

This User Agreement (Agreement) is a legally binding agreement and governs the licensing and use of the ChangeViz software program from The Implementation Specialists Pty Ltd t/as Change Synergy ABN 58 658 126 182 (We, Us or Our). By clicking "I agree" or by installing or using the Software, you (You or Your) acknowledge and agree that You have read and understood the Agreement and agree to be bound by its terms and that if You are using the Software on behalf of an entity other than Yourself, you have the power and authority to bind that entity and consent to the Agreement.

RECITALS:

- A. Supplier is the owner of, or is authorised to license the use of the Software (as defined below). Supplier is also engaged in the provision of technology and related consultancy services.
- B. Customer may wish to obtain a licence to use the Software and/or to engage Supplier to provide a variety of Services from time to time and Supplier has agreed to grant to Customer a licence to use the Software, and to accept such engagement in connection with the Services, in each case on and subject to the terms and conditions set out in this Agreement.
- C. The Parties may from time to time agree Orders setting out details of Software and/or Services to be provided by Supplier to Customer in accordance with the terms and conditions of this Agreement.

1. INTERPRETATION

1.1 *Defined terms:* In the Agreement, unless the context indicates otherwise, a reference to:

- (a) a term defined or used in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is a reference to that term as defined or used in that act; and
- (b) capitalised terms have the meanings set out in an Order or set out below.

Affiliate of a party means any legal entity in which, and only for so long as, that party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights.

Agreement means the agreement between Customer and Supplier for use of a Solution and consisting of these General Terms and Conditions, the Order and any of documents specified in the Order as forming part of the Agreement.

Authorised User means any natural person that is:

- (a) an employee or a Contractor of Customer, one of its Affiliates, or a Service Provider; and
- (b) authorised by Customer to use a Solution.

Business Day means a day on which banks generally are open for business in Sydney other than a Saturday, Sunday or public holiday or bank holiday in New South Wales.

Claim means a claim, demand, action or proceeding of any nature or kind.

Confidential Information means:

- (a) in the case of Customer, the Customer Data, marketing and business plans and/or Customer financial information;
- (b) in the case of Supplier the terms of the Agreement, all computer software (both object and source codes) forming part of a Solution, and the Documentation and Solution Materials;
- (c) in the case of either Supplier or Customer information that is of its nature confidential, is designated or treated by that party as confidential, or the recipient knows, or ought to know, is confidential,

of which the recipient becomes aware through disclosure by or on behalf of the disclosing party to the recipient (whether before or after the Commencement

Date), or otherwise in connection with the Agreement, and all copies, notes and records and all related information based on or arising out of any such disclosure.

Contractor	means a natural person that performs personal services for a corporate entity under a services contract.
Customer Data	means: <ul style="list-style-type: none">(a) any content, materials, data and information that Customer or its Authorised Users enter into a Solution; and(b) any Customer-specific data that is generated by Customers use of a Solution (e.g. Customer-specific reports), and does not include any component of the Solution, Solution Materials or Documentation or material provided by or on behalf of Supplier.
Documentation	means Supplier's then-current technical and functional documentation for the Solution which is made available to Customer.
Disclosing Party	means a party whose Confidential Information is disclosed to, or otherwise comes into the possession of, or becomes known by, the other party.
Intellectual Property Rights or IPR	means all intellectual property rights in Australia and throughout the world, including: <ul style="list-style-type: none">(a) patents, copyright, rights in circuit layouts, registered designs, trade or service marks, trade, business or company names, trade secrets, know-how, and any right to have confidential information kept confidential;(b) any application or right to apply for registration of, or assert or waive, any of the rights referred to in paragraph (a).
Internal Business Purposes	use by a person for internal business purposes consists of use for that persons own internal data processing purposes associated with the operations of its business.
Order	means a document referencing these General Terms and Conditions and specifying the commercial and use parameters that apply to Customers use of a Solution signed by the parties from time to time.
Law	means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction.
Personal Data	means any information relating to an identified or identifiable natural person.
Privacy Laws	means: <ul style="list-style-type: none">(a) the <i>Privacy Act 1988</i> (Cth), the Australian Privacy Principles, and all applicable privacy codes approved under the <i>Privacy Act 1988</i> (Cth); and(b) any other applicable Laws giving rise to an actionable right of privacy.
Recipient	means a party that receives, or otherwise comes in to possession of, or becomes aware of, Confidential Information of the other party.
Service Provider	means a legal entity that: <ul style="list-style-type: none">(a) is contracted to provide services to the Customer or one of its Affiliates; and

(b) requires access to a Solution in order to perform those services.

Solution	means any subscription based, hosted, supported and operated on demand solution provided by Supplier under an Order.
Solution Materials	means any materials produced by Supplier, or by Supplier and Customer, and made available to Customer relating to a Solution or the use of a Solution
Subscription Term	means the period of time identified in the applicable Order, plus any renewals or extension of that period of time.
Taxes	any taxes, imposts, levies and duties imposed by a regulatory authority, together with any interest, penalty, charge, fee or other amount imposed or made in respect of the performance of the Agreement, except: <ul style="list-style-type: none">(a) taxes imposed on or measured by a party's net income;(b) payroll taxes attributable to the compensation paid to workers or employees.
Usage Metric	means the usage parameters for determining the permitted access and use and calculating the applicable fees due for use of a Solution as set out in an Order.

1.2 *Interpretation:* In these General Terms and Conditions, unless otherwise stated:

- (a) headings are for ease of reference only and do not affect the meaning of these General Terms and Conditions;
- (b) a reference to a right or obligation of any two or more persons confers that right or imposes that obligation jointly and severally;
- (c) a reference to a party includes executors, administrators, permitted novatees, assigns and successors of that party;
- (d) when the day on which something must be done is not a Business Day, that thing must be done on the preceding Business Day;
- (e) including means including without limitation;
- (f) a reference to dollars or currency means Australian dollars; and
- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these General Terms and Conditions or any part of it.

2. USAGE RIGHTS AND RESTRICTIONS

2.1 *Grant:* Subject to clause 8, Supplier grants Customer a non-exclusive, non-transferable right during the Subscription Term to configure and permit its Authorised Users to:

- (a) remotely access and use the Solution up to and within the Usage Metric; and
- (b) use the Solution Materials in connection with Customer's use of the Solution, solely for Customer's and its Affiliates' own Internal Business Purposes up to the purchased volume of Usage Metrics.

2.2 *Access credentials:* Access credentials issued to an Authorised User to access or utilise a Solution cannot be shared or used by more than one individual at a time. An Authorised User's access rights may be transferred from one individual to another if the original Authorised User is removed from the Solution and is no longer permitted access to or use the Solution.

2.3 *Responsibility for use:* Customer is responsible for the acts and omissions of its Authorised Users as if they were the acts and omissions of Customer.

2.4 *Affiliate and Service Provider use:* Subject to clause 4.5, Customer may permit Affiliates and Service Providers to use a Solution on condition that:

- (a) any use by Affiliates and Service Providers (including use by any of their employees or Contractors that are Authorised Users) will count towards any calculation of use against the Usage Metrics;
 - (b) any use by Affiliates and Service Providers (including use by any of their employees or Contractors that are Authorised Users) is solely for the Internal Business Purposes of Customer or its Affiliates;
 - (c) for each obligation imposed on Customer under the Agreement, Customer must ensure that each Affiliate or Service Provider that uses a Solution, and each of their employees or Contractors that are Authorised Users:
 - (i) complies with that obligation to the extent it is relevant to their activities; and
 - (ii) otherwise does not perform any act that causes, or through inaction cause, Customer to breach any of those obligations.
- 2.5 **Additional Usage Metrics:** Customer may purchase an increase to a Usage Metric during the Subscription Term of the Order by executing a variation to the Order or an additional Order. The term of each addendum or additional Order will be co-terminus with the then-current Subscription Term of the Order and all fees shall be prorated accordingly. Upon renewal or extension of the Subscription Term for an Order, all Usage Metrics added to the Order under this clause prior to renewal will be consolidated into the renewal or extension Order.
- 2.6 **Verification of use:** Customer is responsible for monitoring its use of the Solution(s) and must promptly report to Supplier any use in excess of the purchased volume of Usage Metrics. Supplier may monitor and audit the usage of a Solution to ensure compliance with the purchased volume of Usage Metrics. If Supplier becomes aware that Customer has used a Solution in excess of the purchased volume of Usage Metrics stated in the Order:
- (a) Supplier may immediately invoice, and Customer must pay, for that excess usage based on the applicable fees set out in the Order; and
 - (b) Customer must execute a variation to the Order or an additional Order to document the required purchase of additional volumes of Usage Metrics.
- Fees for use in excess of the purchased volumes of Usage Metrics will accrue from the date the excess use began.
- 2.7 **No reduction in volumes:** Customer is not be entitled to claim any reduction of the fees payable under the Order or reduce the volume of Usage Metrics during the Subscription Term of an Order.
- 2.8 **Restrictions:** Customer must not:
- (a) sublicense, license, sell, lease, rent or otherwise make any Solution available to third parties (other than Authorised Users and Service Providers who are using the Solution in accordance with the Agreement)
 - (b) copy, translate, disassemble, decompile, reverse-engineer, or attempt to create the source code from object code, a Solution;
 - (c) modify or make any derivative works of a Solution, Solution Materials or Documentation;
 - (d) use any Solution to transmit any content, data or information that is unlawful, defamatory, or invasive of another's privacy right or right of publicity;
 - (e) infringe any intellectual property rights when using a Solution;
 - (f) interfere with or disrupt any Solution;
 - (g) use a Solution in the operation of a service bureau, outsourcing or time-sharing service or as a commercial application service provider;
 - (h) circumvent or disclose the user authentication, or security of a Solution or any related host, network, or account; or
 - (i) access or use a Solution for the purpose of building a competitive product or service or copying its features or user interface.
- 2.9 **Links to Web Sites:** Supplier is not responsible for the contents of any Web site that a Solution is linked to is by embedded widgets or other means of access.
- 2.10 **Modifications to Solutions:** Supplier may change a Solution at any time. If a change materially diminishes the functionality of the Solution:

- (a) Supplier will notify (via email or through the Solution) Customer of the change and the date on which it will date effect (**Change Date**) at least ninety (90) days before the Change Date; and
- (b) Customer may terminate the subscription for the affected Solution with effect on the Change Date by providing written notice to Supplier at least thirty (30) days before to the Change Date. If Customer terminates under this clause, Supplier will refund to Customer any subscription fees paid by Customer for the Solution for the period between the Change Date and the end of the then current Subscription Term. This termination right and refund is Customer's sole and exclusive remedy for a change by Supplier to a Solution.

2.11 *No future functionality commitments:* Customer agrees that its purchase of subscription(s) for Solution(s) is not contingent on the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Supplier, including any roadmaps, with respect to future functionality or features.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 *Supplier ownership:* Supplier or its licensors own all right, title and interest in and to any and all IPR in and to the Solution, Solution Materials and Documentation, and any enhancements, adaptation or derivative works of them. Except for the limited rights expressly granted under the Agreement, no rights in respect of IPR are transfer or granted to Customer.

3.2 *Customer Ownership:* Customer owns all right, title and interest in and to any Customer Data and any IPR in the Customer Data.

4. SUPPLIER RESPONSIBILITIES AND OBLIGATIONS

4.1 *Technical Support:* If Customer has paid the First Term Subscription Fee and any Renewal Term Subscription Fee for the relevant Term, we will provide technical consultation for the Software and You will receive updates and new version releases of the Software provided such updates and new release are generally made available to other customers using the Software (Support Services). Supplier will provide support via the application and/or via email. For an additional fee, you may receive direct technical assistance from Us by telephone.

4.2 *Security:* Supplier will use commercially reasonable security technologies (such as encryption, password protection and firewall protection) in providing the Solution. ChangeViz is hosted on secure servers located in Sydney (Australia) using Amazon Web Services (AWS). Only authorized Change Synergy personnel have access to these servers. Personal information provided by users within ChangeViz is only used for contacting users should they have a support query. Users access ChangeViz using the SSL protocol (https).

4.3 *Access to Customer Data:* Supplier must provide the ability for Customer to access its Customer Data hosted in a Solution at any time during the Subscription Term. Customer may export and retrieve Customer Data in a Solution at any time during a Subscription Term.

4.4 *Excluded responsibility:* If Customer permits an Affiliate or Service Provider to use a Solution in conjunction with services provided to Customer by that Affiliate or Service Provider, Supplier will have no liability for, and Customer will not be entitled to any reduction in fees for the Solution in connection with:

- (a) any defect or failure of the Solution caused by that Affiliate or Service Provider; or
- (b) any inability or impairment of that Affiliate or Service Provider to provide services to Customer as a result of a defect or failure of a Solution.

4.5 *Denial of access:* Supplier may deny access to a Solution to any Affiliate or Service Provider that Supplier determines in its discretion (but acting reasonably) poses a security or confidentiality risk to Supplier systems, data or IPR.

5. CUSTOMER AND PERSONAL DATA

5.1 *Customer Data:* Customer is solely responsible for:

- (a) entering Customer Data into the Solution and for the content of the Customer Data supplied or generated through the use of the Solution;
- (b) determining the suitability of the Solution for Customers business; and
- (c) complying with any regulations, laws, or conventions applicable to the Customer Data and Customer's use of the Solution(s).

5.2 *Personal Data:* Customer warrants that:

- (a) it has collected and will maintain and handle all Personal Data contained in Customer Data in compliance with all applicable Privacy Laws;
 - (b) at the time of collection of Personal Data it issued all notices, and obtain all consents, necessary for Supplier to use and process that Personal Data in accordance with the Agreement.
- 5.3 *Right to process:* Customer authorises and grants to Supplier the right to process and use Customer Data (including Personal Data):
- (a) for the purposes of, and to the extent necessary for Supplier to, provide the Solution (including generating and storing backup copies or performing penetration tests) and to verify Customer's compliance with the terms of the Agreement; and
 - (b) as otherwise set forth in the Agreement.
- 5.4 *Security:* Customer must maintain commercially reasonable security standards, for its and its Authorised Users' use of the Solution, including without limitation the use of regular required password changes and virus scans.
- 5.5 Supplier use of data: Supplier may use information relating to Customer's use of Solutions to improve Supplier products and services, to provide Customer with reports on its use of the Solution, and to compile aggregate statistics and usage patterns by customers using the Solution(s). Any materials produced by Supplier using that information:
- (a) will be the Confidential Information of Supplier and all IPR in them will be owned by Supplier; and
 - (b) must not contain any Personal Data or only contain Personal Data that has been de-identified or subjected to pseudonymisation.

6. MANAGEMENT OF ELIGIBLE DATA BREACHES

6.1 *Additional definitions:* In this clause the following additional definitions apply:

At Risk	in relation to an individual has the meaning given in Part IIIC of the <i>Privacy Act 1988</i> (Cth).
Security Breach	means a confirmed accidental or unlawful destruction, loss, alteration, or unauthorised third party access to or disclosure of Personal Data.
Serious Harm	in relation to an individual has the meaning given in Part IIIC of the <i>Privacy Act 1988</i> (Cth).

6.2 *Suspected Security Breach:* If Supplier suspects that a Security Breach has occurred, Supplier must promptly perform a reasonable and expeditious assessment of that suspected Security Breach.

6.3 *Notifiable Event:* If Supplier becomes aware that a Security Breach has occurred (including following an assessment under clause 6.2) that affects or relates to any Customer Personal Data (**Notifiable Event**), Supplier:

- (a) must promptly inform Customer and provide to Customer any information regarding the Security Breach reasonably required by Customer to meet its legal obligations under Privacy Laws; and
- (b) must provide reasonable support and assistance in any investigative process reasonably required by Customer to meet its legal obligations under Privacy Laws.
- (c) must determine the matters identified in section 26WG of the *Privacy Act 1988* (Cth);
- (d) for the purposes of making a determination as to whether:
 - (i) any individual is At Risk;
 - (ii) there has been, or is likely to be, Serious Harm to an individual;
 - (iii) a statement is required to be made under the *Privacy Act 1988* (Cth) in relation to the Notifiable Event; or
 - (iv) any application should be made for an exemption under Part IIIC of the *Privacy Act 1988* (Cth),
- (e) may, but is not obliged to, consult with Customer, and Supplier will be the ultimate arbiter;
- (f) will take responsibility for issuing statements that are required under the *Privacy Act 1988* (Cth) in relation to any Notifiable Event and the **Customer** must not make:

- (i) any statement to any person in relation to the Notifiable Event unless it is required to do so in order to comply with any Privacy Law or respond to any enquiry, request for information, or investigation conducted by a regulatory authority; or
 - (ii) any application for an exception under section 26WQ 5(b) of the *Privacy Act 1988* (Cth); and
 - (g) may, but is not obliged to, provide Customer an opportunity to review and provide comments on any draft statement to be made under the *Privacy Act 1988* (Cth) in relation to the Notifiable Event. Customer must provide its comments within 24 hours or any other period agreed between the parties at the time.
- 6.4 *Statements:* Any statement made by a party in relation to a Notifiable Event must:
- (a) be factually correct and not misleading;
 - (b) not make any admission of wrongdoing on the part of the other party, or in any way disparage the other party,
 - (c) unless complying with this paragraph (b) would cause the statement to breach paragraph (a) or the requirements of any Privacy Law.

7. FEES AND TERMS OF PAYMENT

- 7.1 *Fees:* The fees for use of a Solution up to the applicable Usage Metric are specified in the relevant Order. Supplier may invoice for the fees for the initial year of a Subscription Term on execution of the Order and for subsequent years of the Subscription Term in advance approximately sixty (60) to thirty (30) days prior to the start of each subscription year. A purchase order is for administrative convenience only and Supplier has the right to issue an invoice and collect payment without a corresponding purchase order.
- 7.2 *Payment:* Customer must pay all invoices within thirty (30) days of receipt of the invoice. Customer has no right to withhold or reduce fees under the Agreement, or set off against fees owed, any amount for alleged defects in a Solution. If Customer fails to pay an invoice when due:
- 7.3 interest on the unpaid amount will accrue at the maximum rate allowed under applicable Law;
- 7.4 Supplier may suspend of Customer's ability to access the Solution until payment is made.
- 7.5 Non-cancellable commitment: Except to the extent permitted under an express right in the Agreement, all purchases are non-cancellable and all fees are non-refundable.
- 7.6 Taxes: Fees and other charges imposed under the Agreement or under an Order, do not include Taxes unless expressly stated otherwise. Customer is responsible for all Taxes. Any applicable direct pay permits or valid tax-exempt certificates must be provided to Supplier prior to the execution of an Order. If Supplier is required to pay any Taxes, Customer must reimburse Supplier for all Taxes paid. Customer indemnifies Supplier for any Taxes and related costs attributable to Taxes paid or payable by Supplier.
- 7.7 Travel Expenses: Customer must reimburse Supplier for all reasonable, pre-approved (by Customer in writing) and appropriately documented travel and related expenses incurred by Supplier in performing any support or [Professional] Services for Customer under the Agreement.

8. TERM, SUSPENSION, TERMINATION AND TERMINATION SUPPORT

- 8.1 *Subscription Term:* The Subscription Term begins on the Commencement Date specified in the Order and will continue in effect for the period specified in the Order, unless terminated pursuant to this clause 8. At the end of the then current Subscription Term, the Subscription Term will automatically renew for a period of one year unless one party notifies the other party of its intention to decline renewal at least thirty (30) days in advance of expiration of then current Subscription Term.
- 8.2 *Termination:* A party may terminate an Agreement by giving the other party no less than 30 days' written notice if the other party commits a material breach of the Agreement and does not remedy that breach within 30 days after receiving notice requiring it to do so. Any failure to pay fees on time will be a material breach of the Agreement.
- 8.3 *Impact on fees:* If Customer terminates an Agreement in accordance with clause 8.2, Customer will be entitled to a pro-rata refund in the amount of the unused portion of prepaid fees for the applicable Solution calculated as of the effective date of termination for the Solution. In all other circumstances, termination will not relieve Customer from the obligation to pay fees that remain unpaid and Customer is not entitled to a refund of any fees paid.

- 8.4 *Impact on other Orders / Agreements:* Termination or expiration of any Agreement will not affect any other Orders / Agreement which will continue unaffected.
- 8.5 *Suspension of a Solution:* Supplier may, in its reasonable deactivate user name(s) and password(s) of Authorised Users and/or temporarily suspend access to a Solution or part of a Solution:
- (a) in accordance with clause 7.4;
 - (b) if Supplier has a right to terminate in accordance with clause 8.2;
 - (c) if and to the extent Supplier can reasonably substantiate that the continued use of the Solution by Customer or its Authorised Users may result in harm to the Solution (including the security of the systems used to provide the Solution) or other Supplier customers, or the rights of third parties. For suspension under this clause, Supplier will provide as much prior notice to Customer as the circumstances permit and will limit the temporary suspension in time and scope as far as reasonably possible.
- 8.6 *Access to Customer Data:* If Customer requires access to a Solution to export and retrieve Customer Data after the effective date of termination or expiration, Customer may extend the Subscription Term for up to ninety (90) days by notifying Supplier at least fourteen (14) days prior to the effective date of termination or expiration and paying subscription fees for that extension calculated as a monthly proration of the annual fees in effect for the Solution immediately prior to the termination or expiry. Except to the extent that the Customer elects to extend a Subscription Term under this clause, Supplier has no obligation to maintain or provide any Customer Data. At Customer's request upon termination or expiration of the Order, Supplier will, within a reasonable time period, remove, delete, purge, overwrite or otherwise render inaccessible all Customer Data still remaining on the servers used to host the Solution to the extent possible based on the then-current technology available within the Solution, unless and to the extent applicable laws and regulations require further retention of that data.
- 8.7 *Ceasing use:* Upon the effective date of expiry or termination of an Order, Customer must, and must ensure that all of its Affiliates, Service Providers and Authorised Users, immediately cease all access to and use of the Solution, Solution Materials, Documentation, and Supplier Confidential Information.
- 8.8 *Survival:* Clauses 1, 3, 7, 8.3, 8.4, 8.6, 10, 11, 12 and 13 will survive the expiry or termination of the Agreement.
- 9. WARRANTIES BY SUPPLIER**
- 9.1 *Solution Warranty:* Supplier warrants that the Solution will substantially conform to the specifications stated in the Documentation for the Solution. That warranty does not apply to the extent:
- (a) the Solution is not being used in accordance with the Agreement or any Documentation;
 - (b) any non-conformity is caused by Customer products, third party products, implementation or configuration performed by any party other than Supplier, or any content or service being accessed through a Solution that is identified as third party products, content or services;
- 9.2 *Remedy:* Subject to clauses 9.3 and 9.4, Customer's sole and exclusive remedy, and Supplier's entire liability for breach of the limited warranty in clause 9.1, will be correction of the warranted non-conformity or, if Supplier fails to correct the warranted non-conformity after using reasonable commercial efforts, Customer may terminate the relevant Agreement in accordance with clause 8.2.
- 9.3 *Notice:* Customer must provide Supplier with notice of any for breach of the limited warranty in clause 9.1 within ninety (90) days of Customers discovery of that breach.
- 9.4 *Consumer guarantees:* If a condition or warranty implied by Schedule 2 of the Competition and Consumer Act 2010 (Cth) (Australian Consumer Law) (other than a condition or warranty implied by Articles 51-53 of Schedule 2 of that Act) applies:
- (a) the Solution comes with guarantees that cannot be excluded under the Australian Consumer Law;
 - (b) for major failures with the Solution, Customer is entitled to cancel the Agreement and to a refund for the unused portion, or to compensation for its reduced value and to be compensated for any other reasonably foreseeable loss or damage;
 - (c) if the failure does not amount to a major failure, Customer is entitled to have problems with the Solution rectified in a reasonable time and, if this is not done, to the Agreement and obtain a refund for the unused portion of the Agreement; and
 - (d) Supplier's liability is limited to the cost of having the services supplied again.

9.5 *Disclaimer:* Subject to clause 9.4, except as expressly provided in the Agreement, neither the Supplier or any of its vendors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any Solution, Solution Materials, Documentation or other materials provided under the Agreement, or that the operation of any Solution, Solution Materials, Documentation or other materials will be secure, uninterrupted or error free.

10. THIRD PARTY CLAIMS

10.1 *IPR claims:* If a third party makes or commences any Claim against Customer alleging that the Solution, Solution Materials or Documentation infringe the IPR of that third party (**IPR Claim**):

- (a) Customer must:
 - (i) promptly notify Supplier of the IPR Claim;
 - (ii) allow Supplier to fully control any defence or settlement of the IPR Claim;
 - (iii) not take any actions in relation to the IPR Claim without Supplier's prior written approval;
 - (iv) provide Supplier with any assistance reasonably requested by Supplier in relation to the IPR Claim; and
- (b) Supplier must:
 - (i) defend or settle the IPR Claim; and
 - (ii) pay any damages finally awarded against Customer (or the amount of any settlement Supplier enters into) with respect to the IPR Claim; and
- (c) Supplier may, at its sole option and expense:
 - (i) procure for Customer the right to continue using the applicable Solution under the terms of the Agreement;
 - (ii) replace or modify the applicable Solution to be non-infringing without material decrease in functionality; or
 - (iii) if either of those options are not reasonably available, terminate the Agreement and refund to Customer all prepaid fees for the affected Solution for the remainder of the Subscription Term after the date of termination.

10.2 *Limitations:* Supplier will not be liable:

- (a) for any IPR Claim to the extent that based on:
 - (i) Customer's use of the Solution other than as permitted in the Agreement;
 - (ii) Customer's use of the Solution in conjunction with any other software or service;
 - (iii) any use of Solution by Customer or its Authorised Users in violation of any applicable Law; or
 - (iv) an allegation that the Customer Data violates, infringes or misappropriates the rights of a third party.
- (b) for any part of the damages finally awarded against Customer (or the amount of any settlement Supplier enters into) that is caused by, or otherwise attributable to, a failure by Customer to comply with its obligations under clause 10.1(a).

Exclusive Remedy: This clause 10 sets out the sole and exclusive liability of Supplier, and remedies available to Customer, with respect to IPR Claims.

11. LIMITATION OF LIABILITY

Except for:

- (a) liability under clauses 9.4 and 10; and
- (b) liability for unauthorised use or disclosure of Confidential Information,

Supplier:

- (c) limits its liability to Customer or any other person in connection with the Agreement for any liabilities, losses, damages, costs or expenses suffered or incurred in connection with a Claim that occurs in a year to a maximum, aggregate amount equal to the fees paid by Customer in that year. In this clause, a Claim will occur in a year if:

- (i) where the Claim relates to a single event, the date on which that event occurred was in that year; and
 - (ii) where the Claim relates to a series of related events, the date on which the first of those events occurred was in that year.
 - (d) excludes liability to Customer or any other person in connection with the Agreement for any special, incidental, indirect or consequential loss or damage, any loss of profit, loss of business, loss of opportunity or goodwill, loss of anticipated savings, loss of reputation, loss of data and any exemplary or punitive damages.
- 12. CONFIDENTIALITY**
- 12.1 The Recipient:**
- (a) must keep the Confidential Information confidential including the existence and terms and conditions of the Agreement;
 - (b) may use the Confidential Information but only in relation to the Agreement;
 - (c) may disclose the Confidential Information to enable it to perform its obligations under the Agreement but only to its employees and Contractors to the extent that they have a need to know;
 - (d) must not copy the Confidential Information or any part of it other than as strictly necessary for the purposes of the Agreement;
 - (e) must implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access, damage or destruction; and
 - (f) must immediately notify the Disclosing Party if the Recipient suspects or becomes aware of any unauthorised copying, use or disclosure in any form.
- 12.2** Except for information kept for electronic archival purposes or contained in board papers which continue to be treated as confidential, on termination or expiry of the Agreement, or earlier on reasonable request by the Disclosing Party, the Recipient must promptly return to the Disclosing Party or destroy any or all copies of Confidential Information, in which case any right to use, copy and disclose that Confidential Information ceases.
- 12.3** Clauses 12.1 and 12.2 do not apply to the extent that the Recipient is obliged by law to disclose the Confidential Information to a third person. If the Recipient is required by law to disclose any Confidential Information to a third person, the Recipient must before doing so:
- (a) notify the Disclosing Party and provide the details of the proposed disclosure;
 - (b) give the Disclosing Party a reasonable opportunity to take any steps the Disclosing Party considers necessary to protect the confidentiality of that information;
 - (c) provide any assistance reasonably required by the Disclosing Party to protect the confidentiality of that information; and
 - (d) notify the third person that the information is confidential information of the Disclosing Party prior to, or at the time of, disclosure.
- 13. MISCELLANEOUS**
- 13.1** For each obligation imposed on a party under the Agreement, that party must ensure that each member of its employees and Contractors:
- (a) complies with that obligation to the extent it is relevant to the activities those employees and Contractors undertake; and
 - (b) otherwise does not perform any act that causes, or through inaction cause, that party to breach any of those obligations.
- 13.2** Customer may not, without Supplier's prior written consent, assign, delegate, pledge or otherwise transfer the Agreement, or any of its rights or obligations under the Agreement, or any Solution, Solution Materials or Supplier Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. Supplier may in its sole discretion subcontract its obligations to third parties.
- 13.3** Any delay or non-performance of any provision of the Agreement (other than for the payment of fees) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of the Agreement, and the time for performance of that provision, if any, will be deemed to be extended for a period equal to the duration of the conditions preventing performance.

- 13.4 No act or omission of a party will waive any right of that party other than a written waiver signed by the party waiving the right.
- 13.5 Any term of the Agreement which is wholly or partially illegal, invalid or unenforceable is severed to the extent that it is illegal, invalid or unenforceable and the remainder of the Agreement is not affected.
- 13.6 The Agreement may be signed in two counterparts, each of which will be deemed an original and which shall together constitute one Agreement. Signatures sent by electronic means (facsimile or scanned and sent via e-mail, or signed by electronic signature service where legally permitted) will be deemed original signatures.
- 13.7 The Agreement and any Claims arising out of or relating to the Agreement and its subject matter is governed by the laws applicable in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of that State. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement. Either party must initiate a cause of action for any Claim(s) arising out of or relating to the Agreement and its subject matter within one (1) year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the Claim(s).
- 13.8 The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third-party beneficiaries to the Agreement.
- 13.9 In relation to its subject matter the Agreement constitutes the entire Agreement between the and supersedes any prior understanding or agreement between the parties