

EZYENTRY TERMS AND CONDITIONS

Please carefully read these terms and conditions (**Terms of Use**) for download, installation, display and use of the EzyEntry Software and/or Portal or use of the EzyEntry web site (**Software** and) before you download, install, display or use the Software and/or Portal. If you do not agree with these Terms of Use, you must cease downloading, installing, displaying or using the Software and/or Portal immediately.

1. INTRODUCTION

- 1.1 These terms and conditions of use (**Terms of Use**) govern the agreement between you and us.
- 1.2 By subscribing to the Software and the Services, you acknowledge and agree that you have had a sufficient chance to read and understand these Terms of Use and agree to be bound by them.
- 1.3 This agreement commences on the Commencement Date.

2. DEFINITIONS

For the purposes of these Terms of Use:

- 2.1 **agreement** means these Terms together with any Information Schedule, Special Conditions, any Proposal if noted in any Information Schedule and annexures and schedules;
- 2.2 **Business Day** means any day other than a Saturday, Sunday, public holiday in Queensland, Australia or 27, 28, 29, 30 and 31 December of each year;
- 2.3 **Claim** means, in relation to a person, any action, suit, proceeding, claim or demand instituted, made or threatened against the person, however arising and whether present or future, fixed or unascertained, actual or contingent;
- 2.4 **Client** means the person or organisation accessing and using the Software and/or the Portal;
- 2.5 **Commencement Date** means the earlier of the date specified as the Commencement Date in any Information Schedule, the date upon which we confirm to you that the Software and the Services will commence, or the date you make the first payment of the Subscription Fee, whichever is the earlier;
- 2.6 **Confidential Information** means all information, in any form, written or unwritten, including trade names, trade secrets, domain names, client lists, client information and contact details, logos, methods described in patent applications, software, hardware, source code, methodologies, advice, processes, procedures, inventions, ideas, know-how, technical expertise or concepts, which is provided or made available by a party to this Agreement by another party to these Terms of Use or its associates (whether orally or in writing) or to a related entity or a related body corporate but excluding information already in the public domain, except where that information has become available by virtue of a breach of these Terms of Use;
- 2.7 **consequential loss** means any Liability suffered by a party which:
 - (a) is special, indirect or consequential loss or damage within the meaning of the common law;
 - (b) results from a supervening event;
 - (c) is a loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of interest, damage to credit rating, loss or denial of opportunity or increased overhead costs, loss of use, loss of profits; or
 - (d) is suffered by a party as a result of a claim upon it by a third party (including third party claims for personal injury or damage to property);
- 2.8 **EzyEntry** means EzyEntry Pty Ltd Pty Ltd ACN 629 871 978 together with its successors and assigns;
- 2.9 **Fee** means the fees (including but not limited to the Usage Fee and the Subscription Fee) set by us for the provision of the Services from time to time;
- 2.10 **Force Majeure Event** means any cause unforeseen and arising without fault or negligence on the part of the party affected or otherwise beyond the reasonable control of the party affected, including but not limited to acts of God, civil disorder, war, riots, industrial disturbance, national emergency, material shortages, damage to plant, equipment and or facilities, acts or omissions of public authorities including local, state or federal governments;
- 2.11 **GST** means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Agreement;

- 2.12 **Improvement** means any variation to the Services or the Intellectual Property, conceived of or developed by either us or you, which could improve them in any way;
- 2.13 **Information Schedule** means any Information Schedule attached to, or forming part of, these Terms of Use and any term defined in the Information Schedule shall have the same meaning where used in these Terms of Use unless otherwise specified;
- 2.14 **Insolvency Event** means any of the following events in respect of either party:
- (a) an application is made to a court for an order, or an order is made appointing a liquidator or provisional liquidator in respect of the party (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
 - (b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the party or an order is made or any effective resolution is passed for the winding up of the party;
 - (c) the party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
 - (d) a controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of the party;
 - (e) the party is or is deemed or presumed by law or a court to be insolvent;
 - (f) the party takes any step to obtain protection or is granted protection from their creditors under any applicable legislation or an administrator is appointed to the party; and
 - (g) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the party under the law of any applicable jurisdiction;
- 2.15 **Intellectual Property** means:
- (a) all proprietary rights and Intellectual Property Rights (including the right to make application for such rights) which relate, refer or pertain to the Software, the Services and the Portal, any Improvements, the Confidential Information or the business of EzyEntry, which are provided under patent law, copyright law, trademark law, design patent and industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, trade names, trade dress or business reputation, or the expression or use thereof, and including all past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief;
 - (b) all applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in EzyEntry, the Services and the Portal;
 - (c) and any Improvement to any of the above;
- 2.16 **Intellectual Property Rights** means any intellectual property rights protected by statute or common law in Australia or elsewhere in the world and whether registered or unregistered and includes copyright, design, patent, trade mark, semiconductor and circuit layout rights'
- 2.17 **Interest Rate** means ten percent (10%);
- 2.18 **Law** means any statutes, regulations, ordinances, by-laws, orders, awards, proclamations and any enforceable policy of an authority, certificates, licences, consents, permits, approvals and requirements of authorities, applicable codes of practice, applicable standards (including any relevant Australian Standards), obligations under the common law and in equity as well as any fees and charges payable in connection with any of the foregoing;
- 2.19 **liability** means all liability, causes of action, Claims, losses, damages (including consequential damages), costs, charges, expenses, penalties and injuries of any kind parties means the parties to this agreement and party means any of them;
- 2.20 **personnel** mean subcontractors, employees, agents, advisors and other persons engaged by a party to perform its obligations under this Agreement;
- 2.21 **Portal** means the dashboard interface in which you can interact with the Services regarding your usage of the Services;
- 2.22 **Proposal** means any proposal provided by us to you for the provision of the Services, signed by both us and you;
- 2.23 **Services** mean the subscription services for use of the Software provided by us to you in accordance with these Terms of Use;
- 2.24 **Software** means the EzyEntry software as varied from time to time;
- 2.25 **Special Conditions** mean any special conditions set out in any Information Schedule;

- 2.26 **Subscription** means the subscription for the provision of the Services by us to you pursuant to these Terms;
- 2.27 **Subscription Fee** means any fees set by us for the provision of the Services from time to time;
- 2.28 **Support** means our support of the Software only as set out in our Support Policy as amended from time to time;
- 2.29 **Terms of Use** means these Terms of Use together with any Information Schedule, Special Conditions, annexures and schedules;
- 2.30 **Term** means the term of this agreement commencing on the Commencement Date and expiring on the date this agreement is terminated in accordance with these Terms of Use;
- 2.31 **Us, we, our** means EzyEntry Pty Ltd;
- 2.32 **Usage Fee** means the fee set by us for the register of documents to the Software by you from time to time;
- 2.33 **You, your** means the person or organisation accessing and using the Software and/or the Services.

3. INTERPRETATION

- 3.1 The following apply in the interpretation of these Terms of Use, unless the context requires otherwise:
- (a) a reference to the agreement means this agreement and includes any variation or replacement of it;
 - (b) a reference to a document includes a reference to that document as amended, novated, assigned or otherwise varied;
 - (c) a reference to a statute or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
 - (d) the singular includes the plural number and vice versa;
 - (e) a reference to a gender includes a reference to each gender;
 - (f) the word "person" includes a firm, corporation, body corporate, unincorporated association or a government department or authority, association or other legal entity;
 - (g) a reference to a person includes a reference to the person's legal personal representatives, successors, liquidators, trustees in bankruptcy and the like, and permitted assigns;
 - (h) an agreement on the part of, or in favour of, two (2) or more persons binds or is for the benefit of them or any one or more of them together and separately;
 - (i) a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this agreement;
 - (j) "includes" (or similar wording) means "includes but without limitation";
 - (k) where a word or phrase is given a defined meaning in this agreement, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
 - (l) a reference to an act includes an omission and a reference to doing an act includes executing a document;
 - (m) words not otherwise defined in this agreement but defined in the *Corporations Act 2001* (Cth) have the meaning given in that Act;
 - (n) a reference to dollars or \$ is to Australian currency. All amounts to be invoiced or paid under this Agreement are to be in Australian currency unless otherwise agreed to by us;
 - (o) headings are for reference only and do not affect the meaning or interpretation of this agreement;
 - (p) if any day appointed or specified by this agreement for the payment of any money falls on a day which is not a Business Day, the day so appointed or specified is deemed to be the next day which is a Business Day;
 - (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (r) a reference to a day is to be interpreted as the twenty-four (24) hour period ending at midnight at the end of that day; and
 - (s) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this agreement.

3.2 The parties agree that to the extent there is any inconsistency between any of the documents that form the agreement, the documents with the higher precedence will prevail:

- (a) Information Schedule;
- (b) Special Conditions;
- (c) Terms of Use;
- (d) Proposal;
- (e) any other Annexure.

3.3 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

4. TERMS OF USE

4.1 By downloading, installing, displaying or using the Software, you accept these Terms of Use and you agree to abide by them as a legally binding agreement between you and us. Your download, installation or use of the Software constitutes your acceptance of these Terms of Use which takes effect on the date on which you download, install, display or use the Software.

4.2 The Software is owned and operated by us. We reserve the right to amend, modify, add, delete and make corrections to the Terms of Use or by updating the Software to incorporate new Terms of Use, at any time. All changes are effective from the date they are posted, and your continued use of the Software will constitute your acceptance of the variation of the Terms of Use. It is your responsibility to ensure you are aware of any changes to these Terms of Use each time you utilise the Software.

5. USER LICENCE

5.1 We grant you a personal, non-exclusive, non-transferable, limited and revocable licence (**User Licence**) to use the Software for use only on a computer device (each a **Device**) owned or controlled by you as permitted in accordance with these Terms of Use.

5.2 Any use of the Software in any other manner, including, without limitation, resale, transfer, modification or distribution of the Software or text, pictures, music, QR codes, video, data, hyperlinks, displays and other content associated with the Software (**Content**) is prohibited.

5.3 These Terms of Use and the User Licence also govern any updates to, or supplements or replacements of, the Software unless separate terms accompany such updates, supplements or replacements, in which case the separate terms will apply.

6. USE OF THE SOFTWARE

6.1 You may download the Software to view, use and display the Software on your Device or Devices for your personal use only.

6.2 You acknowledge that you have no rights in, or to, the Software or any technology used or supported by the Software, other than the right to use the Software in accordance with these Terms of Use.

6.3 To access the Software, you must have a device with access to a telecommunications provider. Notwithstanding that the Software may be free to download, your telecommunication provider's rates and fees will apply for accessing and downloading information within the Software.

6.4 You must:

- (a) use the Software in accordance with these Terms of Use;
- (b) not copy, transmit, distribute, reproduce, licence, alter, reverse engineer, adapt or modify the whole or any part of the Software in any way whatsoever;
- (c) not use the Software in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms of Use, or hacking into or inserting malicious code, destruction of data, including viruses, or harmful data, into the Software;
- (d) you must not work around any technical limitations in the Software or attempt to run the Software on any unsupported platform;
- (e) not use the Software in any way that could damage, disable, overburden, impair or compromise the Software; and
- (f) comply with all applicable laws and regulations relating to use of the Software.

6.5 You are solely responsible for:

- (a) providing all documents, text, information, and other content in a format recognised and advised by us as compatible with the Software;
- (b) the content of all documents, text, information, and other content;
- (c) checking the accuracy of the all documents, text and content,

that you upload to the Software. We are not responsible for any errors contained in the documents, text, information or content uploaded by you to the Software.

- 6.6 You may not upload any content to the Software that do not own or do not have permission to upload.
- 6.7 You are responsible for checking, maintaining (and updating) the accuracy of any information that you upload to the Software or that is uploaded or derived from email scraping (should you elect to use such function of the Software). You are also responsible for creating backup copies of any content that you upload to the Software.
- 6.8 We may in our sole discretion, acting reasonably, backup and/or remove any content uploaded to the Software that in our sole opinion violates these Terms of Use or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others.
- 6.9 You must notify us immediately if you become aware of any unauthorised use of the Software.
- 6.10 We provide no warranty that the Software will be error free nor that the Software will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the Software.
- 6.11 We may terminate these Terms of Use and/or cancel or suspend your use of the Software at any time, with or without notice if you have breached the Terms of Use (including but not limited to a failure to pay any Subscription Fee).
- 6.12 We reserve the right to cease operating the Software or providing the Services at any time (and consequently terminating your Subscription), without notice.
- 6.13 On suspension or termination of these Terms of Use for any reason, you will have no further access to the Software. Unless otherwise agreed with us, all content associated with the Software will be removed and not available for further use by you.
- 6.14 If your agreement with us forms part of any arrangement you may have with any third party, termination of your arrangement with that third party for any reason whatsoever may result in the termination of these Terms of Use and a suspension and/or disablement of your access to all or part of the Software (unless we agree otherwise).

7. SUBSCRIPTION SERVICES

- 7.1 In consideration for the Subscription Fee, we will provide the Services to you for the Term subject to these Terms of Use and our policies and guidelines published from time to time. Our Services may include the following:
 - (a) onboarding of the Software;
 - (b) day to day operation of the Software;
 - (c) reasonably requested configuration changes;
 - (d) Support;
 - (e) access to the Portal; and
 - (f) such other support as may be agreed between you and us.
- 7.2 Support will be provided by us to you in accordance with our Support Policy.
- 7.3 Where you require us to perform additional services (**Additional Services**), any Additional Services will be provided by us:
 - (a) as agreed between us and you in writing;
 - (b) at our current charge rates for the provision of such Additional Services; and
 - (c) on the same terms and conditions as set out in these Terms of Use (as applicable) unless agreed otherwise.
- 7.4 We may implement policies around support and service levels as may be appropriate to the Services from time to time.
- 7.5 You agree to promptly provide us with the following (as may be reasonably requested by us) to enable us to perform the Services:

- (a) access to and authorisation to use all and any data, information, material and content as reasonably required by us;
- (b) authority to communicate with your third-party suppliers (if required); and
- (c) such other information, authorisation and items as may be requested by us.

7.6 Where you provide us with information, you agree and warrant that any and all information supplied by you is true, accurate, current and complete and you either own or have right to supply the information supplied.

7.7 You acknowledge that failure to promptly provide the information in clause 7.6 may restrict our ability to provide the Services in accordance with these Terms of Use. We will not be liable in any respect where any failure to provide the Services is due to your (or a third party's) delay to provide the required information or your (or a third party's) providing incorrect or inaccurate information.

7.8 You further agree to cooperate with, act reasonably and follow our reasonable directions in connection with these Terms of Use.

7.9 You must notify us immediately of any change in your contact detail.

8. FEES

8.1 During the Term, you will pay:

- (a) the Usage Fee; and
- (b) any Subscription Fee; and
- (c) any other fees relevant to the provision of the Services as set by us and notified to you from time to time,

(Fees) in accordance with our current payment requirements for the Fee from time to time.

8.2 We may:

- (a) elect to send invoices by electronic mail to the email address set out in any Information Schedule or such other email address as is advised in writing to us by you; and/or
- (b) require you to enter into a direct debit arrangement in respect of the payment of the Fees.

8.3 We may increase any one or more Fee annually by a maximum amount of three percent (3%) to reflect any increases in costs of offering the Services. You will be notified in writing of any increase to the Fee.

8.4 Should a payment of the Fees at any time be declined at the time of processing, further reasonable attempts to process the payment will be made by us. Should payment continue to be declined, we will contact you in relation to payment processing and a one hundred dollar (\$100.00), excluding GST, administrative processing fee may be charged to you.

8.5 If we have not received any payment required in accordance with these Terms of Use, in addition to any of our other rights and remedies, we may without liability to you:

- (a) suspend the provision of the Software and/or the Services to you while the invoice(s) concerned remain unpaid;
- (b) disable your access to all or part of the Software and/or the Services and we will be under no obligation to provide any or all of the Software and/or the Services while the invoice(s) concerned remain unpaid; and
- (c) interest shall accrue on such due amounts at an annual rate equal to the Interest Rate from the date the unpaid amount became due until the unpaid amount is paid to us in full (whether before or after judgment).

8.6 Where there has been a failure to pay pursuant to these Terms of Use, we are under no obligation to reinstate the Software and/or the Services even if requested by you. Any reinstatement will be at our sole discretion (acting reasonably).

8.7 You agree that in the event of any action being taken by us to recover any overdue amount due and owing by you pursuant to these Terms of Use, any costs incurred by us in recovering the debt (including without limitation any legal expenses on a solicitor/client basis, collection agency charges (if permissible by law) or any other reasonable associated costs) are payable by you to us and shall be recoverable by us as a separate debt.

8.8 On termination, all outstanding Fees will become payable by you to us.

8.9 All amounts and fees stated or referred to in these Terms of Use:

- (a) are exclusive of GST;
- (b) will be in Australian dollars; and

(c) are (subject to the terms of these Terms of Use) non-cancellable and non-refundable.

8.10 If there is a debt or other moneys due from you to us or we have a claim to money against you whether for damages or otherwise, arising out of or in any way in connection with these Terms of Use or on any other legal or equitable basis, then we may withhold, deduct or set-off the debt or other moneys due or claim against any sum which you are or may be entitled to arising out of or in any way in connection with these Terms of Use. Nothing in this clause affects or restricts our right to recover from you the whole of the debt or claim or any balance that may remain owing.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All intellectual property in the information and material published on/in the Software and/or the Services is owned by us. You obtain no interest in the intellectual property. All content in the Software and in the Services, including but not limited to all software, design, brand names, text, photographs, information, sound recordings, images and other material is protected by copyright, trademark and intellectual property laws in Australia and world-wide. You may not do anything which interferes with or breaches those laws or the intellectual property rights in the Application or any of its components.

9.2 You warrant that you own, or have the right to use, any intellectual property in the information and material published uploaded by you. You indemnify, and keep indemnified, us in respect of any claim, loss or damage that it may occur as a result of a breach of this clause by you.

9.3 Nothing in these Terms of Use gives:

(a) you a right to use any of our trade names, trademarks, service marks, logos, domain names, or other distinctive brand features; and

(b) us a right to any of your trade names, trademarks, service marks, logos, domain names, or other distinctive brand features contained in content that you upload to the Software.

9.4 This clause survives termination of these Terms of Use.

10. SECURITY AND PRIVACY

10.1 The parties expressly recognise that it is impossible to maintain flawless security.

10.2 Each party shall use best endeavours to ensure that each party's data and Confidential Information is protected at all times during the Term of this agreement from unauthorised access or use by third parties and from physical misuse, damage or destruction by any person.

10.3 You are responsible for protecting your passwords, login in details and files and shall be responsible for any damage caused by unauthorised access to the Software or Portal.

10.4 If either party becomes aware of unauthorised access or use by third parties, physical misuse, damage or destruction of the Software or Portal by any person then that party will immediately notify the other party and will take all reasonable measures to ensure such unauthorised access immediately ceases.

10.5 You acknowledge that information about you, including information provided to us in respect of these Terms of Use may be held by us. Any information collected by us will only be for the purpose of operating the Software and providing the Services.

10.6 We may use your personal information in accordance with our Privacy Policy located at www.EzyEntry.com.au.

10.7 If you enable email scraping in the Software to obtain data for inputting into the Software or Portal you acknowledge and agree that:

(a) the email scraping function may not be one hundred percent (100%) accurate;

(b) you are responsible for checking all data collected by way of email scraping to ensure its accuracy;

(c) data and documents may be obtained from the email account which are not relevant to the Services. We are not liable for any data or documents collected which are not relevant to the Services;

(d) you should ensure that your use of the email scraping function will not breach the privacy or intellectual property rights of any party.

11. WARRANTIES

11.1 You represent and warrant to us that:

(a) you have full authority and power to enter into and perform your obligations under these Terms of Use and can do so without the consent of any other person;

- (b) you have taken all action which is necessary to authorise the performance of these Terms of Use in accordance with its terms;
- (c) you are solvent;
- (d) you have not entered or taken steps to enter and do not propose to enter into any arrangement, compromise or assumption with or assignment for the benefit of your creditors or any class of them; and
- (e) your nominated representative is authorised by you as your agent to act on your behalf in connection with these Terms of Use and it is authorised to sign and execute documents on your behalf.

11.2 We represent and warrant to you that:

- (a) we have full authority and power to enter into and perform our obligations under these Terms of Use and can do so without the consent of any other person; and
- (b) we have taken all action which is necessary to authorise the performance of these Terms of Use in accordance with its terms.

12. RISK

- 12.1 The Software and/or the Services are provided on an 'as is' and 'as available' basis and without warranties of any kind, expressed or implied except any which may be implied by statute and are incapable of exclusion, in respect of the Software, the Services or their content.
- 12.2 You access and use the Software and/or the Services at your own risk and we accept no responsibility for any interference, loss, damage or disruption to your business, Device or otherwise which arises in connection with use of the Software and/or the Services. You must take your own precautions to ensure that the process which you employ to obtain access to, and use, the Software and/or the Services does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your Device or otherwise cause you or any person loss, damage or corruption.
- 12.3 To the maximum extent permitted by law, we exclude, and do not make any representation, warranty or endorsement of any kind, whether express or implied, in relation to the content, accuracy, completeness, accessibility, suitability, safety, security, reliability, or any other aspect of:
- (a) any material and/or information in the Software or obtained from the Services;
 - (b) the performance and availability of the Software or the Services; and
 - (c) the loss, damage, corruption or degradation of any data or other material as a result of the use of the Software or the Services.
- 12.4 To the maximum extent permitted by law, we exclude all liability for any loss or damage whatsoever which is suffered, (including but not limited to direct, indirect, incidental, special, consequential or exemplary damages, loss of profits or revenue, business interruption, loss, damage or corruption of data or failure to realise anticipated savings or benefits or business opportunities) as a result of:
- (a) the use of, reliance on, or action taken as a result of, any information or material in the Software or obtained from the Services (whether by way of email scraping or otherwise) for any decision or otherwise;
 - (b) accessing, displaying and using the Software, the Services and/or participating in any on-line activities contained therein;
 - (c) any interruption, suspension or termination of the Software or the Services in whole or in part for whatever reason including failure of or suspension of public or private telecommunications network or third-party service provider;
 - (d) the unavailability, unsuitability and non-connectivity of third-party sites; and
 - (e) any loss, damage, corruption or degradation of any data or other material or interruption of business as a result of the use of the Software or the Services and or viruses or other technologically harmful material that may infect your device due to use of the Software or the Services.
- 12.5 You hereby waive, release, forgive, discharge and relinquish any and all claims that you may have against us, our related bodies corporate, directors, officers, employees, contractors, agents and representatives, in connection with, or arising out of, or incidental to, access to or use of the Software or the Services including but not limited to downloading any information and materials in or from the Software or the Services.
- 12.6 Without limiting the above, we will use best endeavours to ensure, but cannot warrant that, the Software, the Services, information and or material available for download is free from viruses or other conditions that could damage or interfere with data, hardware or software. Accordingly, we exclude to the maximum extent possible, any liability for any loss suffered as a result of any such viruses or defects.
- 12.7 These Terms of Use do not attempt or purport to exclude liability arising under statute if, and to the extent, that such liability cannot be lawfully excluded.

12.8 Any act or omission which, if it were an act or omission of you or your personnel, would be a breach of these Terms of Use on its part, is taken to be such an act or omission for which you are responsible if the act is done or omitted:

- (a) by any corporation or association which you control directly or indirectly in any manner, or
- (b) by any firm or unincorporated body of which you are a partner or member; or
- (c) by any third party contracted by you.

13. INDEMNITIES

13.1 To the maximum extent permitted by law, you indemnify and hold harmless us, our affiliates, successors and assigns, and our and their personnel, directors, officers, and other licensees (each an **Indemnified Party**), against any claim, cause of action, debt, expense or Liability (including legal fees and costs on a solicitor-client basis) incurred by an Indemnified Party arising out of or in connection with:

- (a) any breach of these Terms of Use by you or your personnel;
- (b) any breach of law by you or your personnel;
- (c) a representation made by you or your personnel being incorrect or misleading in any way;
- (d) an act or omission by you or your personnel which is not required under these Terms of Use;
- (e) any loss or damage or liability for any loss or damage incurred by you;
- (f) personal injury, death or property damage caused or contributed to by you or your personnel;
- (g) any infringement of, or claim in regard to, any third party intellectual property right arising as a result of you or your personnel carrying out its obligations under these Terms of Use; and
- (h) your or your personnel's use of the Software or the Services which is negligent or infringes the rights of any third party;
- (i) your use of the Services or the Software or any linked website, including by making or carrying out any commitments or selecting any particular function;
- (j) your use of or reliance on information contained in or accessed through the Software or the Services.

13.2 Your liability to indemnify an Indemnified Party under clause 13.1, other than in respect of the indemnity under clause 13.1(g) and clause 13.1(h), will be reduced proportionally to the extent that a negligent act or omission of the Indemnified Party has contributed to the loss, damage, claim, action, expense, cost or liability.

13.3 It is not necessary for us to incur expense or make any payment before enforcing a right of indemnity conferred by these Terms of Use.

14. GST

14.1 For the purpose of this clause the following definitions apply:

- (a) **GST** means any form of goods and services tax payable under the GST Law;
- (b) **GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

14.2 Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

14.3 Unless otherwise specified, all amounts payable under these Terms of Use are exclusive of GST and must be calculated without regard to GST.

14.4 If a supply made under these Terms of Use is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.

14.5 The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.

14.6 If there is an adjustment to a taxable supply made under these Terms of Use then the Supplier must provide an adjustment note to the Recipient.

14.7 The amount of a party's entitlement under these Terms of Use to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

15. SUSPENSION

15.1 We may suspend the Software and/or the Services in the following circumstances:

- (a) pursuant to clause 8.5 (non-payment of the Fee);
- (b) where you have breached these Terms of Use and failed to rectify such breach within ten (10) Business Days after receiving written notice from us to do so;
- (c) upon your written request.

15.2 We will not be liable to you for any liability or claim arising as a result of any suspension.

15.3 After the Software and/or the Services have been suspended, we may reinstate the Software and/or the Services but is under no obligation to do so save for when the Services have been suspended as a result of a request from you.

16. TERMINATION

16.1 Without prejudice to any other right or remedy that we may have under these Terms of Use or otherwise, we may by written notice to you terminate these Terms of Use with immediate effect if you:

- (a) become insolvent, bankrupt or subject to any form of external administration; or
- (b) cease to carry on business; or
- (c) bring our reputation into disrepute; or
- (d) breach a material term of these Terms of Use (including a failure to pay), that in our reasonable opinion is not capable of remedy within a reasonable time; or
- (e) breach a term of these Terms of Use and fail to remedy the breach within ten (10) Business Days after receiving written notice from us to do so.

16.2 You will not be entitled to a refund of any Fees where these Terms of Use is terminated pursuant to this clause.

16.3 You may by written notice to us terminate these Terms of Use with immediate effect if we:

- (a) become insolvent, bankrupt or subject to any form of external administration; or
- (b) cease to carry on business; or
- (c) breach a material term of these Terms of Use and fail to remedy the breach within ten (10) Business Days after receiving written notice from you to do so.

16.4 Either party may terminate these Terms of Use without cause by giving the other party not less than thirty (30) days' notice in writing.

16.5 We may terminate these Terms of Use immediately at any time for its sole convenience, and for no reason, where we cease to operate the Software and/or provide the Services.

16.6 On termination of these Terms of Use:

- (a) we will cease providing the Software and the Services;
- (b) you must immediately cease using any intellectual property, information, materials or knowledge of us acquired pursuant to these Terms of Use;
- (c) you must immediately return to us all intellectual property, property, information and materials that relate to us, the Software and the Services that you hold to the extent that it is possible to do so;
- (d) each party must return to the other all Confidential Information to the extent that it is possible to do so;
- (e) you will pay the Fees to us up to and including the date of termination. Where the Fees have been paid in advance and these Terms of Use has been terminated due to no fault of you, we will calculate the applicable refund and pay to you such refund.

16.7 Termination of these Terms of Use will not prejudice any right of action or remedy which we may have accrued prior to termination of these Terms of Use.

17. CONFIDENTIALITY

17.1 A party (**Recipient**) must ensure that it and its personnel:

- (a) use and reproduce Confidential Information of the party disclosing the Confidential Information (**Discloser**) only to perform its obligations under these Terms of Use; and
- (b) not disclose or otherwise make available a Discloser's Confidential Information other than to personnel who have a need to know the information to enable them to perform obligations under these Terms of Use.

17.2 All of a Discloser's Confidential Information will remain the property of the Discloser and all copies or other records containing that Confidential Information (or any part of it) must be returned by the Recipient to the Discloser on termination or expiry of these Terms of Use.

17.3 The Recipient acknowledges and agrees that a Discloser will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Recipient of this clause and without the need on the part of the Discloser to prove any special damages.

17.4 Subject to clause 17.5, each party agrees to treat as confidential all information of or relating to the other party that is provided to it, under these Terms of Use or otherwise, which the Discloser notifies in writing to the Recipient is confidential.

17.5 Each Discloser hereby consents to the Recipient disclosing any Confidential Information of the Discloser:

- (a) as required by law; or
- (b) to external consultants and advisers of the Recipient engaged with regard to these Terms of Use.

18. FORCE MAJEURE

18.1 If a party hereto is affected, or likely to be affected, by a Force Majeure Event, it must immediately give the other parties prompt notice of that fact including:

- (a) full particulars of the Force Majeure Event;
- (b) an estimate of its likely duration;
- (c) the obligations affected by it and the extent of its effect on those obligations; and
- (d) the steps being taken to rectify or minimise it.

18.2 The obligations under these Terms of Use of the party affected by a Force Majeure Event are suspended to the extent to which they are affected by the relevant Force Majeure Event and for as long as the Force Majeure Event continues.

18.3 If the affected party's inability to perform its obligations continues for a period greater than thirty (30) days following the Force Majeure Event, the other parties have the right to immediately terminate these Terms of Use by written notice.

19. VARIATION

19.1 We may change these Terms of Use either by obtaining your consent or by giving you notice. The period of notice given by us depends on the nature of the change (as determined by us in our sole discretion). If:

- (a) The change will benefit you: The change can be made immediately. Prior notification is not required.
- (b) The change is required by law, a regulatory body or for a technical reason: Three (3) Business Days' prior notice.
- (c) The change will have significant and detrimental impact on you: Twenty-one (21) Business Days' prior notice.
- (d) All other changes: Twenty-one (21) Business Days' prior notice.

19.2 Notice of a change may be given by email to you.

19.3 Continued use of the Software and/or the Services after expiration of the required notice period will constitute acceptance of the varied terms by you.

20. NOTICES

20.1 Notices must be in writing and delivered to or sent by pre-paid post, email or facsimile at the address, email address or fax number set out in any Information Schedule unless a substitute address, email address or fax number has been notified in writing by a party to the other party.

20.2 The parties agree that a notice will be deemed received:

- (a) if delivered by hand, on the date of delivery;
- (b) if sent by pre-paid post, three (3) Business Days after posting;
- (c) if sent by facsimile, on confirmation of correct transmission of the facsimile; or
- (d) if sent by email, at the time the email leaves the sender's email server, provided the party giving the notice does not receive an automatically generated email response indicating non-receipt by the intended recipient, provided that any notice personally delivered or sent by facsimile or electronically after 5.00pm on any Business Day will be deemed to have been validly delivered at 9.00am on the next Business Day.

20.3 Any notice given by email must also be delivered or sent by facsimile or by hand if it relates to a variation or dispute in connection with these Terms of Use.

20.4 A notice sent by facsimile or email will be deemed to be in writing for the purposes of this clause.

21. GENERAL

21.1 Where a term is defined and referred to in these Terms of Use, the definition will, unless otherwise specified, apply to the whole of these Terms of Use.

21.2 These Terms of Use and its attachments constitute the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

21.3 We make no representation or guarantee as to the effectiveness of the Software or the Services.

21.4 You must not assign, sublicense or otherwise deal in any other way with any of your rights under these Terms of Use.

21.5 We are not liable for any delays in performing any obligation under these Terms of Use caused by circumstances beyond its reasonable control, including but not limited to catastrophes, fire, internal or external strike, wars, terrorists acts, internal or external breakdowns or failure, and, in general, any failure of you to act in a timely or appropriate way.

21.6 These Terms of Use will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of these Terms of Use will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

21.7 A right created by these Terms of Use cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

21.8 These Terms of Use may be assigned or transferred in any manner by us at our sole discretion.

21.9 Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in these Terms of Use.

21.10 These Terms of Use are governed by the laws of Queensland, Australia and each party submits to the jurisdiction of the courts of Queensland, Australia.