

TERMS & CONDITIONS OF SUPPLY

1. INTERPRETATION

1.1 In this Agreement the following expressions will have the following meanings unless inconsistent with the context:

"Agreement" the agreement between the Parties, including these terms & conditions, the Order and any documents referred to therein.

"Business Day" any day other than a Saturday or Sunday or a public or bank holiday in New South Wales, Australia.

"Charges" the charges to be paid by the Customer to the Company in respect of the Goods and/or Services as set out in the Order.

"Company" Peak Technologies Australia Pty Ltd (ABN: 90 672 714 091) of Level 24, 1 O'Connell Street, Sydney NSW 2000.

"Confidential Information" the terms of this Agreement and each Order and all sums payable under this Agreement and each Order, all information in respect of the business of a Party including, but not limited to, its know-how, other technical, business, financial and product development plans, forecasts, customer lists, strategies or other matters connected with the Goods and/or Services, and any other information which a reasonable person would consider to be of a confidential nature (whether or not marked as confidential) but shall exclude the Excluded Information with effect from the date that it becomes Excluded Information.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Customer" the person who places an Order for the Goods and/or Services, as specified in the Order.

"Data Protection Laws" the Privacy Act, General Data Protection Regulation 2016 ("GDPR") and all other privacy laws and regulations in any applicable jurisdiction. The terms "Controller", "Personal Data", "Processor", and "process/processing" shall have the meanings given in the Data Protection Laws.

"Excluded Information" means otherwise Confidential Information which:

- (i) was or becomes publicly known through no default or breach of this Agreement by the receiving Party;
- (ii) was or becomes lawfully known to the receiving Party without restriction from a source other than the disclosing Party who itself obtained it without any confidentiality obligation or which has been demonstrated by the receiving Party to the disclosing Party to have been independently developed by the receiving Party;
- (iii) is approved for disclosure by the Party which has provided it without restriction in a document signed by a duly authorised officer of such Party; or
- (iv) is required to be disclosed to a court or competent regulatory body, only to the extent that the receiving Party is compelled to disclose it by a court or competent regulatory body (in which case the receiving Party shall give the Party which has disclosed the information prompt notice of the relevant order).

"Force Majeure" any cause preventing a Party from performing any or all of its obligations under this Agreement and the Order which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the affected Party including, without limitation, strikes, lockouts or other industrial disputes, protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, accident, fire, explosion, flood, storm, epidemic or any of the above events affecting suppliers or subcontractors.

"Goods" the goods which the Company supplies to the Customer (including any of them or any part of them) under this Agreement as set out in the applicable Order, which may include, but is not necessarily limited to, Hardware and/or Software.

"Group Company" means in respect of a Party, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time ("Parent Undertaking" and "Subsidiary Undertaking" having the meanings set out in section 1162 Companies Act 2006).

"GST" the tax imposed by the GST Act.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* and related legislation.

"Hardware" any computer hardware, networking equipment, or peripheral products supplied by the Company to the Customer but not including any consumables.

"Initial Term" means the initial term of the Agreement, if any, specified in the Order.

"Insolvency Event":

- (i) an application is made to a court for an order (which is not otherwise stayed, withdrawn or dismissed within 30 days), or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (ii) being in liquidation or provisional liquidation or under administration;
- (iii) having a Controller, as defined in the Corporations Act, or analogous person appointed to it or any of its property;
- (iv) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

- (v) being unable to pay its debts when they fall due or being otherwise insolvent;
- (vi) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (vii) entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors;
- (viii) it ceases to carry on business or threatens to do so, other than for reorganisation or restructuring while solvent;
- (ix) any analogous event or circumstance under the laws of any jurisdiction; or
- (x) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other Party (which approval is not to be unreasonably withheld or delayed).

"Intellectual Property Rights" means copyrights, moral rights, patents, supplementary protection certificates, rights in software, trade marks, trade names, service marks, design rights, database rights, rights in goodwill, rights in undisclosed or confidential information (such as Know-How, trade secrets and inventions (whether patentable or not)), and other similar or related intellectual property rights (whether registered or not) and applications for such rights anywhere in the world.

"Order" the Customer's order for Goods and/or Services.

"Party" the Company or the Customer (as appropriate) and "Parties" shall be construed accordingly.

"Privacy Act" the *Privacy Act 1988* (Cth) or any amendment, replacement or re-enactment for the time being in force. The term "Personal Information" shall have the meaning given to it therein.

"Services" the managed, support, technical, consultancy and/or other services which the Company supplies to the Customer under this Agreement.

"Software" any computer software supplied by the Company, whether embodied in ROM, RAM, firmware or on disk, tape or other media.

1.2 In this Agreement unless the context otherwise requires any reference to:

1.2.1 a "Clause", "Schedule" or "Appendix" is a reference to a clause, schedule or appendix in this Agreement;

1.2.2 the word "including" shall mean "including without prejudice to the generality of the foregoing phrase or term" and references to "written", "in writing" or any similar expression shall include all data in written form whether represented in hand-writing, facsimile, printed, electronic or other formats;

1.2.3 a statute, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time and any subordinate laws made under it;

1.2.4 the Parties shall include their permitted successors and assigns;

1.2.5 an obligation on a Party not to do any act or thing shall be deemed to include an obligation not to permit or suffer the doing of that act or thing; and

1.2.6 the singular include the plural, references to any gender include all other genders, and references to "persons" shall include individuals, bodies corporate, unincorporated associations, professions, businesses and partnerships.

2. COMMENCEMENT & DURATION

2.1 This Agreement shall commence on the Company's acceptance of the Order (indicated by the Company signing the Order, providing written acceptance to the Customer, or commencing performance of the Order) and shall continue for the Initial Term or until completion of the Goods and/or Services, as applicable. If the Agreement is subject to an Initial Term, the Agreement shall thereafter continue unless and until terminated by either Party by giving at least 90 days' prior written notice to the other, such notice to expire on or any time after the end of the Initial Term.

2.2 An Order shall not be binding on the Company, and the Company shall have no liability to the Customer, unless and until the Order is accepted in accordance with clause 2.1. The Parties agree and acknowledge that:

2.2.1 the Company shall be under no obligation to accept any Order(s);

2.2.2 in the case of any conflict between these terms and conditions and an Order accepted by the Company, the terms of the Order shall prevail;

2.2.3 subject to clause 2.2.2, the terms and conditions contained in this Agreement shall apply to all Order(s), and the Company's acceptance of any Order(s) shall at all times be conditional upon the Customer's assent

to the terms and conditions herein.

2.3 The Agreement and any accepted Order(s) set out the whole agreement between the Parties in relation to the subject matter of this Agreement and Order(s). For the avoidance of doubt, no terms or conditions endorsed upon, delivered with or contained in any quotation, technical documentation, or Customer documents will form part of this Agreement unless specifically agreed in advance, between the parties.

2.4 This Agreement may only be varied or amended in writing and signed by or on behalf of the Parties.

3. CHARGES & PAYMENT

3.1 The Charges payable by the Customer will be calculated and payable in accordance with the provisions set out in the Order and are stated exclusive of any GST or other sales tax or duty, import/export costs, duties or taxes which, if applicable, will be added to the sum in question and payable by the Customer in addition.

3.2 Where the Charges are calculated on a time and materials basis, the fee rates are calculated on the basis of an eight-hour day, worked during 8:00am to 5:30pm on Business Days. Any work performed outside of these hours shall be chargeable at the Company's then-applicable overtime rates.

3.3 Unless otherwise stated, the Charges exclude any hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the performance of an Order, which shall be payable in addition.

3.4 Unless otherwise agreed, all payments shall be made in SAUD within 30 days of the date of an invoice issued by the Company.

3.5 No payment will be deemed to have been received until the Company has received cleared funds. If the Customer fails to pay any undisputed sum by the due date for payment, and such payments are not made within 5 Business Days of the Company serving a written demand on the Customer, the Company shall be entitled to suspend the provision of the Goods and/or Services under the Order until all outstanding undisputed sums due and payable are discharged in full.

3.6 All sums payable to the Company under the Order (including any amounts not yet invoiced) will become due immediately upon expiry or termination of this Agreement.

3.7 All payments to be made by the Customer under this Agreement will be made in full without any set-off, restriction, deduction or withholding (including but not limited to any deduction or withholding in respect of any present or future taxes, levies, duties, charges or fees of any nature). Where the Customer is required by law to make any deduction or withholding from any Charges or other sums payable under this Agreement, then the Customer shall pay to the Company in the same manner and at the same time such additional amounts as will result in receipt by the Company of such amount as would have been received by the Company had no such deduction or withholding been required to be made.

3.8 If any sum payable under this Agreement, including any sums payable upon termination, is not paid by the due date then (without prejudice to the Company's other rights and remedies), the Company reserves the right to charge interest on such sum on a day to day basis (after as well as before any judgment) from the due date up to the date of actual payment (both dates inclusive) at the rate of five percent (5%) per annum over the National Bank of Australia cash target rate from time to time in force.

4. COMPANY OBLIGATIONS

4.1 The Company shall use reasonable commercial endeavours to provide the Goods and/or Services in accordance with the Order in all material respects.

4.2 The Company shall use reasonable commercial endeavours to meet any performance dates or timetables specified in the Order but any such dates shall be estimates only and time for performance by the Company shall not be of the essence of this Agreement.

4.3 Where the Company has access to Customer premises, it shall use reasonable commercial endeavours to observe all health and safety and security requirements communicated to it by the Customer.

4.4 The Company warrants that:

4.4.1 it will provide the Services in accordance with good industry practice, using suitably skilled and qualified personnel;

4.4.2 it will have and maintain all necessary licences, permissions and consents for the provision of the Services from time to time;

4.4.3 it will not do or omit to do anything which may cause the Customer to lose any licence, permission or consent or to be in breach of any applicable law.

5. CUSTOMER OBLIGATIONS

5.1 The Customer warrants and undertakes to the Company that:

5.1.1 it has obtained all necessary permissions and consents required by it to enter into this Agreement;

5.1.2 it will provide the Company with such information as it may reasonably need concerning the Customer's operations and answers to queries, decisions and approvals which may be reasonably necessary for the Company to comply with its obligations under this Agreement, and ensure such information and answers are accurate and complete;

5.1.3 it shall ensure that all personnel assigned by it to provide assistance to the Company shall have the requisite skill, qualification and experience to perform the tasks assigned to them; and

5.1.4 it shall provide such reasonable access to its premises, personnel and facilities, at a pre-arranged time as agreed between the Parties, as the Company shall reasonably require in order to provide the Goods and/or Services.

5.2 If the Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Company shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

6. GOODS DELIVERY

6.1 Delivery of Goods shall take place at the location(s) specified in the Order or otherwise agreed by the Parties.

6.2 Any delivery times advised by the Company to the Customer are estimates only, non-binding and indicated in Business Days unless stated otherwise. The Company is not liable for late delivery or non-delivery. To the extent permitted by law and except as otherwise provided for under this Agreement, the Company will not be liable for:

6.2.1 any loss or damage resulting from early or delayed, partial, complete or non-complete delivery of an Order;

6.2.2 any loss or damage suffered or incurred during the course of shipment by the carrier; or

6.2.3 any loss or damage occasioned by the late or non-delivery of an Order.

6.3 In the case of non-delivery to the Customer or non-compliance of Goods with this Agreement, the Customer must notify the Company in writing within five (5) Business Days of receipt by the Customer of the Company's delivery note or invoice (whichever is earlier) and the Company shall use all reasonable endeavours to remedy the non-delivery or non-compliance. Delays in the delivery of any Goods shall not entitle the Customer to refuse to take delivery of such Goods or terminate this Agreement.

6.4 If the Customer fails to take delivery of any Goods within 5 Business Days of being notified that they are ready for delivery or fails to provide any necessary instructions, documents, licences or authorisations required to enable the Goods to be delivered or the Services to be performed on time (except solely on account of the Company's default), the Goods and/or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) the Company shall store or arrange for storage of the Goods until actual delivery or sale and charge the Customer for all reasonable related costs and expenses (including, without limitation, storage and insurance) until delivery can be made (and the Company shall use all reasonable endeavours to arrange delivery as soon as possible).

6.5 The Customer will provide at its expense at the Customer delivery location(s) adequate and appropriate equipment and manual labour for off-loading the Goods.

6.6 Unless otherwise agreed by the Parties, the Company may partially deliver Goods pursuant to the quantity tolerances as customary to the standards in the applicable industry in Australia.

6.7 Where the Customer places an Order with multiple call-offs or shipment dates, the Company may invoice the Customer for each shipment on the applicable shipment date. The Customer shall be liable for the entire value of the Order, regardless of whether it requests shipment of all Goods under that Order. If no expiration date is stated in the Order, it shall expire twelve months from its date and the Company shall invoice any remaining balance due in respect of the Order on its expiry or termination (without obligation to provide any further Goods in respect of that Order).

7. HARDWARE MAINTENANCE & SERVICE TERMS

7.1 **OEM Support.** The Customer may purchase from the Company support services as provided by a relevant original equipment manufacturer ("OEM"), in accordance with the OEM's standard support terms ("OEM Support"). The Customer acknowledges and agrees that the Company acts as reseller of the OEM Support and it shall enter into the OEM's standard terms and conditions for such OEM Support, which shall form part of this Agreement insofar as applicable to the OEM Support.

7.2 **Company Maintenance Services.** The Company shall provide the maintenance services ("Maintenance") detailed in the Order. The Company will perform the Maintenance at the locations and in relation to the Hardware agreed, during the Company's standard support hours. Hardware received for repair which

- falls outside of the scope of the Maintenance may be repaired at the Company's sole discretion subject to payment by the Customer of the costs of such repair on a time and material basis.
- 7.3 **Additional Services.** Maintenance does not include the following services unless specifically agreed within the scope of the Maintenance: (a) site preparation and maintenance of a proper environment; (b) set up and installation of Hardware; (c) moving Hardware; (d) refurbishing Hardware; (e) adding, changing or removing features or options or making other functional changes to Hardware; (f) providing consumable supplies such as paper, ribbons and print heads, batteries, carrying cases, software or firmware upgrades or updates, power supplies, cables ("Consumables"); (g) systems engineering services, programming services and operational procedures of any sort; (h) maintenance, repair or replacement of Hardware (or any part thereof), where required because of operator error, physical damage whether accidental or malicious, abuse, misuse, accident, neglect, usage in an improper environment, alterations or repairs not authorised or performed by the Company, use of parts or Consumables not approved by the manufacturer of the Hardware or the Company, not in accordance with the manufacturer's specifications, or in excess of an item's duty cycle, or other loss or damage to the Hardware due to an insurable loss or cause(s) external to the Hardware; and (i) any services (including Maintenance) requested outside of the Company's standard support hours or in relation to locations or Hardware other than those agreed by the parties ("Additional Services"). Any Additional Services which the Customer requests and the Company agrees to perform shall be billed on a time and materials basis in accordance with the Company's then-current rates and the Customer shall be liable for any reasonable expenses (including travel, lodging and project expenses) incurred by the Company in performing such Additional Services.
- 7.4 **Customer Software.** The Customer shall, if requested by the Company in connection with the provision of the Maintenance, provide a copy of and licence to retain and use any application software used by the Customer in conjunction with the Hardware (at the Customer's expense), to facilitate the repair of such Hardware by the Company.
- 7.5 **Customer Responsibilities.** Without prejudice to the generality of clause 5, the Customer shall provide all access to the Hardware and to related facilities (including utilities and portable electric tools) and access to suitable personnel required by the Company. The Customer shall perform all operator preventative maintenance for the Hardware in accordance with the operation manuals and/or good industry practice. The Customer shall be responsible for returning Hardware to the Company for repair and shall not bulk ship unless otherwise agreed.
- 7.6 **Term.** Except as otherwise provided in the Order, Maintenance shall continue on a 12-month rolling basis, unless terminated by either party giving at least 90 days' notice of termination, such notice to expire at the end of the then applicable 12-month period. The Customer may add Hardware to the scope of the Maintenance from time to time subject to the Company's agreement and any conditions imposed by the Company, including but not limited to inspection of the Hardware and an increase in the Charges payable for the Maintenance.
- 7.7 **Charges.** Unless otherwise agreed, Charges for Maintenance shall be payable annually in advance. The Charges are based on an agreed annual percentage return rate for the Hardware ("Return Rate"). If the actual return rate exceeds the Return Rate, the Company reserves the right to charge the Customer for any repairs in excess of the Return Rate. The Company shall issue a quotation for any Additional Services, which the Customer shall accept prior to the Company undertaking the Additional Services. The Company may reasonably increase the Charges in respect of any renewal period by giving notice to the Customer prior to renewal, or otherwise annually by giving the Customer 90 days' prior notice.
8. **PROFESSIONAL SERVICES**
- 8.1 Where the Order includes the provision of professional services by the Company, which may include ad hoc elements of project management, gold build, software loading, site installations, consultancy, training or other related services ("Deployment Services") and/or ongoing helpdesk, advance emergency exchange, mobile device management, battery management or other ongoing services ("Support Services"), the following Supplementary Terms shall apply:
- 8.1.1 **Term.** Deployment Services shall be as set out in the Order. Support Services shall be provided for the period set out in the Order (which shall be no less than one year) and shall continue to be provided on a rolling 12-month basis unless terminated by either party giving at least 90 days' prior written notice to the other, such notice to expire at the end of the then-current 12-month period.
- 8.1.2 **Charges.** Unless otherwise agreed, Charges for the Support Services shall be payable annually in advance. The Company may reasonably increase the Charges in respect of any renewal period by giving notice to the Customer prior to renewal, or otherwise annually by giving the Customer 90 days' prior notice.
9. **RISK / OWNERSHIP OF GOODS**
- 9.1 Risk of damage to or loss of Goods will pass to the Customer on delivery. Where the Company stores Goods on the Customer's behalf until deployment, the risk in the Goods shall pass to the Customer on receipt by the Company. The Company shall be entitled to charge a reasonable storage fee in such circumstances.
- 9.2 Save in respect of Software (which is licensed only, subject to the terms of this Agreement and any other applicable licence terms) and as otherwise specified in an Order, title in the Goods shall transfer to the Customer when the Company receives payment in full for the Goods.
10. **COMPANY WARRANTIES AND LIABILITY**
- 10.1 The Company, to the extent that it is able to do so and only during the continuance of the Agreement, hereby assigns the benefit of any guarantee or warranty covering any defects in Goods received by the Company under an agreement with the manufacturer or supplier of the relevant Goods.
- 10.2 Unless expressly specified in the Order, the Company makes no warranty or guarantee in connection with the Goods supplied by it under this Agreement.
- 10.3 Nothing in this Agreement shall limit or exclude either Party's liability:
- 10.3.1 for fraud or fraudulent misrepresentation; or
- 10.3.2 for death or personal injury resulting from negligence; or
- 10.3.3 to the extent not permitted by law.
- 10.4 Subject to clauses 10.3 and 10.5, the Company's total liability to the Customer under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not in any circumstances exceed a sum equal to the Charges payable by the Customer.
- 10.5 Neither Party will have any liability under or in connection with this Agreement in respect of:
- 10.5.1 loss of profits, loss of business, loss of revenue, loss of contract, loss of goodwill, loss of anticipated earnings or savings (whether direct, indirect or consequential); or
- 10.5.2 any indirect or consequential loss howsoever arising.
- 10.6 The Charges have been set by the Company on the basis of the exclusions and restrictions of liability in this clause and would be higher without those provisions. In the circumstances, the Customer agrees that those provisions are reasonable.
- 10.7 Except as specifically provided in this Agreement, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
11. **FORCE MAJEURE**
- 11.1 Neither Party will be deemed to be in breach of this Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to Force Majeure.
- 11.2 If the Force Majeure in question continues for more than sixty (60) days, the Party not claiming Force Majeure may give written notice to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than 15 Business Days after the date on which the notice is given.
12. **TERMINATION / CONSEQUENCES OF TERMINATION**
- 12.1 The Company may by notice in writing served on the Customer terminate this Agreement with immediate effect if:
- 12.1.1 the Customer fails to pay any overdue sum due under this Agreement within 5 Business Days of the Company serving a written demand on the Customer for payment of such overdue sums; or
- 12.1.2 any event occurs which has or is likely to have in the opinion of the Company a material adverse effect on the business, properties or condition, financial or otherwise of the Customer or on the ability of the Customer to duly perform and observe its obligations under this Agreement.
- 12.2 Either Party may by notice in writing served on the other Party terminate this Agreement forthwith if:
- 12.2.1 the other Party is in material breach of any of the terms of this Agreement and, where the breach is capable of remedy, the Party in breach fails to remedy such breach within 20 Business Days of service of a written notice from the other Party, specifying the breach and requiring it to be remedied; or
- 12.2.2 an Insolvency Event occurs to the other Party;
- 12.2.3 the equivalent of any of the events set out in clause 12.2.2 occurs in relation to the other Party under the jurisdiction to which the other Party is subject.
- 12.3 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or the Company accrued prior to termination.
- 12.4 Within 30 days after the date of termination each Party will:
- 12.4.1 return to the other Party all Confidential Information (including without limitation all copies and extracts) and all other property (whether tangible or intangible) of the other Party in its possession or control;
- 12.4.2 destroy or permanently erase (if technically feasible) all documents and all records (in any media) created by it or on its behalf that use, concern or are based on any Confidential Information of the other Party ("Records") – if any Records cannot be permanently erased, they shall remain subject to the confidentiality obligations of this Agreement; and
- 12.4.3 cease to use the Confidential Information of the other Party.
- 12.5 On termination or expiry of this Agreement all provisions in this Agreement which expressly or impliedly have effect after termination shall remain in effect, including clauses 10.3 – 10.7, 12, 13, 14, 15 and 18.
13. **INTELLECTUAL PROPERTY**
- 13.1 All Intellectual Property Rights in or in relation to the Services and Software (including any manuals and operating documentation relating thereto) and related materials provided by the Company shall remain vested in the Company or its suppliers as the case may be. The Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in this Agreement.
- 13.2 The Customer's Intellectual Property Rights which exist at the Effective Date, and the Intellectual Property Rights in any Confidential Information provided by the Customer to the Company are, will be and remain the property of the Customer. The Company shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically set out in this Agreement.
- 13.3 The Company will indemnify the Customer in respect of any claim or action against the Customer by any third party that the receipt by the Customer of all or any part of the Services infringes the Intellectual Property Rights of that third party ("Claim"). The foregoing indemnity is subject to the Customer (a) having used the Services in accordance with this Agreement and any applicable instructions; (b) not having attempted to modify, repair, or otherwise adapt any part of the Services or associated Goods; (c) providing prompt written notice of the Claim to the Company; (d) allowing the Company to assume full conduct of the Claim and providing reasonable assistance (at the Company's cost) in relation to the Claim.
- 13.4 The Customer acknowledges and agrees that Software may be subject to third-party licence terms, which the Customer shall be deemed to accept when it takes delivery of, installs and/or uses the Software. The Customer shall indemnify the Company against any losses, claims, damages, expenses or liabilities arising out of any breach by the Customer of any third-party Software licence terms.
- 13.5 The Customer undertakes that it shall not (and that it shall not employ nor permit any third party) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer Software or any part thereof except to the extent allowed by applicable law.
- 13.6 The Customer further acknowledges that Software and all accompanying operating documentation are confidential and subject to the terms of clause 14.
14. **CONFIDENTIALITY / DATA PROTECTION**
- 14.1 The Parties will keep confidential any and all Confidential Information that they may acquire pursuant to this Agreement.
- 14.2 Each Party will not use the Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers and employees comply with the provisions of this clause 14 and shall be liable for the acts and omissions of its employees and officers.
- 14.3 The Parties shall comply with the Data Protection Laws applicable to them and shall not, by any act or omission, put the other Party in breach of any of the Data Protection Laws (in so far as such laws are applicable to the other Party) in connection with this Agreement.
- 14.4 The Customer acknowledges and agrees that the Customer's Personal Information may be transferred or stored outside Australia if necessary to carry out the Company's obligations under the Agreement, provided the Company takes such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the Australian Privacy Principles (as set out in the Privacy Act).
- 14.5 For the purpose of the GDPR, and to the extent the GDPR applies, the Customer acknowledges and agrees that the Customer Personal Data may be transferred or stored outside the European Economic Area ("EEA") (including transfers to sub-processors based outside EEA) if necessary to carry out the Company's obligations under the Agreement provided that (a) the Company provides and maintains appropriate safeguards as set out in Article 46 GDPR to lawfully transfer the Personal Data to a third country; (b) the data subject has enforceable rights and effective legal remedies; and (c) the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Customer Personal Data.
- 14.6 The Customer acknowledges and agrees that any transfers of Personal Data or Personal Information made by it directly to third parties, including in connection with the OEM Support, shall be subject to those third parties' data processing terms and/or privacy policies in force from time to time.
15. **EMPLOYEES / NON SOLICITATION**
- 15.1 Each Party agrees that it will not, and it will ensure that its Group Companies will not, solicit or approach in any way, any of the other's employees who are engaged in connection with the provision of Goods/Services under this Agreement with a view to offering them employment or to solicit services from them on their own account (whether for itself or another party) during the period of this Agreement and for a period of 1 year after the termination or expiration of this Agreement. "Solicit" or "approach" shall not apply in the case of any employee responding without enticement to a job advertisement which is capable of being responded to by members of the public (or sections thereof) generally.
16. **DISPUTE RESOLUTION PROCEDURE**
- 16.1 All disputes, differences or questions arising in relation to this Agreement shall be referred in the first instance to the Account Director of the Company and Head of IT of the Customer who shall promptly meet and attempt to settle the dispute (acting in good faith) within 10 Business Days of such referral.
- 16.2 If the persons appointed in clause 16.1 are unable to resolve the dispute within 10 Business Days of the referral, it shall be escalated to the Managing Director of the Company and the Managing Director or equivalent responsible person of the Customer who shall promptly meet and attempt to settle the dispute (acting in good faith) within 10 Business Days of such referral.
- 16.3 If the persons appointed in clause 16.2 are unable to resolve the dispute within 10 Business Days of the referral to such parties, the dispute may be referred to the courts under clause 18.7.
- 16.4 Neither Party may initiate any legal action until the procedure set out above has been completed, provided that this clause 16 shall not operate to prevent a Party seeking interim relief.
17. **COMMUNICATIONS**
- 17.1 All notices that are required to be given under this Agreement shall be in writing and shall be sent to the addresses set out at the front of this Agreement by first class pre-paid or other next working day delivery, by hand, by airmail (where international postage is required), or email and shall be deemed to have been received:
- 17.1.1 by first class or next working day delivery, 2 Business Days after the date of mailing or at the time of delivery recorded by the courier;
- 17.1.2 by hand, 1 Business Day following delivery;
- 17.1.3 by airmail, 5 Business Days after the date of mailing or at the time of delivery recorded by the courier; or
- 17.1.4 by email, 1 Business Day following transmission of the email.
18. **GENERAL**
- 18.1 Each right or remedy of a Party under this Agreement is without prejudice to any other right or remedy of the Party under this Agreement.
- 18.2 If any condition or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other provision or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.
- 18.3 The Company is acting as an independent contractor and nothing in this Agreement shall be deemed to make a Party the employee, agent, or partner of the other.
- 18.4 No failure or delay by a Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 18.5 The Customer may not assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under this Agreement, without prior written consent of the Company (such consent not to be unreasonably withheld or delayed).
- 18.6 The Company shall be responsible for the acts, defaults and omissions of its sub-contractors, as if they were its own.
- 18.7 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement, including any non-contractual obligations, will be governed by the laws of New South Wales, Australia. Subject to clause 16, the Parties submit to the exclusive jurisdiction of the courts of that State and to the courts of appeal therefrom.