in the Quote.

“Project Audit” means a service where Supplier consultants review a Project against best practice use of the Product. It includes improvements to workflows and recommendations to improve the use of the Product.

“Project Collaborator” means any person who has been invited by the Customer to use the Service.

“Quote” means the separate Quote that has been executed by the Customer and Supplier.

“Receiving Party” has the meaning given in the definition of Confidential Information.

“Related Body Corporate” has the meaning given to that term in section 9 of the Corporations Act 2001 (Cth) and excludes (for clarification) a joint venture project in which the Customer is not the majority owner of that joint venture.

“Schedule” means any schedule to this Agreement.

“Scheduled Outage” means an outage which is planned and occurs within the hours of 7pm AWST Saturday through to 7am NZST Monday.

“Services” means the Internet Service, Support Services and CoE Consulting Services (as applicable).

“Service Period” means the period specified as Service Period in the Quote.

“Service Period Extension” means the period specified as Service Period Extension in the Quote.

“Service Specifications” means the descriptions provided to the Customer by Supplier that are applicable to the Services, including any Documentation, hosting, support and security policies, and other descriptions referenced or incorporated in such descriptions or in a Schedule.

“Supplier” means the Exactal or RIB company described in the Quote who will be providing the Service.

“Support Fee” means the fee for Support Services specified in the Fee Schedule.

“Support Services” means those services specified in clause 3.4.

“System” means any computer system, network or other technical infrastructure owned or operated by a party.

“Term” has the meaning given in clause 15.1.1.

“Third Party Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Supplier and made available to the Customer through, within, or in conjunction with the Customer's use of, the Internet Services. Examples of Third Party Content include data feeds from social network services, RSS feeds from blog posts, and data libraries and dictionaries. Third Party Content does not include separately licensed third party technology.

“Written” or in writing includes printing and other means of representing or reproducing words in material form including mail, fax, email, or correspondence through the Internet Service.

Headings are for convenience only and do not affect the interpretation of this Agreement.

2. Formation and precedence

2.1. The following are comprised in the Agreement:

- 2.1.1. these General Terms and Conditions;
- 2.1.2. the Quote(s);
- 2.1.3. any other document that is incorporated into this Agreement by reference contained in a Quote; and
- 2.1.4. any other document forming part of the Agreement as agreed in writing between the Customer and the Supplier,

together the **Agreement**.

2.2. In the event of any conflict or inconsistency between one or more of the documents detailed above, for interpretation, the following will be the order of precedence (listed in order of highest to lowest):

- 2.2.1. the terms of the Quote(s);
- 2.2.2. these General Terms and Conditions;

- 2.2.3. any other document that is incorporated into this Agreement by reference contained in a Quote; and
- 2.2.4. any other document forming part of the Agreement as agreed in writing between the Customer and the Supplier.

3. Services to be provided by Supplier

- 3.1. Supplier will provide the Services to the Customer for the Term in accordance with this Agreement.
- 3.2. The Customer must, if requested by Supplier, follow Supplier's then current product registration process, if any, to obtain and input an authorisation key or licence file.
- 3.3. The Internet Service includes:
 - 3.3.1. providing the Customer with access to and use of the Product as specified in the Quote;
 - 3.3.2. the hosting of the Product Website;
 - 3.3.3. providing the Customer with access to the Product software modules specified in this Agreement, including reasonable software upgrades and fixes;
 - 3.3.4. monitoring the server response times each minute of the server hosting the Product Website;
 - 3.3.5. providing the Customer with access to a functional help desk facility; and
 - 3.3.6. any other services and functionality specified in the Quote.
- 3.4. The Support Service includes:
 - 3.4.1. Self-Training

Once a user has been created an account, to assist them with learning how to use the Product, they will have access to the Product help manual, which provides:

 - 3.4.1.1. Online documentation describing how to access the system, any system requirements, and how to use the standard parts of the Product; and
 - 3.4.1.2. Product Module specific documentation to describe how to use specific features of the Product.
 - 3.4.2. Help Desk

Supplier provides help desk services for all Project Collaborators, which can be accessed by telephone or email, and tracked with the Product ticketing system. The help desk covers:

 - 3.4.2.1. Product questions & answers;
 - 3.4.2.2. assisting with internet connection and browser issues;
 - 3.4.2.3. logging and tracking progress on any Product issues; and
 - 3.4.2.4. logging of any Product improvement suggestions.

The Customer agrees that the help desk services do not cover:

 - 3.4.2.5. training of Customer Personnel;
 - 3.4.2.6. Acceptance Testing;

- 3.4.2.7. transition out or data migration services;
- 3.4.2.8. assistance with interoperability issues in respect of applications not forming part of the Services as agreed between the parties.

3.4.3. Account Management

Supplier assigns to all corporate accounts an Account Manager who is the primary point of contact for the Customer and assists with:

- 3.4.3.1. reporting on tickets and service level performance;
- 3.4.3.2. arranging any CoE Consulting Services;
- 3.4.3.3. updating billing and project phases information;
- 3.4.3.4. ordering project Export Services; and
- 3.4.3.5. escalating and resolving any Customer dissatisfaction.

3.4.4. Implementing patches, bug fixes, updates, maintenance and service packs (collectively, Patches).

3.5. CoE Consulting Service includes:

- 3.5.1. training courses for the Product core platform, and each of its Product Modules;
- 3.5.2. implementation and configuration services;
- 3.5.3. general consulting; and
- 3.5.4. Project Audits.

3.6. The Customer acknowledges that Acceptance Testing does not form part of the Services. The Customer warrants that it has satisfied itself as to the functionality of the Product and compatibility of the Product (as may be further configured where the parties have agreed to same) with its existing systems and applications. The Customer acknowledges and agrees that its conducting Acceptance Testing in respect of the Product during the Term does not excuse it from performing its obligations under this Agreement.

4. Service Performance and Availability

- 4.1. Supplier will make all reasonable efforts to ensure the availability and performance of the Internet Service in accordance with the terms of this Agreement.
- 4.2. Supplier will use its best efforts to restore all software or hardware faults related to the Internet Service.
- 4.3. Supplier does not warrant that the Product, the Internet Service, Support Service, CoE Consulting Service or any associated services or products provided by Supplier in the course of performing its obligations under this Agreement will be uninterrupted, error-free or completely secure, or meet the Customer's requirements.
- 4.4. Supplier excludes all warranties and representations in relation to the performance, features, compatibility, content or otherwise of any Internet Service, or Support Service, or CoE Consulting Service, or any host/computer connected to the Internet Service other than those expressly set out in this Agreement.

5. Intellectual Property Rights

- 5.1. Supplier grants to the Customer a non-exclusive, non-transferable licence for the Term to:
 - 5.1.1. access and use the Internet Service (and the Product via the Internet Service) for the Customer's internal business purposes; and
 - 5.1.2. use the Documentation, solely for the purpose of supporting the Customer's use of the Internet Service.
- 5.2. Any licence granted to the Customer under this Agreement must not be sublicensed and is subject to the Customer's compliance with this Agreement, and payment of all fees.
- 5.3. The Customer must not, without Supplier's prior written consent:
 - 5.3.1. use the Internet Services in an IT services, service bureau, application service provider or similar capacity;
 - 5.3.2. disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of the Internet Services performed by or on behalf of the Customer; or
 - 5.3.3. transfer or assign the Internet Services to a third party.
- 5.4. The Customer acknowledges and agrees that the Customer must only access the data made available via the Product through use of an application programming interface deliberately exposed by the Supplier and expressly approved by the Supplier for use by the Customer. Prior to use of the application programming interface Customer will purchase a licence to use the application programming interface at the API Fee.
- 5.5. Supplier (including its independent auditors) may audit the Customer's usage of the Internet Service to confirm compliance with this Agreement. Such audit is subject to reasonable prior notice by Supplier and shall not unreasonably interfere with the Customer's business activities. The Customer must without prejudice to other rights of Supplier address and rectify any non-compliant matters identified by the audit including any breach of this Agreement, by immediately procuring additional licences or as otherwise directed by Supplier.
- 5.6. All Intellectual Property Rights in the Product and the Documentation are the sole property of Supplier and its Related Bodies Corporate. Nothing in this Agreement conveys to the Customer any right, title or interest in the Product or Documentation, or any Intellectual Property Rights in the Product or the Documentation, except as expressly granted under this Agreement.
- 5.7. The Customer must not modify (but may configure) the Product. If, contrary to the foregoing, the Customer modifies the Product, the Customer absolutely and unconditionally assigns, and must procure that its Personnel absolutely and unconditionally assign, to the Supplier all Intellectual Property Rights throughout the world in the modifications to the Product created by or on behalf of the Customer (whether or not authorised) without the need for further assurance, including all copyright in such modifications.

- 5.8. The parties agree that Customer Data remains the property of, or vests upon its creation with, the Customer.
- 5.9. The Customer:
 - 5.9.1. warrants that no data stored or transmitted by the Customer as a result of use of the Product will infringe any third party Intellectual Property Rights; and
 - 5.9.2. indemnifies and keeps indemnified Supplier (and its Related Bodies Corporate) in relation to any Claim made against Supplier, any of its Related Bodies Corporate or any of its or their Personnel in the case of any such actual or alleged infringement.
- 5.10. The Customer agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Product or which is visible during its operation or which is on media or on any Documentation.
- 5.11. Customer must not, and must not omit to do, or permit another to do, (whether knowingly or otherwise) anything which infringes the Intellectual Property Rights of the Supplier.
- 5.12. Supplier shall not include any advertising on documents produced or derived from the Internet Service, nor display any on-screen advertising content in relation to the Internet Service other than as agreed with the Customer, whose agreement shall not be unreasonably withheld.
- 5.13. Any third party application or third party data used in connection with the Internet Service remains the property of the third party licensor.

6. Fees and Payment

- 6.1. On the Agreement Start Date, Supplier will provide the Customer with an invoice for the Product Licensing Establishment Fee for the Services as detailed in the applicable Quote. The Customer must pay the Product Licensing Establishment Fee to Supplier by the date stipulated on the invoice which will be in accordance with the Invoice and Payment Schedule, or prior to the Customer's first use of the Internet Service, whichever occurs first.
- 6.2. Supplier will provide the Customer with an invoice for Product Licensing Ongoing Fees in accordance with the Quote. Subject to clause 6.5, the Customer must pay to Supplier the Product Licensing Ongoing Fees by the date stipulated in the invoice in accordance with the Invoice and Payment Schedule, or prior to the commencement of the period to which the Product Licensing Ongoing Fees relate, whichever occurs first.
- 6.3. The Licensing Fee applies only to the Internet Service and does not include any third party charges the Customer may incur to connect to the Internet.
- 6.4. Supplier may charge, at the rates set out in the Quote, expenses including travel, accommodation and per diems reasonably incurred in connection with the provision of the Services. Supplier must notify the Customer of the likely costs to be incurred by the Supplier prior to incurring any such expenses.

- 6.5. In the event of a dispute as to the amount payable pursuant to an invoice, the Customer may withhold the disputed portion pending resolution of the dispute but must pay the undisputed portion within the applicable period specified in this clause 6. Full written reasons for the Customer's belief of why the amount is disputed must be provided to Supplier within 7 days of receipt of the invoice containing the disputed elements, otherwise the Customer and Supplier agree that the amount is not disputed. The Services relating to the disputed portion may be suspended by Supplier without prejudicing Supplier's rights under the disputed portion of the invoice.
- 6.6. Supplier may at its sole discretion suspend Services if any Supplier invoice to Customer remains unpaid for more than 21 days past its due date.
- 7. Maintenance and Support of Internet Service**
- 7.1. Supplier will give the Customer a minimum of five (5) Business Days' notice of each Scheduled Outage.
- 7.2. Supplier's obligations as set out in clause 7.1 do not cover maintenance necessitated as a result of:
- 7.2.1. any fault or error in equipment or software not forming part of the Internet Service; or
- 7.2.2. damage arising from the Customer's misuse of the system or Force Majeure.
- 8. Responsibilities of Customer**
- 8.1. The Customer must comply with any reasonable operational procedures (including any security procedures) related to the use and access of the Internet Service as provided or directed by the Supplier and must only use the Internet Services for its own internal business purposes.
- 8.2. At the request of Supplier, the Customer must provide such information, access to systems, materials and other inputs and assistance as reasonably required by Supplier in order to enable Supplier to meet its obligations under this Agreement.
- 8.3. The Customer must, and must ensure that its Personnel, comply with all reasonable directions and instructions of Supplier in relation to the Customer's use of the Services provided prior reasonable written notice is given to the Customer of any such directions and instructions.
- 8.4. The Customer acknowledges and agrees that Supplier's ability to provide the Services is dependent upon:
- 8.4.1. the Customer's performance of its obligations under this Agreement;
- 8.4.2. the Customer's full and timely cooperation with Supplier;
- 8.4.3. the Customer's IT systems and infrastructure meeting the requirements as set out by the Supplier;
- 8.4.4. the accuracy and completeness of any information and data which the Customer has from time to time provided to Supplier; and
- 8.4.5. any dependencies set out in the Quote or referenced by the Quote.
- 8.5. The Customer must not, and must ensure that its Personnel do not:
- 8.5.1. use, or attempt to use, the Services:
- 8.5.1.1. in any way which violates or infringes any duty or obligation in contract, tort (including negligence), or otherwise to any third person;
- 8.5.1.2. in connection with the commission of an offence against any law, including fraud and dealing with any material which infringes the Intellectual Property Rights of any person;
- 8.5.1.3. to communicate or transmit material which is defamatory, obscene, harassing, offensive, upsetting, abusive, indecent, menacing, considered spam, destructive, deceptive, inappropriate or unwanted;
- 8.5.1.4. in any way which interferes with, damages or impairs the operation of the Product, the network or any equipment of Supplier, or any equipment or facilities associated with the Services; or
- 8.5.1.5. in any way which may cause physical, mental or emotional harm any person;
- 8.5.2. provide access to or otherwise permit third parties (including providers of outsourcing or facilities management services) to use or modify the Product or otherwise receive the Services, other than Project Collaborators who may use (but not modify) the Product and receive the Services;
- 8.5.3. copy, modify, enhance or adapt the Product;
- 8.5.4. unless otherwise permitted by law, reverse engineer or decompile the Product or any part of it;
- 8.5.5. exploit the Product otherwise than as permitted by this Agreement;
- 8.5.6. based on the Product, attempt to create any software or service which has features or functionality the same as or similar to the features and functionality of the Product; or
- 8.5.7. introduce any Harmful Code into, or cause any Harmful Code to be introduced into, the Product or Supplier's Systems.
- 8.6. The Customer must provide all reasonable assistance required by Supplier to implement patches, bug fixes, updates, maintenance and service packs (collectively, **Patches**) deemed by Supplier to be necessary for the proper function and security of the Services, as such Patches are generally released by Supplier. Supplier is not responsible for performance or security issues encountered with the Services that result from the Customer's failure to accept the application of Patches.
- 8.7. The Customer acknowledges and agrees that the Customer is responsible for providing (at the Customer's own cost) all computer and telecommunications facilities that are required in order to access and use the Services over the

Internet, and for configuring these facilities (eg by having appropriate security and firewall settings) so that the Customer can access and use, and otherwise receive the Services.

- 8.8. To the extent that the CoE Consulting Services include providing training, the Customer must provide facilities and resources for training purposes, including, without limitation, an appropriately configured training room.
- 8.9. The Customer acknowledges that the Internet Service is designed for use with hardware and software that might have to meet minimum system requirements. Details of any such requirements are available upon request. These requirements may change over time to reflect changing technologies. Supplier will provide reasonable notice of any such changes to these requirements to the Customer.
- 8.10. The Customer acknowledges that Seller is committed to eliminating all risk of bribery and corruption, influence peddling, money laundering and tax evasion or the facilitation thereof in its business activities and Customer shall adhere to Seller's Trust Charter a copy of which is available at <https://www.se.com/ww/en/aboutus/sustainability/responsibility-ethics/>. The Customer must immediately notify Seller of any suspected, or known, breaches of Anti-Corruption Law. The Customer may raise this alert through their point of contact or through the Trust Line <https://www.se.com/ww/en/about-us/sustainability/responsibility-ethics/trustline/>
- 8.11. None of the Customers employees, beneficial owners, shareholders, or any other person who is involved in or will benefit from the performance of the Contract or has an interest in the Customer:
 - (a) is a civil servant, public or governmental official;
 - (b) is an official or employee of Seller or one of its affiliates; or
 - (c) has been convicted of, or otherwise been subjected to any administrative sanction or penalty for, any offence involving fraud, bribery, corruption, influence peddling, money laundering, or any other criminal offence involving dishonesty as an element. The Customer will immediately notify Seller if any such individuals are the subject of any investigation into any such offenses.
- 8.12. The Customer undertakes and covenants to Seller that it shall not, alone or in conjunction with any other person, directly or indirectly, offer, pay, give, promise to pay or give, or authorize the payment or giving of any money, gift, undue advantage, or anything of value to any employee, official or authorized representatives of Seller.

9. Confidentiality

- 9.1. No disclosure
 - 9.1.1. Subject to clauses 9.3 and 9.4, the Receiving Party must not use or disclose the Disclosing Party's Confidential Information (including to the Receiving Party's Personnel and professional advisors), other than for the purposes of exercising its rights and fulfilling its obligations under this Agreement, without the Disclosing Party's prior written consent.
 - 9.1.2. The Receiving Party must immediately return all Documentation and other materials containing the

Disclosing Party's Confidential Information to the Disclosing Party when:

- 9.1.2.1. it is no longer required for the purposes of this Agreement; or
- 9.1.2.2. requested to do so by the Disclosing Party (unless to do so would prevent the Receiving Party from exercising its rights or performing its obligations under this Agreement).

9.2. Survival

This clause 9 shall remain in full force and effect after the termination or expiry of this Agreement.

9.3. Permitted disclosure

This clause 9 does not prevent either party disclosing or publicising Confidential Information where required by law, a governmental agency or the rules of any relevant stock exchange to do so or disclosing Confidential Information to its advisers and auditors on a confidential basis.

9.4. Disclosure by Supplier

This clause 9 does not prevent Supplier from disclosing Confidential Information to its Related Bodies Corporate or any Personnel of any of those Related Bodies Corporate for the purposes of providing the Internet Services.

9.5. Acknowledgement by the Customer

The Customer acknowledges that Supplier will not be in breach of clause 9.1 if Confidential Information is disclosed to a third party as a result of the Customer providing the third party with access to and use of the Services (whether that access and use is permitted by this Agreement or not).

10. Customer Data

- 10.1. Supplier will ensure that the Customer has access to all Customer Data through the Product Website.
- 10.2. Supplier must take all reasonable steps to ensure that:
 - 10.2.1. access to the Customer Data is restricted to those of Supplier's Personnel who require access to the Customer Data in order to enable Supplier to comply with its obligations under this Agreement; and
 - 10.2.2. subject to the operation of clause 10.2.1, no third party is able to gain access to the Customer Data without the prior written approval of the Customer.
- 10.3. If the Customer Data is lost, destroyed or altered whilst stored in the Product database due to the fault of Supplier and without fault on the part of the Customer then Supplier will take commercially reasonable measures to restore the Customer Data at no additional charge.
- 10.4. Prior to, or within 60 days after, the termination or expiry of the Agreement, the Customer may require Supplier to make available to the Customer all of the Customer Data stored in the Product database, and provided the Customer has paid all fees due and payable under this Agreement, Supplier will comply with such requests, subject to the payment of the Export Fee.
- 10.5. Subject to clause 10.6, on the termination or expiry of this Agreement, if requested by the Customer, then Supplier

must delete all copies of the Customer Data from Supplier's systems and otherwise in the possession or control of Supplier. To the extent that Supplier is unable to delete any Customer Data, the obligations of confidentiality will continue to apply to the Customer Data.

- 10.6. Where Customer Data is provided to Supplier by a nominee of the Customer (**Nominee's Data**) nothing in this Agreement will prevent Supplier from providing, to that nominee only, access to that Nominee's Data or a backup of that Nominee's Data upon request.
- 10.7. Customer must make all disclosures and obtain all consents required under the Privacy Law in relation to Customer Data it provides to Supplier. Subject to the foregoing, Supplier agrees to comply with the Privacy Law with respect to any act done or practice engaged in by Supplier for the purposes of this Agreement, in the same way and to the same extent as the Customer would have been bound by the relevant Privacy Law in respect of that act or practice had it been directly done or engaged in by the Customer.
- 10.8. Supplier agrees to comply (at the Customer's cost) with any reasonable direction given by the Customer for the purpose of the Customer complying with the Privacy Law.
- 10.9. This clause 10 survives termination or expiry of this Agreement.

11. Warranties

- 11.1. Supplier excludes all warranties and representations:
 - 11.1.1. relating to the integrity or accuracy of any content managed by Supplier in providing the Internet Service;
 - 11.1.2. in the event that the Internet Service is not used in accordance with this agreement or with the Service Specifications; and
 - 11.1.3. in the event that any failure of the Service to comply with this Agreement is caused by third party services or goods.
- 11.2. The Customer warrants that Customer Data and the Customer's use of the Internet Service will not:
 - 11.2.1. result in an infringement or violation of any duty or obligation in contract, tort (including negligence), or otherwise to any third party;
 - 11.2.2. involve the commission of an offence against any law, including fraud and dealing with any material which infringes any person's rights (including Intellectual Property Rights and moral rights);
 - 11.2.3. involve the communication or transmission of material which is defamatory, obscene, harassing, offensive, upsetting, abusive, indecent, menacing or unwanted; or
 - 11.2.4. in any way interfere with, damage or impair the operation of the Internet Service, the network or any equipment of Supplier, or any equipment or facilities associated with the Services.
- 11.3. The Customer agrees that the terms of this Agreement are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Supplier regarding future

functionality or features.

12. Indemnity

- 12.1. Subject to clauses 12.3 and 12.4, if a third party makes a Claim against either the Customer or Supplier (**Indemnified Party**) that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, **Material**) furnished by the other party (**Indemnifying Party**) and used by the Indemnified Party in accordance with this Agreement infringes the third party's Intellectual Property Rights, the Indemnifying Party, at the Indemnifying Party's sole cost and expense, must defend the Indemnified Party against the Claim and indemnify the Indemnified Party from and against all damages, liabilities, costs and expenses awarded by a court of competent jurisdiction to the third party claiming infringement or the settlement agreed to by the Indemnifying Party, if the Indemnified Party does the following:
 - 12.1.1. notifies the Indemnifying Party promptly in writing, not later than 5 days after the Indemnified Party receives notice of the Claim (or sooner if required by applicable law);
 - 12.1.2. gives the Indemnifying Party sole control of the defense and any settlement negotiations; and
 - 12.1.3. gives the Indemnifying Party the information, authority and assistance the Indemnifying Party needs to defend against or settle the Claim.
- 12.2. If the Indemnifying Party believes or it is determined that any Material may violate a third party's Intellectual Property Rights, the Indemnifying Party may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Supplier may terminate this Agreement with immediate effect and refund any unused, prepaid fees the Customer may have paid in respect of any unexpired part of the Term.
- 12.3. Clause 12.1 does not apply to the extent that the Indemnified Party :
 - 12.3.1. alters the Material or uses it outside the scope of use identified in the Indemnifying Party user or program documentation or Service Specifications;
 - 12.3.2. uses the Material with other materials not provided by or on behalf of the Indemnifying Party, where the infringement Claim would not have arisen but for such combined use;
 - 12.3.3. uses a version of the Material which has been superseded, if the infringement Claim could have been avoided by using an unaltered current version of the Material which was made available to the Indemnified Party; or
 - 12.3.4. continues to use the applicable Material after the end of the license to use that Material.
- 12.4. Without limiting clause 12.3, Supplier will not indemnify the Customer:
 - 12.4.1. for infringement caused by the Customer's actions against any third party if the Service as delivered to Customer and used in accordance with the terms of this Agreement would not otherwise

- infringe any third party Intellectual Property Rights; and
- 12.4.2. for any intellectual property infringement Claim(s) known to the Customer at the time the Service is first provided to the Customer.
- 12.5. This clause 12 survives termination or expiry of this Agreement.

13. Liability

- 13.1. Subject to clause 13.2 and to the extent permitted by law, this Agreement is in substitution of all other terms, conditions, warranties, guarantees and representations, express or implied, by statute or otherwise, as to the description, merchantable quality or fitness for purpose of the Internet Service, Support Service, CoE Consulting Service, Product or other services provided by Supplier in connection with this Agreement.
- 13.2. Nothing in this Agreement is intended to exclude, restrict or modify any rights that the Customer may have under the CCA or any other applicable legislation which may not be excluded, restricted or modified by agreement. To the fullest extent permitted by law, the liability of Supplier for a breach of a guarantee, condition or warranty implied by such legislation shall be limited, at Supplier's sole discretion, to:
 - 13.2.1. in the case of goods supplied under this Agreement, the replacing or repairing the goods, or payment of the cost of repairing or replacing the goods or of acquiring equivalent goods;
 - 13.2.2. in the case of services supplied under this Agreement, supplying the services again or paying the cost of having the services supplied again.
- 13.3. Clause 13.2 will not apply if:
 - 13.3.1. goods or services under this Agreement are goods or services that are 'ordinarily acquired for personal, domestic or household use or consumption' (as that expression is used in the ACL); or
 - 13.3.2. it is not 'fair or reasonable' (as that phrase is used in the ACL) for Supplier to rely on such limitation.
- 13.4. Subject to clause 13.2 and to the maximum extent permitted by law, in no event will either party or its affiliates, agents and subcontractors be liable to the other party for any Consequential Loss which may be suffered or incurred or which may arise directly or indirectly in connection with this Agreement however caused, under any theory of liability, whether based on breach of contract, breach of statute, tort (including any negligent act or omission) or otherwise and whether or not the Party has been advised of the possibility of such loss or damage.
- 13.5. Subject to clause 13.2 and to the maximum extent permitted by law, the maximum aggregate liability of Supplier and any of its Personnel to the Customer arising out of or in connection with this Agreement (regardless of the number, timing, or nature of the Claims and whether based on breach of contract, breach of statute, tort (including negligence or otherwise) is limited to the lower of:

- 13.5.1. an amount equal to 12 months' Licensing Fees as specified under the Fee Schedule (based on the preceding 12 months fees at the time the Claim arose); and
- 13.5.2. the Licensing Fees paid to date under the Agreement.

14. Suspension

- 14.1. Supplier may suspend the Services to the Customer at any of the Customer Premises at any time:
 - 14.1.1. if the Customer becomes bankrupt or insolvent, is unable to pay its debts as and when they fall due, enters into a scheme of arrangement or composition with the Customer's creditors or, being a company, is placed in receivership or under official management or has a provisional liquidator appointed; or
 - 14.1.2. if the Customer breaches any material term or condition of this Agreement (including an obligation to make a payment under this Agreement) and fails to remedy that breach within a period of thirty (30) days after service of a notice that states that the Services provided to the Customer will be disconnected due to that breach;
 - 14.1.3. to the extent Supplier is required to ensure Supplier can comply with an order, instruction or request of government, regulator, emergency services organisation or other competent authority;
 - 14.1.4. if problems are experienced interconnecting the network with any network of another supplier;
 - 14.1.5. if Supplier determines, acting reasonably, that the Customer or its Personnel or Project Collaborator(s) are misusing, abusing or otherwise using the Services and/or Product in a manner in breach of this Agreement; or
 - 14.1.6. if Supplier is otherwise entitled to do so under this Agreement or required to do so at law.
- 14.2. Where provision of the Services has been suspended under clause 14.1, the reconnection of the Services shall be subject to payment of the reasonable costs incurred by Supplier in reconnecting the Services.
- 14.3. Supplier may suspend the Services to the Customer at any of the Customer Premises at any time in the event of an emergency or whenever Supplier reasonably considers it necessary in order to safeguard provision of the Services to emergency and other essential services provided that Supplier will give the Customer written notice of such intended or actual suspension of the Services as soon as reasonably practicable.
- 14.4. CONSEQUENCES OF SUSPENSION. Despite any other provision of this Agreement, Supplier will not be liable to the Customer, or any third party claiming through the Customer for any Claim made, in connection with Supplier suspending or limiting access to or the supply of any Service (or failing to do so) in accordance with this clause 14.

15. Term and Termination

- 15.1. Term
- 15.1.1. This Agreement will commence on the Agreement Start Date, and, subject to earlier termination in accordance with its terms, continue for the Service Period (**Term**).
- 15.1.2. Not less than 30 days prior to expiry of the Service Period, the parties may agree in writing to the extension of the Term for the Service Period Extension.
- 15.1.3. The parties agree that the Supplier is entitled to re-evaluate the fees payable for the Product and/or Service for the Service Period Extension prior to the commencement of the Service Period Extension in accordance with clause 15.1.2.
- 15.2. If either party breaches a material term of this Agreement and, if the breach is remediable, fails to correct the breach within 30 days of written specification of the breach, then the non-breaching party may terminate this Agreement.
- 15.3. If Supplier terminates the Agreement in accordance with clause 15.2, the Customer must pay, within 30 days, all amounts that have accrued prior to such termination, plus related taxes and expenses.
- 15.4. Except in the case of non-payment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues to use reasonable efforts to cure the breach.
- 15.5. The termination of this Agreement for whatever reason is without prejudice to any rights that have accrued to either party prior to the date of termination.
- 15.6. Upon termination or expiry of this Agreement:
- 15.6.1. the licence described in clause 5.1 is immediately revoked;
- 15.6.2. upon request by the Customer (such request to be submitted to the Supplier no longer than 3 calendar months after termination or expiry of the Agreement), the Supplier may provide to the Customer Export Services in a format determined by Supplier.
- The Customer agrees that the Supplier is entitled to delete, remove, archive or permanently encrypt all Customer Data after the period specified in clause 15.6.2 and the Supplier is not liable for any Losses suffered by the Customer as a result of the Supplier exercising this right.
- 15.7. This clause 15 survives termination of this Agreement.

16. Disputes

- 16.1. General
- 16.1.1. Disputes must, as far as possible, be settled amicably between the parties.
- 16.1.2. The party raising the dispute must provide to the other party written confirmation of the issue in dispute and such confirmation must include sufficient detail of the issue or issues in dispute to enable the parties to attempt to settle the dispute.
- 16.1.3. If the parties cannot settle the dispute amicably, within 14 days from the date the dispute is

reduced to writing in accordance with clause 16.1.2, the parties must attempt to resolve the dispute by consultation between senior management of each party.

- 16.2. If the parties cannot settle the dispute within 21 days from the date the dispute is reduced to writing in accordance with clause 16.1.2, the dispute must be dealt with in the manner specified in clauses 16.2 and 16.3 of the Agreement. If the dispute relates to the construction or interpretation of the terms and conditions of this Agreement, the dispute must be dealt with by a court.
- 16.3. All other disputes not subject to clause 16.2 must be dealt with by referral to an expert nominated jointly by the parties, or failing agreement, within 14 days after either party's request to the other party for such a referral, an expert nominated by the president for the time being of the New South Wales Law Society. Such expert shall be deemed to act as an expert and not as an arbitrator and the expert's fees shall be paid by the parties in equal shares unless the expert determines that the conduct of a party is such that such party should bear all such costs.
- 16.4. Nothing in this clause 16 prevents a party from seeking urgent interlocutory relief before an appropriate court having jurisdiction in the state governing this Agreement.

17. Insurance

- 17.1. In connection with the provision of the Services under this Agreement, Supplier must effect and maintain with a reputable insurer:
- 17.1.1. for the Term valid and enforceable insurance policies for :
- 17.1.1.1. public and products liability with coverage of \$10 million; and
- 17.1.1.2. workers' compensation as required by law; and
- 17.1.2. from the Agreement Start Date until 7 years after the termination or expiry of this Agreement, a valid and enforceable insurance policy for professional indemnity with coverage of \$10 million.
- 17.2. Supplier must, on request by the Customer, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this clause 17.
- 17.3. This clause 17 survives the termination of this Agreement.

18. General

- 18.1. Assignment
- A party must not assign any of the party's rights under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 18.2. Severance
- 18.2.1. A provision of, or the application of a provision of, this Agreement that is prohibited in any jurisdiction, is in that jurisdiction, ineffective only

- to the extent of that prohibition.
- 18.2.2. A provision of, or the application of a provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 18.2.3. If a provision of this Agreement is void, illegal or unenforceable, it may be severed without affecting the validity, legality or enforceability of the other provisions of this Agreement.
- 18.3. Waiver
- 18.3.1. Waiver of a breach of this Agreement, or of any rights created by, or arising upon default, under this Agreement, must be in writing and signed by the party granting the waiver.
- 18.3.2. A breach of this Agreement is not waived by a failure to exercise, a delay in exercising, or a partial exercise of, any remedy available under this Agreement or in law or equity.
- 18.3.3. A right created by, or arising upon, default under this Agreement, is not waived by a failure to exercise, a delay in exercising, or a partial exercise of, that right.
- 18.4. Entire Agreement
- 18.4.1. This Agreement is the entire agreement between the parties in respect of its subject matter.
- 18.4.2. This Agreement may only be amended by agreement in writing by the parties.
- 18.5. Variation
- 18.5.1. The provisions of this Agreement will not be amended or varied, except by a document in writing signed by the parties.
- 18.6. Force Majeure
- 18.6.1. If a party is prevented from performing an obligation under this Agreement (other than the Customer's obligations under clause 6) by Force Majeure, the party will be granted a reasonable extension of time to perform the obligation if:
- 18.6.1.1. the party notifies the other party as soon as is reasonably practicable of the events or circumstances and of the period that the party expects to be prevented from performing the obligation; and
- 18.6.1.2. the party takes all reasonable steps to avoid or limit the effects of the events or circumstances or to render to the reasonable satisfaction of the other party the equivalent of performance of the obligation.
- 18.6.2. If a party is prevented from performing a material obligation by Force Majeure for a period greater than 3 months, the other party may terminate this Agreement immediately by giving notice in writing to the first mentioned party.
- 18.7. No Partnership

- Nothing in this Agreement will constitute or be deemed to constitute a partnership or employment relationship between the parties or constitute or be deemed to constitute a party as agent for the other party for any purpose and neither party has the authority or power to bind the other or contract in the name of the other in any way or for any purpose other than as specifically contemplated by this Agreement.
- 18.8. Sub-contracting
- Supplier may sub-contract for the performance of this Agreement any part thereof without the written consent of the Customer, provided that any subcontracting will not relieve Supplier of its obligations under this Agreement.
- 18.9. Notices
- Any notice given under or pursuant to this Agreement must be in writing and will be deemed duly given or made if delivered or sent by registered mail, hand delivery, facsimile transmission or electronic mail to the address of the relevant party specified in this Agreement and marked to the attention of the authorised representative. Any notice, demand or other communication will be deemed, in the absence of proof to the contrary, to have been received by the person to whom it was sent:
- 18.9.1. in the case of hand delivery, upon delivery;
- 18.9.2. in the case of registered mail, 3 Business Days after the date of dispatch;
- 18.9.3. in the case of facsimile transmission, on the next Business Day following successful transmission as evidenced by the sender's facsimile machine statement; and
- 18.9.4. in the case of electronic mail, or transmission through the Internet Service, upon successful transmission of the electronic mail or Internet Service correspondence.
- 18.10. Export Control
- The Product contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. The Customer acknowledges and agrees that the supply, assignment and/or usage of the products, software, services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under this Agreement shall fully comply with related applicable US, EU and other national and international export control laws and/ or regulations.
- Unless applicable export license/s has been obtained from the relevant authority and the Supplier has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. The Customer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons.
- If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any

such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit the Supplier from fulfilling any order, or would in the Supplier's judgment otherwise expose the Supplier to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, the Supplier shall be excused from all obligations under such Quote and/or this agreement.

18.11 Governing Law

This Agreement is governed by and will be construed in accordance with the laws of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts and tribunals of that state.