

December 17, 2018



STANDARD CONTRACT TERMS & CONDITIONS FOR LICENCE
OF EXPEDE SOFTWARE PLATFORM
AND ACCESS TO ASSOICATED SERVICES

EXLS-C6000-002 EXPEDE LIC & SERVICES STANDARD TERMS & CONDITIONS REV6

Microsoft
Azure

Certified

STANDARD CONTRACT TERMS & CONDITIONS FOR LICENCE OF EXPEDE SOFTWARE PLATFORM AND ACCESS TO ASSOCIATED SERVICES**DATE:**

The Effective Date of this Agreement between Customer and Provider is from the date of execution of the Form of Agreement.

BACKGROUND:

The Provider owns and operates the Expede system which is a software solution with hosting Services from the Microsoft Azure Cloud. Within the Expede range of software it provides the Platform and also provides associated, Services and Supporting Services, and the Customer wishes to be granted a license to the Platform and to receive the Services and Support Services, on the terms of this Agreement.

AGREEMENT**1. DEFINITIONS AND INTERPRETATION****1.1 In this Agreement:**

"Acceptable Use Policy" means the policy that stipulates the constraints and practices that a user must agree to in order to gain access to the Platform;

"Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network;

"Affiliate" means an entity that Controls, is controlled by, or is under common Control with the relevant entity;

"Agreement" means this Standard Contract Terms & Conditions together with any amendments or modifications that might at any time be made to it and includes the Form of Agreement and other attachments to it;

"Agreement Cancellation Notice" means the period of notice the Customer must give to the Provider to cancel this Agreement. The period is defined within the Order Form;

"Business Day" means any week day, other than a bank or public holiday in Western Australia;

"Business Hours" means between 08:30 and 17:30 local time on a Business Day;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to this Agreement as set out in Order Form;

"Confidential Information" means the Customer Confidential Information and the Provider Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" will be construed accordingly);

"Customer" means the company or individual named and described as such as a party within the Form of Agreement and includes all his or her or its lawful successors, or assigns, and unless context requires otherwise includes the corporate entities controlled by Customer;

"Customer Confidential Information" means

- a. any information disclosed by the Customer to the Provider that is marked as "confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential;
- b. The financial terms and conditions of this Agreement; and
- c. the Customer Materials;

"Customer Indemnity Event" has the meaning given to it in Clause 8.1;

"Customer Materials" all works and materials:

- a. uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Customer or by any application or automated system using the Customer's account; and
- b. Otherwise provided by the Customer to the Provider in connection with this Agreement;

"Customer Personal Data" means Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement;

"Customer Portal" means a private, secure web portal that enables Customers to directly manage their account specific information, to include but not limited to: Order Specification management, billing, payment management and invoices.

"Defect" means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the Platform, but excluding any defect, error or bug caused by or arising as a result of:

- a. An act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors; or
- b. An incompatibility between the Platform and any other system, application, program or software not specified as compatible in Platform Specification;

"Documentation" means the documentation produced by the Provider and made available to the Customer specifying how the Platform should be used;

"Effective Date" means the date of execution of the Form of Agreement;

"Form of Agreement" means the Agreement executed by the parties and other attachments to it including this Standard Contract Terms & Conditions together with any amendments or modifications that might at any time be made to it;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs;

"Malicious Code" means code, files, scripts, agents or software intended to do harm, including: viruses, worms, Trojan horses or any other attack methods described by OWASP;

"Object Code" means code that is produced when an interpreter or a compiler translates Source Code into recognizable and executable machine code. Object Code is a set of instruction codes that is understood by a computer at the lowest hardware level. Object Code is produced by a compiler that reads some higher-level computer language source instructions and translates them into equivalent machine language instructions;

"Order Form" means an ordering document detailing the Order Specification, Platform licence, Charges, Services, Supporting Services and Service Level Agreement to be provided hereunder that is entered into between Customer and Provider, including any addenda and schedules including those selected through the Customer Portal;

"Order Specification" means a specification detailing the Platform and User allocation, Charges, Agreement Cancellation Notice, payment terms, Named Users, Platform Hosting Location including any addenda and schedules including those selected through the Customer Portal;

"Platform Specification" means the document which details the operating parameters of the Platform;

"Permitted Purpose" means the upload, storage, access, download recovery and interrogation of the Customers Materials within the Platform in full compliance with this Agreement and the Acceptable Use Policy;

"Personal Data" has the meaning given to it in the Privacy Act 1998;

"Platform" means the software Platform known as EXPEDE that is owned and operated by the Provider, and that will be made available under licence to the Customer under this Agreement;

"Provider" means the company Expede Pty Ltd. a company incorporated in Australia (registration number ABN: 34 115 009 366 and includes all its lawful successors, or assigns;

"Provider Confidential Information" means:

- a. any information disclosed (whether disclosed in writing, orally or otherwise) by the Provider to the Customer that is marked as "confidential", described as "confidential" or should have been understood by the Customer at the time of disclosure to be confidential;
- b. The terms and conditions of this Agreement; and
- c. The Platform functional behaviour.

"Provider Indemnity Event" has the meaning given to it in Clause 8.3;

"Services" means the services that are provided to Customer under an Order Form and made available by Provider including associated hosting services and offline components;

"Service Level Agreement" means an ordering document specifying the availability and reliability of the hosting services being provided as specified in the Order Form;

"Support Services" means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with the Order Form;

“Source Code” means a text listing of commands to be compiled or assembled into an executable computer program language or Object Code;

“Term” means the term of this Agreement;

“Third Party Services” means any hosted or cloud services provided by any third party that transmits data to and from the Platform

- 1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- that statute or statutory provision as modified, consolidated and/or re-enacted from time to time;
 - any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement.

2. TERM

The Term of this Agreement is 2 years unless detailed otherwise within the Order Form;

3. THE PLATFORM

3.1 The Provider will make available the Platform to the Customer by setting up an account access code for the Customer on the Platform, and providing to the Customer login details for that account;

3.2 Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clause 3.4, the Provider hereby grants to the Customer a non-exclusive Licence to use the Platform for the Permitted Purpose via any defined web browser in accordance with the documentation during the Term;

3.3 The access granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:

- the Platform may only be used by the named users identified in Order Form, providing that the Customer may change, add or remove a designated named user in accordance with the procedure set out therein;
- the Platform must not be used at any point in time by more than the number of concurrent users specified in Order Form;
- The Platform may only be used by the employees, contractors and agents of the Customer and:
 - Where the Customer is a company, the Customer's officers;
 - (i) Where the Customer is a partnership, the Customer's partners; and
 - (ii) Where the Customer is a limited liability partnership, the Customer's members;
- The Customer must comply at all times with the terms of the Acceptable Use Policy and must ensure that all users of the Platform comply with the terms of that Acceptable Use Policy; and
- Access the Platform only from a known secure device which is free for Malicious Code and malware.

3.4 Except to the extent mandated by applicable law or expressly permitted in this Agreement, the Licence granted by the Provider to the Customer under this Clause 3 is subject to the following prohibitions:

- The Customer must not sub-license its right to access and use the Platform or allow any unauthorised person to access or use the Platform;
- The Customer must not frame or otherwise re-publish or re-distribute the Platform;
- The Customer must not alter or adapt or edit the Platform save as expressly permitted by the Documentation; and
- The Customer must follow the requirements of the Acceptable Use Policy and any applicable laws.

3.5 For the avoidance of doubt, the Customer has no right to access the Object Code or Source Code of the Platform, either during or after the Term.

3.6 All Intellectual Property Rights in the Platform shall, as between the parties, be the exclusive property of the Provider.

3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account.

3.8 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.

3.9 The Customer must not use the Platform:

- In any way that is unlawful, illegal, fraudulent or harmful; or
- In connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

3.10 The Customer agrees that the Customer acceptance of the Agreement is not dependent on any oral or written comments made by Provider regarding functionality or features of the Platform or Services prior to the execution of this Agreement;

3.11 The Customer agrees to grant Provider a worldwide, perpetual, irrevocable, royalty-free ownership of any suggestions, enhancement requests, recommendation, correction or other feedback provided by Customer or users relating to the Provider and its operation of the Services and Platform.

3.12 For the avoidance of doubt, Services and Supporting Services associated with the licence and access to the Platform are only to be provided by the Provider under this Agreement.

4. TRIAL

Upon execution of the Form of Agreement, Customer is entitled to a single free trial for a period not exceeding 14 calendar days. Provider will make available the Expede Platform and associated Services to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Customer registered to use the Platform and Services or (b) the start date of any Order Form ordered by Customer for such provisions.

ANY CUSTOMER DATA ENTERED INTO THE PLATFORM DURING A FREE TRIAL MAY BE PERMANENTLY LOST UNLESS CUSTOMER EXECUTES AN ORDER FORM OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

Please review the Documentation during the trial period in order to become familiar with the features and functions of the Platform and Services before placing an order.

5. CUSTOMER MATERIALS

5.1 The Customer grants to the Provider a non-exclusive Licence to store, copy and otherwise use the Customer Materials on the Platform for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under this Agreement, and exercising its rights under this Agreement.

5.2 Subject to Clause 5.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.

5.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of this Agreement, will not:

- a. Breach any laws, statutes, regulations or legally-binding codes;
 - b. Infringe any person's Intellectual Property Rights or other legal rights; or
 - c. Give rise to any cause of action against the Provider or the Customer or any third party,
- In each case in any jurisdiction and under any applicable law.

5.4 Any breach by the Customer of this Clause 5 will be deemed to be a material breach of this Agreement for the purposes of Clause 12.

6. CHARGES

6.1 The Provider will issue invoices for the charges to the Customer in accordance with the provisions of Order Form;

6.2 The Customer will pay the charges to the Provider within the specified period within the Order Form from the date of issue of an invoice issued in accordance with Clause 6.1;

6.3 All charges stated in or in relation to this Agreement are stated exclusive of GST, unless the context requires otherwise. GST will be payable by the Customer to the Provider in addition to the principal amounts;

6.4 Charges must be paid by bank transfer (using such payment details as are notified by the Provider to the Customer from time to time);

6.5 If the Customer does not pay any amount properly due to the Provider under or in connection with this Agreement, the Provider may:

- a. Charge the Customer interest on the overdue amount at the rate of 3 % per year above the base rate of National Australian Bank from time to time (which interest will accrue daily and be compounded quarterly); or
- b. Claim interest and statutory compensation from the Customer pursuant to the Commercial Arbitration Act 1984;

6.6 Notwithstanding clause 12.5, the Provider may suspend access to the Platform and the provision of the services if any amounts due to be paid by the Customer to the Provider under this Agreement are overdue by more than 60 days.

7. WARRANTIES

7.1 The Customer warrants and represents to the Provider that it has the legal right and authority to enter into and perform its obligations under this Agreement;

7.2 The Provider warrants and represents to the Customer:

- a. That it has the legal right and authority to enter into and perform its obligations under this Agreement;
- b. That it will perform its obligations under this Agreement with reasonable care and skill;
- c. That the Platform will be hosted in accordance with the requirements set out in this Agreement including Order Form, and will be available to the Customer in accordance with the uptime commitments given in Service Level Agreement;
- d. The Platform (excluding for the avoidance of doubt the Customer Materials) will not:
 - (i) Breach any laws, statutes, regulations or legally-binding codes;
 - (ii) Infringe any person's Intellectual Property Rights or other legal rights; or
 - (iii) Give rise to any cause of action against the Provider or the Customer or any third party;

- 7.3** The Customer acknowledges that:
- Complex software is never wholly free from Defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such Defect, errors and bugs;
 - The Provider does not warrant or represent that the Platform will be compatible with any application, program or software not specifically identified as compatible in Platform Specification and
 - The Provider will not and does not purport to provide any legal, taxation or accountancy advice under this Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person;
- 7.4** All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.
- 8. INDEMNITIES**
- 8.1** Subject to the Provider's compliance with Clause 8.2, the Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clause 5.3 (a "Customer Indemnity Event").
- 8.2** The Provider will:
- Upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
 - Provide to the Customer all reasonable assistance in relation to the Customer Indemnity Event;
 - Allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event; and
 - Not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the prior written consent of the Customer;
- 8.3** Subject to the Customer's compliance with Clause 8.4, the Provider will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Customer and arising as a result of any breach by the Provider of Clause 7.2 (d) (a "Provider indemnity event");
- 8.4** The Customer will:
- Upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
 - Provide to the Provider all reasonable assistance in relation to the Provider Indemnity Event;
 - Allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Provider Indemnity Event; and
 - Not admit liability in connection with the Provider Indemnity Event or settle the Provider Indemnity Event without the prior written consent of the Provider.
- 9. LIMITATIONS AND EXCLUSIONS OF LIABILITY**
- 9.1** Nothing in the Agreement will:
- Limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - Limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - Limit any liability of a party in any way that is not permitted under applicable law; or
 - Exclude any liability of a party that may not be excluded under applicable law.
- 9.2** The limitations and exclusions of liability set out in this Clause 9 and elsewhere in the Agreement:
- Are subject to Clause 9.1;
 - Govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
 - Will not limit or exclude the liability of the parties under the express indemnities set out the Agreement.
- 9.3** Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 9.4** Neither party will be liable for any loss of business, contracts or commercial opportunities.
- 9.5** Neither party will be liable for any loss of or damage to goodwill or reputation.
- 9.6** The Provider will not be liable in respect of any loss or corruption of any data, database or software.
- 9.7** Neither party will be liable in respect of any special, indirect or consequential loss or damage.
- 9.8** Neither party will be liable for any losses arising out of a Force Majeure event.
- 9.9** The Provider's liability in relation to any event or series of related events will not exceed The total amount paid and payable by the Customer to the Provider under the Agreement during the 3 month period immediately preceding the event or events giving rise to the claim.
- 9.10** The Provider's aggregate liability under the Agreement and any collateral contracts will not exceed 10% of the total amount paid and payable by the Customer to the Provider under the Agreement.

10. DATA PROTECTION

10.1 The Customer warrants that it will not disclose any Personal Data to the Provider under or in connection with this Agreement.

10.2 The Provider warrants that:

- a. It will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and
- b. It has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.

11. CONFIDENTIALITY AND PUBLICITY

11.1 The Provider will:

- a. keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 11;
- b. protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own Confidential Information of a similar nature, being at least a reasonable degree of care; and
- c. without prejudice to the generality of Clause 11.1(b), deploy and maintain the security systems and technologies detailed in Platform Specification in relation to the Customer Confidential Information held on the Platform.

11.2 The Customer will:

- a. keep confidential and not disclose the Provider Confidential Information to any person save as expressly permitted by this Clause 11;
- b. protect the Provider Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own Confidential Information of a similar nature, being at least a reasonable degree of care.

11.3 Confidential Information of a party may be disclosed by the other party to that other party's officers and employees provided that the disclosing party will cause the recipients to maintain the confidentiality of the Confidential Information disclosed.

11.4 The obligations set out in this Clause 11; shall not apply to:

- a. Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
- b. Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer, and Provider Confidential Information that is in possession of the Customer prior to disclosure by the Provider;
- c. Customer Confidential Information that is received by the Provider, and Provider Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information; or
- d. Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement.

11.5 The Provider must not make any public disclosures relating to the Agreement or the subject matter of the Agreement (including disclosure in named case studies, public announcements and marketing materials) without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed and providing that the Provider may make the following public disclosure without the consent of the Customer: brief named press release on Providers website and inclusion in the named customer list within the Providers general track record statements.

12. TERMINATION

12.1 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

- a. commits any material breach of any term of this Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
- b. persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).

12.2 Either party may terminate this Agreement immediately by giving written notice to the other party if:

- a. the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- b. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- c. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- d. (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

12.3 Customer may terminate this Agreement at any time by giving Provider a written Agreement Cancellation Notice or by notification through the Customer Portal.

- 12.4** If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate this Agreement by giving at least 180 days' written notice of termination to the Customer.
- 12.5** The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date.
- 13. EFFECTS OF TERMINATION**
- 13.1** Upon termination of this Agreement, all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6.5, 8, 9, 11.1 to 11.4, 13 and 17.
- 13.2** Termination of this Agreement will not affect either party's accrued liabilities and rights as at the date of termination.
- 13.3** Subject to Clause 13.5, within 7 days following the termination of the Agreement, the Provider will:
- a. issue a notice to Customer to irrevocably delete from the Platform all Customer Confidential Information within 14 days of Customer's receipt of the notice; and
 - b. irrevocably delete from its other computer systems all Customer Confidential Information, and dispose of all documents and materials containing Customer Confidential Information.
- Upon Customer's receipt of the notice referred to in clause 13.3(a), Customer may elect to execute the provisions within the Order Form to the Provider to recover all Customer Confidential Information from the Platform in its native documentation.
- 13.4** Subject to Clause 13.5, within 21 days following the termination of this Agreement, the Customer will:
- a. return to the Provider or dispose of as the Provider may instruct all documents and materials containing Provider Confidential Information; and
 - b. irrevocably delete from its computer systems all Provider Confidential Information.
- 13.5** A party may retain any document (including any electronic document) containing the confidential information of the other party after the termination of this Agreement if:
- a. that party is obliged to retain such document by any law or regulation or other rule enforceable against that party; or
 - b. the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to the party retaining the document.
- 14. NOTICES**
- 14.1** Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered by recorded signed-for post, or sent by email, for the attention of the relevant person, and to the relevant address email address given below (or as notified by one party to the other in accordance with this Clause).
- The Provider:
Expede Pty Ltd
Email: Notice@expede.net
- The Customer
As defined within the Form of Agreement
- 14.2** A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- a. where the notice is delivered personally, at the time of delivery;
 - b. where the notice is sent by recorded signed-for post, 48 hours after posting; and
 - c. where the notice is sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
- 15. FORCE MAJEURE EVENT**
- 15.1** Where a Force Majeure event gives rise to a failure or delay in either party performing its obligations under this Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure event.
- 15.2** A party who becomes aware of a Force Majeure event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will:
- a. forthwith notify the other; and
 - b. will inform the other of the period for which it is estimated that such failure or delay will continue.
- 15.3** The affected party will take reasonable steps to mitigate the effects of the Force Majeure event.

16 INTEGRATIONS WITH THIRD PARTY SERVICES

- 16.1** The Platform is integrated with those Third Party Services identified within the Platform Specification as at the Effective Date.
- 16.2** The supply of Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. The Provider does not contract or supply the Third Party Services and is not a party to any contract for, or otherwise responsible in respect of the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the Third Party Services.
- 16.3** The Customer acknowledges that:
- a. the integration of Third Party Services may entail the transfer of Customer Materials from the Platform to the relevant Third Party Services; and
 - b. the Provider has no control over, or responsibility in respect of: any disclosure, modification, deletion or other use of Customer Materials resulting from any integration with Third Party Services.
- 16.4** Without prejudice to its other obligations under Clause 16, the Customer must ensure that it has in place the necessary contractual safeguards to ensure that both:
- a. the transfer of relevant Customer Personal Data to the Provider or Third Party Services is lawful; and
 - b. the use of relevant Customer Personal Data by Provider or Third Party is lawful.
- 16.5** The Customer shall have the opportunity to consent to transfer of Customer Materials to any Third Party Services. The Provider must ensure that such transfer shall not take place without the consent of the Customer.
- 16.6** The Customer hereby consents to the transfer of Customer Materials to the Third Party Services detailed within the Platform Specification.
- 16.7** The use of some features of the Platform may depend upon the Customer enabling and agreeing to integrations between the Platform and Third Party Services.
- 16.8** The Customer warrants to the Provider that the transfer of Customer Materials by the Provider to a Third Party Services in accordance with Clause 16 will not infringe any person's legal or contractual rights and will not put the Provider in breach of any applicable laws.
- 16.9** Additional Charges may be payable by the Customer to the Provider in respect to a Third Party Services integration as set out within the Solution Order Form.
- 16.10** Save to the extent that parties expressly agree otherwise in writing and subject to Clause 9.1:
- a. the Provider gives no warranties or representations in respect to any Third Party Services; and
 - b. the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by Third Party Services.

17. GENERAL

- 17.1** No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 17.2** If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 17.3** Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 17.4** This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 17.5** Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under this Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. The assigning party will remain responsible for the due observance of all of the requirements of this Agreement, and any contravention by any assignee or successor will be deemed to be that of the assigning party. The assigning party will promptly notify the other party of any such assignment or succession. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any contractual rights or obligations under this Agreement.
- 17.6** Neither party will, without the other party's prior written consent, either during the term of this Agreement or within 6 months after the date of effective termination of this Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of this Agreement.
- 17.7** Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

- 17.8** This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 17.9** Subject to Clause 9.1:
- a. this Agreement constitutes the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous Agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - b. neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.
- 17.10** This Agreement will be governed by and construed in accordance with the laws of Western Australia; and the courts of Western Australia will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.
- 17.11** Customer acknowledges and agrees that Provider may obtain and aggregate technical and other data about Customer's use of the Platform and Services excluding any personally identifiable with respect to Customer ("Aggregated Anonymous Data"), and Provider may use the Aggregated Anonymous Data to analyze, improve, support and operate the Platform and Services and otherwise for any business purpose, during and after the term of this Agreement, including without limitation to generate industry benchmarks or best practices guidance, recommendations or similar reports for distribution to and consumption by Customer and other Provider customers and prospects. For clarity, this Section 17.11 does not give Provider the right to identify Customer as the source of any Aggregated Anonymous Data.
- 17.12** Customer may not access the Services or Platform if Customer is a competitor to the Provider. Customer may not access the Services or Platform for the purpose of monitoring their availability, performance, functionality, or for any benchmarking or competitive purpose.

18. GST

- a. In this clause:
 - i. GST means the same as in the GST Law.
 - ii. GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - iii. Words defined in the GST Law have the same meaning in this clause unless specifically defined in this clause.
- b. All charges and amounts payable by a party to another under this Agreement are stated exclusive of GST.
- c. For each taxable supply under or in connection with this Agreement:
 - i. The supplier will be entitled to charge the recipient for any GST payable by the supplier in respect of the taxable supply.
 - ii. The recipient will pay to the supplier the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under this Agreement.
 - iii. The supplier will provide a valid tax invoice to the recipient in respect of the taxable supply, and will include in the tax invoice the particulars required by the GST Law.

19. IMPROPER INFLUENCE AND CONTROLS

Each party warrants and agrees that neither it nor any of its directors, officers, contractors or employees, agents or representatives has made, solicited or accepted or will make, solicit or accept, directly or indirectly:

- a. any offer, payment, 'facilitation payment', promise to pay or authorisation of the payment of any money, or any offer, gift, promise to give or authorisation of the giving of anything of value, directly or indirectly, to or from or for the use or benefit of any official or employee of the government or of a public international organisation or to or from or for the use or benefit of any political party, official, or candidate or to or from any other person for the purpose of influencing any discretionary act or decision by such person or organisation or of gaining an undue advantage in connection with the matters which are the subject of the Agreement.
- b. any such offer, payment, 'facilitation payment', gift, promise or authorisation to or from or for the use or benefit of any other person if the party knows, has a firm belief, or is aware that there is a high probability that the other person would use such offer, payment, gift, promise or authorisation for any of the purposes described in clause 19 above.