



MASTER SERVICES AGREEMENT

PARTIES

The party set out in column 2 of the table in clause 1, determined by reference to the country in which the Deliverables are supplied and as set out in an Order Form (**Company**)

and

The party named in an Order Form (**Customer**)

BACKGROUND

- (a) The Customer wishes to enter into this Master Services Agreement for the Term for the supply of the Deliverables by the Company to the Customer on pre-agreed terms and conditions set out in this Master Services Agreement.
- (b) A separate Agreement must be formed between the Parties in relation to each supply of the Deliverables pursuant to this Master Services Agreement.

1. DEFINITIONS

In this Master Services Agreement and each Agreement:

Additional Charge	means a charge in accordance with the Company's time and materials rates specified or as applicable at any given time and/or a charge for Additional Services and Products.
Additional Documents	has the meaning given to that term in the Order Form.
Additional Services and Products	means additional services, software products and hardware and related support services not specified in an Order Form agreed between the Parties pursuant to an Agreement.
Agreement	means each agreement made between the Parties pursuant to this Master Services Agreement for each supply of Deliverables comprised in each case by this Master Services Agreement and an Order Form (including any applicable Additional Documents).
ASEAN Country	means Brunei, Indonesia, Malaysia, The Philippines, Singapore, Thailand, Vietnam, Laos, Burma or Cambodia.
Assumptions and Dependencies	means those Assumptions and Dependencies set out in an Order Form.
Background IP	means, in respect of an Agreement, those Intellectual Property Rights owned by a Party which are in existence prior to the commencement of that Agreement.
Business Day	means a day that is not a Saturday, Sunday or public holiday at the place to which the notice, consent or other communication is sent.
Change Request	has the meaning given to that term in clause 10.4.
Cloud Server Location	will be determined by reference to the country in which the Deliverables are supplied to a Customer under the relevant Agreement (as set out in column 1 of the table below), the identity of the Company contracting entity (as set out in column 2 of the table below) and otherwise in accordance with the following table:

If the Deliverables are supplied to the Customer in the following country:	The Company contracting entity is:	The Cloud Server location is:
An EU Country	Getz Clinical Pte Ltd	Ireland, EU
Switzerland or South Africa	Getz Clinical Pte Ltd	Frankfurt, EU
ASEAN Country (excluding the Philippines)	Getz Clinical Pte Ltd	Singapore
Philippines	Getz Bros Philippines. Inc.	Singapore
Australia or New Zealand	Getz Clinical Pty Ltd	Australia
Hong Kong SAR	Getz Clinical Pte Ltd	Singapore

If the Deliverables are supplied to a country not listed in the above table, the Company will provide written notice to the Customer of the **Cloud Server Location** as soon as reasonably practicable after the Effective Date.

Commencement Date means, in respect of each Agreement, the date on which the Order Form is executed by the Parties.

Completion Notice has the meaning assigned to it in clause 10.8.

Confidential Information means all information belonging and relating to a Party or its Related Bodies Corporate about or concerning that Party's business or the subject matter of an Agreement in whatever form (including verbal, or recorded on paper or by electronic means) including:

- (a) all financial, operational, marketing or technical information;
- (b) trade secrets;
- (c) Intellectual Property Rights and the materials in which they are embodied;
- (d) business plans;
- (e) ideas and concepts;
- (f) know-how, processes and knowledge;
- (g) all other information marked as confidential by a Party;
- (h) all notes, data, reports and other records (whether or not in tangible form) based on, incorporating or derived from information referred to in paragraphs (a) to (g) of this definition; and
- (i) all copies (whether or not in tangible form) of the information, notes, reports and records referred to in paragraphs (a) to (h) of this definition,

but excluding information which is or becomes known or generally available to the public, except if this happens because of a breach of an obligation of confidence owed by a Party under this Master Services Agreement or an Agreement.

Consequential Loss means loss of use, loss of production, loss of profit, loss of revenue, loss of business, loss of goodwill, loss of anticipated saving, financing costs, increased operating costs, loss of reputation and any other consequential loss or damage not described in this definition.

Consultancy Services means consultancy services which may be supplementary to, or in relation to, the provision of Implementation and Configuration Services or otherwise in relation to the Deliverables.

Corporations Law will be determined by reference to the country in which the Deliverables are supplied to a Customer under the relevant Agreement (as set out in the left-hand column of the table below) and otherwise in accordance with the following table:

If the Deliverables are supplied to the Customer in the following country:	The Corporations Law is:
ASEAN Country (excluding Hong Kong SAR)	<i>Companies Act</i> (Cap. 50, 2006 Rev. Ed.)
Australia or New Zealand	<i>Corporations Act 2001</i> (Cth)
United Kingdom	<i>The Companies Act 2006</i>

If the Deliverables are supplied to a country not listed in the above table, the **Corporations Law** will be the equivalent legislation in force in the country in which the Deliverables are provided.

Data means information or an opinion about the Customer and the Customer's patients (whether or not that information or opinion reasonably identifies an individual) stored, used, processed, collected or accessed by the Company in the course of providing Deliverables to the Customer, including but not limited to Customer and business information or individual's names, addresses, telephone numbers, dates of birth, billing records, medical history, health information and health records.

Default Rate means at the United States Dollar six-month ICE LIBOR rate (as at the date on which the relevant overdue payment was due to the Company) plus two percent (2%) per annum.

De-identified Data means Data that has been aggregated and/or de-identified by the Company under the licence granted to the Company by the Customer pursuant to clause 11.2.

Deliverables means Products and/or Services supplied by the Company to the Customer under an Agreement.

Documentation means operating manuals, technical information, user guides, operator instructions, e-learning modules, videos, online resources for education purposes and other paper or electronic materials provided by the Company to the Customer pursuant to an Agreement in relation to the Services and/or the use and operation of the Deliverables.

Effective Date means the date that is the first Commencement Date of an Agreement between the parties.

EU Country means Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

Excluded Services means those services described in the section headed **Exclusions** in an Order Form.

Fees	<p>means the fees and charges payable by the Customer to the Company as set out in the Order Form relevant to the Deliverables being acquired by the Customer pursuant to an Agreement including (but not limited to):</p> <ul style="list-style-type: none"> (a) Additional Charges; (b) Product and Hardware Fees (as specified in an Order Form); and (c) Consultancy Fees (as specified in an Order Form).
Fee Commencement Date	<p>means, in respect of each Agreement, the date specified in the Order Form</p>
Force Majeure	<p>means acts of God including lightning, earthquakes and storms, strikes, lockouts or other industrial disturbances, acts of enemies of any country, sabotage, wars, terrorism, blockades, insurrections, riots, landslides, floods, fires, washouts, arrests and restraints, civil disturbances, explosions, breakages of or accidents to machinery or delivery facilities, the orders of any court or governmental authority or change in the laws of the country in which the Deliverables are provided, or any other cause whether of the kind herein enumerated or otherwise not within the control of the person claiming force majeure and which by the exercise of due diligence the person claiming force majeure is unable to overcome.</p>
Hardware	<p>means, in respect of an Agreement, all and each part of the:</p> <ul style="list-style-type: none"> (d) hardware items specified in the Order Form or any Additional Documents; (e) each or any replacement, altered or substitute part, and all appliances, parts, components, instruments, appurtenances, accessories and other equipment which may from time to time be incorporated or installed in or attached to the Hardware; (f) any replacement Hardware supplied pursuant to clause 18.7, an Order Form or any Additional Documents, <p>and incorporates the Operating Software (but expressly excludes the Products).</p>
Implementation and Configuration Services	<p>means implementation and configuration services in respect of the Deliverables supplied by the Company to the Customer.</p>
Insolvency Event	<p>means where a Party to this Agreement:</p> <ul style="list-style-type: none"> (a) is (or states that it is) insolvent; (b) has a controller, receiver or manager appointed to any part of its property; (c) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or judicial management or wound up or has had a receiver appointed to any part of its property; (d) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Customer); (e) has made an application or order (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with a party, which is preparatory to or could result in any of the circumstances detailed in any of paragraphs (a), (b), (c) or (d) of this definition; (f) is taken (under the relevant provisions of the Corporations Law) to have failed to comply with a statutory demand; (g) is otherwise unable to pay its debts when they fall due; (h) is (or states that it is) bankrupt; (i) has something of substantially similar effect to any of the circumstances detailed in any of paragraphs (a) to (h) of this definition happen to that Party in the jurisdiction in which that Party is resident or incorporated and in accordance with any applicable equivalent legislation in that jurisdiction.
Intellectual Property Rights	<p>means any type of intellectual property anywhere in the world including without limitation:</p> <ul style="list-style-type: none"> (a) any patents, utility models, copyrights, trade marks or service marks, trade names, brand names, indications of source or appellations of origin, circuit layout rights, designs, drawings, specifications or technology or designations (all whether registered or unregistered); (b) any invention, discovery, trade secret, know how, computer software or confidential, scientific, technical or product information and any developments or improvements to equipment, products, technology, processes, methods or techniques; (c) any other rights which result from intellectual activity in any field whether industrial, commercial or agricultural and whether dealing with manufactured or natural products; and (d) any pending application or right to apply for registration, letters patent, deed of grant, certificate or document of title for anything which is referred to in paragraphs (a) to (c) of this definition and any medium in which anything which is referred to in those paragraphs is stored or embodied.

Master Services Agreement	means this document.
Number of Subscriptions	means, in respect of each Agreement, the number of subscriptions to the Product or Products specified in the Order Form.
Operating Software	means the operating system or other software that is installed on the Hardware, but expressly excludes the Products.
Order Form	means an order form agreed between the Parties in relation to a supply of Deliverables by the Company to the Customer.
Party	means either the Customer or the Company as the context dictates and includes a permitted substitute or permitted assign of each entity.
Payment Dates	means, in respect of each Agreement, the date or dates specified in the Order Form for the Customer's payment of the Fees to the Company.
Personally Identifiable Data	means Data which reasonably identifies the individual.
Personnel	means the officers, employees, agents or sub-contractors of a Party.
Privacy Laws	will be determined by reference to the country in which the Deliverables are supplied to a Customer under the relevant Agreement (as set out in the left-hand column 1 of the table below) and otherwise in accordance with the following table:

If the Deliverables are supplied to the Customer in the following country:	The Privacy Law is:
Australia	<i>Privacy Act 1998 (Cth)</i>
Hong Kong	<i>Personal Data (Privacy) Ordinance (Cap 486)</i>
Malaysia	<i>Personal Data Protection Act 2010</i>
New Zealand	<i>Privacy Act 2000 (NZ)</i>
Philippines	<i>Republic Act No. 10173, known as the Data Privacy Act of 2012</i>
Singapore	<i>Personal Data Protection Act 2012</i>
United Kingdom/EU	<i>The EU Data Protection Directive 95/46/EU and (in the UK) the 1998 Data Protection Act</i>

If the Deliverables are supplied to a country not listed in the above table, the **Privacy Laws** will be the equivalent legislation in force in the country in which the Products and/or Services are provided.

Product Agreement	has the meaning assigned to it in clause 7.1(a).
Products	means products supplied by the Company to the Customer under an Agreement, including but not limited to software products, computer programs and Hardware.
Project IP	means all Intellectual Property Rights, including the material in which they are embodied, that are created by the Customer or the Company on behalf of the Customer under an Agreement, during the course of providing the Deliverables under that Agreement, including the Deliverables and the De-identified Data.
Related Body Corporate	means: <ul style="list-style-type: none"> (a) if the Company contracting entity is Getz Clinical Pte Ltd, "related corporation" as defined under sections 4 and 6 of the Corporations Law; or (b) if the Company contracting entity is Getz Clinical Pty Ltd, the meaning given to that term in section 9 of the Corporations Law; or (c) if the Company contracting entity is any other party, the meaning given to that term, or an equivalent term (having regard to the definitions in (a) and (b) above), in the Corporations Law.
Request	means a request by a Customer for a quotation by the Company for the supply of the Deliverables.
Right to Use	means, in respect of each Agreement, the rights granted by the Company to use and access the Products and Hardware on the terms set out in clause 7.1.
Security Interest	has the meaning given to that term in the Security Interest Legislation and also includes any other mortgage, pledge, lien, charge, encumbrance or other arrangement of any kind which in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors.
Security Interest Legislation	will be determined by reference to the country in which the Deliverables are supplied to a Customer under the relevant Agreement (as set out in column 1 of the table below) and otherwise in accordance with the following table:

If the Products and/or Services are supplied to the Customer in the following country:	The Security Interest Legislation is:
Australia	<i>Personal Property Securities Act 2009 (Cth)</i>
New Zealand	<i>Personal Property Securities Act 2009</i>

If Deliverables are supplied to a country not listed in the above table, the **Security Interest Legislation** will be the equivalent legislation and common law in force in the country in which the Deliverables are provided.

Services	means the Company's supply, installation, implementation and configuration of Products and/or Hardware at all Sites and all associated project management services pursuant to an Agreement as more particularly described in the Order Form, and also includes Implementation and Configuration Services and/or Consultancy Services.
Sites	means the Customer's physical site or sites to which Services, Products and/or Hardware will be supplied pursuant to an Agreement as specified in an Agreement.
SLA	means the service level agreement made available on www.getzclinical.com/legal/sla.pdf as amended from time to time on 30 days' written notice to the Customer.
Special Conditions	has the meaning given to that term in an Order Form.
Support Services	means, in respect of each Agreement, maintenance and support services to be provided by the Company in respect of the Products and the Hardware in accordance with clause 8 and the SLA.
Taxes	means all use, value-added and sales tax, goods and services tax and other similar transaction taxes and any withholding taxes levied by a government agency.
Term	means the term of this Master Services Agreement, as set out in clause 4.
Terminated Products and Hardware	has the meaning assigned to it in clause 19.6(f).
Third Party IP	means the Intellectual Property Rights owned by a third party which are or will be incorporated into, or which will form part of, the Deliverables.
Updates and New Releases	means any patch, update, upgrade or new version of the Products supplied by the Company in accordance with an Agreement.

2. INTERPRETATION

In this Master Services Agreement and in an Agreement (including an Order Form):

- (a) the clause headings are for ease of reference only and will not be relevant to interpretation;
- (b) a reference to a clause number is a reference to its subclauses;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (f) a reference to a clause in this Master Services Agreement is a reference to a clause or subclause of this Master Services Agreement;
- (g) a reference to a subclause is a reference to a subclause of the clause in which that reference is made;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) a reference to a Schedule or Attachment includes a reference to any part of that Schedule or Attachment which is incorporated by reference; and
- (j) monetary references are references to the lawful currency of the country in which the Deliverables are supplied under the Agreement.

3. ACQUIRING DELIVERABLES

- (a) Subject to clause 3(b), if the Customer wishes to acquire the Deliverables, the Customer and the Company must conclude a separate Agreement for each supply of Deliverables by entering into and executing an Order Form.
- (b) The Company may (but is under no obligation to) advise the Customer in writing whether:
 - (i) a new Agreement is required to be concluded between the parties in respect of the supply of the Deliverables; or
 - (ii) the Deliverables can be supplied to the Customer by way of variation to an existing Agreement.
- (c) If the Company advises the Customer pursuant to clause 3(b)(i) that a new Agreement is required to be concluded between the Parties in respect of the supply of the Deliverables;
 - (i) the Order Form will be prepared by the Company following discussions with the Customer; and
 - (ii) the parties must enter into and execute the Order Form.

- (d) If the Company advises the Customer pursuant to clause 3(b)(ii) that the relevant Deliverables can be acquired by way of variation to an existing Agreement, the Parties must comply with the provisions of the relevant Order Form to effect that variation.
- (e) The Parties acknowledge and agree that each Agreement for a supply of Deliverables:
 - (i) is made pursuant to this Master Services Agreement; and
 - (ii) together with this Master Services Agreement, an Order Form, any Additional Documents and any variations to that Agreement that are agreed between the Parties,

forms a separate and binding Agreement between the Parties.

- (f) Except as stated to the contrary in an Order Form, an Order Form and any Additional Documents incorporates all terms of this Master Services Agreement and is subject to the terms and conditions of this Master Services Agreement. By entering into an executing an Order Form pursuant to clause 3(c)(ii), the parties unconditionally and irrevocably agree to the terms of this Master Services Agreement.
- (g) Unless otherwise expressly stated to the contrary in an Order Form or Additional Documents, in relation to each Agreement, if there is a conflict between the terms of this Master Services Agreement and an Order Form and any Additional Documents, the order of priority is as follows:
 - (i) any Special Conditions agreed under the Order Form;
 - (ii) the Order Form;
 - (iii) any Additional Documents; and
 - (iv) the Master Services Agreement.
- (h) The Customer acknowledges and agrees that the Company is under no obligation to supply the Deliverables to the Customer or to conclude an Agreement with the Customer in response to the Customer's acceptance of any quotation issued by the Company.

4. TERM

This Master Services Agreement will commence on the Effective Date and continue unless terminated in accordance with clause 19.1.

5. FEES

Unless specified to the contrary in an Agreement and subject to clause 5.4, the Customer will pay the Fees to the Company within thirty (30) days after receipt of a valid invoice from the Company.

5.1 Consideration

The Parties acknowledge that the Fees are valuable consideration for the purposes of an Agreement.

5.2 Payments

- (a) The Customer must make all payments required to be made to the Company pursuant to an Agreement free from all deductions and offsets. Each payment must be made in immediately available funds by 5pm on its due date by electronic funds transfer or as otherwise agreed in writing by the company as the Company may from time to time direct in writing.
- (b) Where any amount payable by the Customer under an Agreement is not paid to the Company in the manner required by clause 5.2(a) on or before its due date for payment:
 - (i) default interest will be payable on the outstanding amount; and
 - (ii) default interest will be calculated and will accrue at the Default Rate from the date following the due date for payment of the outstanding amount up to and including the date of its payment; and
 - (iii) default interest will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.
- (c) The Customer acknowledges and agrees that the Customer's obligation to make all payments due under an Agreement and the rights of the Company in and to such payments is absolute and unconditional. Such amounts will continue to be payable in the manner and at the times provided, unless the Customer's obligations in respect of them have been terminated under an express provision of the Agreement.

5.3 Product and Hardware Fees

- (a) In consideration of the Company's grant of the Right to Use to the Customer and the Company's provision of the Support Services in accordance with an Agreement, the Customer will commence paying the Product and Hardware Fees to the Customer on the Fee Commencement Date and will thereafter pay the Company the Product and Hardware Fees on the Payment Dates.
- (b) The Company reserves the right to increase or decrease the Product and Hardware Fees annually on the anniversary of the Fee Commencement Date provided that:
 - (i) the Company gives the Customer written notice of the increase or decrease in Product and Hardware Fees no later than sixty (60) days prior the relevant anniversary; and
 - (ii) any increase to the Product and Hardware Fees must not exceed an amount equal to 5% of the Product and Hardware Fees payable in the immediately preceding 12-month period.

5.4 Disputes

If the Customer in good faith disputes part or all of an invoice:

- (a) the Customer will, within fourteen (14) days after receipt of the invoice, notify the Company in writing of the amount in dispute and the reasons for the dispute; and
- (b) within seven (7) days of the notice described in clause 5.4(a), a Company representative and a Customer representative will meet to try to resolve the dispute; and
- (c) if those representatives fail to resolve the dispute within a further fourteen (14) days of first meeting, each Party must comply with the dispute resolution procedures in clause 21.

5.5 Amounts not in dispute

- (a) If there is a dispute of the nature referred to in clause 5.4, the Customer shall pay the Company the amount of the invoice which is not in dispute.
- (b) If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was invoiced, then the Customer shall pay the amount finally resolved together with interest on that amount at the Default Rate calculated daily from the date the payment was due.

5.6 Additional Charge

- (a) The Company may charge the Customer Additional Charges from time to time.
- (b) Unless specified to the contrary in an Order Form or an Additional Document and subject to clause 5.4, the Customer will pay Additional Charges to the Company within thirty (30) days after receipt of a valid invoice from the Company.
- (c) The Parties acknowledge and agree that, in respect of each Agreement, unless the Parties otherwise agree in writing:
 - (i) the Company will be solely responsible for the Company's expenses incurred in connection with the provision of the Deliverables to the Customer under an Agreement, including travel, administrative, and out-of-pocket expenses; and
 - (ii) the Customer is solely responsible for the Customer's expenses incurred in connection with the Deliverables, including travel, administrative, and out-of-pocket expenses.
- (d) If the Company gives a notice pursuant to this Master Services Agreement or an Order Form to advise the Customer that the Company will charge the Customer an Additional Charge for any part of the Deliverables supplied under an Agreement (**Additional Charge Notice**) the Customer must give notice in writing to the Company within five (5) Business Days of the Company's Additional Charge Notice to accept or reject the proposed Additional Charge. The Customer acknowledges that in certain circumstances the Company may be precluded from completing the Deliverables under an Agreement if the Customer does not agree to pay an Additional Charge for the relevant Deliverables.
- (e) If the Customer gives a notice to the Company in the time required by clause 5.6(d) notifying that the Customer does not agree to pay an Additional Charge:
 - (i) senior representatives of the Parties must meet within three (3) Business Days of the Customer's notice given in accordance with clause 5.6(d) to discuss in good faith the Additional Charge proposed by the Company;
 - (ii) if the Company and the Customer have not agreed in writing on the proposed Additional Charge within seven (7) days of the senior representatives first meeting, the Company may immediately terminate the Agreement on written notice to the Customer;
 - (iii) the Parties will not be required to resolve the dispute in accordance with the dispute resolution procedure set out in clause 21; and
 - (iv) clause 19.6(c) will apply.

6. TAXES

The Fees and all Additional Charges are exclusive of Taxes. The Customer is responsible for paying all Taxes in connection with the supply of or associated with the Company's provision of the Deliverables under an Agreement. If the Company has an obligation to pay or collect Taxes for which the Customer is responsible under this clause 6, the Company will invoice the Customer for any such Taxes and the Customer will pay that amount to the Company in addition to the Fees or Additional Charges due to the Company in respect of the Deliverables under an Agreement.

7. PROVISION OF PRODUCTS

7.1 Right to Use

- (a) Subject to the formation of an Agreement in respect of the provision of Products pursuant to clause 3 (**Product Agreement**), on and from Fee Commencement Date of the Product Agreement, and for the term of the Product Agreement (as set out in an Order Form), the Company:
 - (i) grants the Customer a non-exclusive, non-transferable, revocable for cause, right to use the Number of Subscriptions of Products and the Documentation at the Sites;
 - (ii) grants the Customer a non-transferable, revocable for cause, right to use the Hardware and the Operating Software at the Sites; and
 - (iii) agrees to provide the Support Services to the Customer,

on the terms and conditions of the relevant Agreement.

- (b) The Customer acknowledges that the Documentation contains sufficient information for the adequate use of the Products and the Hardware, except to the extent the Company has notified the Customer of any omission or deficiency or of any variation which it considers necessary for the proper use of the Products and/or the Hardware.

7.2 Delivery and Installation

- (a) In respect of each Product Agreement:
- (i) the Products and Hardware will be delivered and installed to the Customer in accordance with the Order Form and any Additional Documents;
 - (i) the Company will arrange for the installation of the Hardware at the Sites in accordance with the Order Form and any Additional Documents;
 - (ii) the Customer must make any arrangements necessary to enable the Customer to obtain delivery of and for the Company to install the Hardware. The Company will not be liable for any delay in obtaining, or (where delivery is to be made by a third party whether acting as agent of the Customer or of the Company or otherwise) refusal of delivery or for any damage to the Hardware in the course of delivery; and
 - (iii) the Customer acknowledges that the Company gives no warranty or representation as to the date of delivery of the Hardware and agrees that the Customer's obligation to pay the Product and Hardware Fees will not be affected by any delay in delivery howsoever caused, except any delay directly caused by the Company and which is not a result of Force Majeure.
- (b) If, on any occasion the Company supplies the Customer with Hardware or replacement Hardware pursuant to an Agreement, the Customer in good faith does not accept the Hardware or replacement Hardware:
- (i) the Customer will, within seven (7) days after receipt of the Hardware, notify the Company in writing of Hardware that is rejected and the reason for such rejection;
 - (ii) within seven (7) days of the notice described in clause 7.2(b)(i), a Company representative and a Customer representative will meet to try to resolve the reason for rejection; and
 - (iii) if those representatives fail to resolve the reason for rejection within a further fourteen (14) days of first meeting, each Party must comply with the dispute resolution procedures in clause 21.
- (c) The absence of receipt of notice under clause 7.2(b)(i) by the Company will, without any further act, irrevocably constitute acceptance of the Hardware by the Customer for all purposes of the Agreement and will be binding on the Customer absolutely that the Hardware has been fully and unconditionally accepted by the Customer for the purposes of the Agreement.

7.3 Ownership of Hardware

- (a) In respect of each Product Agreement, the Company retains full title to the Hardware notwithstanding:
- (i) the delivery of the Hardware to the Customer;
 - (ii) the possession and use of the Hardware by the Customer; and
 - (iii) any temporary attachment of the Hardware to any land or buildings to facilitate use of the Hardware,
- with a right only to use it in accordance with, and under, the Agreement.
- (b) The Customer does not have any right, option or obligation to purchase the Hardware and acknowledges that no representation to that effect, express or implied, written or oral, has been made by or on behalf of the Company to the Customer or any nominee of the Customer at any time.
- (c) The Customer must protect the Company's interest in the Hardware, including by making clear to others that the Company is the owner of the Hardware. Subject to clause 7.7(i), the Customer must not place, or allow to be placed, on the Hardware any plates or marks that are inconsistent with the Company's ownership. If requested by the Company, the Customer must put plates on the Hardware that state that the Company owns the Hardware.

7.4 Location of Hardware

- (a) In respect of each Product Agreement, prior to delivery of the Hardware to the Customer and prior to any change in Sites as contemplated by clause 7.4(b), the Customer must arrange for all persons who have an interest in the Sites to deliver to the Company an acknowledgment in writing (in a form acceptable to the Company) that the Company:
- (i) has the absolute, unencumbered title to the Hardware (as between the Company and that person); and
 - (ii) has the right to enter upon or into the Sites to inspect and remove the Hardware at any time without any payment to, or the consent of, any person.
- (b) The Customer must not remove the Hardware from any Sites without the Company's prior written consent, which consent will not be unreasonably withheld.

7.5 Security Interest

- (a) For the purposes of clause 7.5, the terms **Financing Change Statement, Financing Statement, Security Agreement, Purchase Money Security Interest, Personal Property Security Register (PPSR) and Proceeds** have the meanings given to those terms (if at all) in the Security Interest Legislation.
- (a) To the extent permitted by law (including the Security Interest Legislation), the Customer unconditionally and irrevocably acknowledges and agrees that in relation to Hardware that is supplied to a Sites pursuant to an Agreement:
- (i) the Agreement constitutes a Security Agreement which creates (or may create) a Security Interest and Purchase Money Security Interest in favour of the Company in the Hardware at the Sites;
 - (ii) the Security Interest in the Hardware includes all Proceeds of any kind from the Hardware;

- (iii) the Company may without notice to the Customer seek registration of its Security Interest in the Hardware on the PPSR;
 - (iv) the Customer agrees that the Company is not required to disclose to an interested person information pertaining to the Company's Security Interest unless required to do so pursuant to the Security Interest Legislation or at law generally;
 - (v) the Customer will sign any transfer documents or provide any transfer information which the Company may reasonably require to enable registration of its Security Interest in the Hardware on the PPSR;
 - (vi) the Customer will not register a Financing Change Statement or make a demand to alter a Financing Statement in respect of the Hardware without the prior written consent of the Company;
- (b) The Customer must not create or permit to exist any Security Interest in the Products, Hardware or Documentation or in any modifications to, or enhancements, or New Releases of, the Products, Hardware or the Documentation (other than the Company's Security Interest).

7.6 Conditions of Right to Use

- (a) In respect of those modules of Product specified in an Order Form which are only intended to be used with Hardware supplied by the Company, the Customer must not use or operate those Products on any hardware not supplied by the Company unless with the Company's prior written consent, which consent will not be unreasonably withheld.
- (b) The Customer may only use the Products and the Hardware in accordance with the relevant Agreement (including the Documentation) and the normal operating procedures as provided and/or notified by the Company.
- (c) The Products and the Hardware may only be used pursuant to the relevant Agreement by the Customer at the Sites specified in Order Form.
- (d) The Customer must not copy, alter, modify or reproduce the Products except to the extent otherwise authorised by this Master Services Agreement or the relevant Agreement or as expressly authorised under and subject to the following sections of the *Copyright Act 1968* (Cth) or equivalent sections in legislation in the jurisdiction to which the Deliverables are supplied:
 - (i) 47B(1) (reproduction for normal use or study of computer programs) but not 47B(3);
 - (ii) 47C (back-up copy of computer programs);
 - (iii) 47D (reproducing computer programs to make interoperable products);
 - (iv) 47E (reproducing computer programs to correct errors); or
 - (v) 47F (reproducing computer programs for security testing),
 subject always to section 47G of the *Copyright Act 1968* (Cth) (or equivalent legislation in the relevant jurisdiction).
- (e) In addition to any other remedies available to the Company under each Agreement, at law or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Products will entitle the Company to any available equitable remedy against the Customer.
- (f) The Customer must not copy or reproduce the Products by any means or in any form without the Company's prior written consent. The Customer may make one copy of the Documentation for each of the Number of Subscriptions.
- (g) If the Company gives a written consent pursuant to clause 7.6(f), the Customer must ensure any copy of the Products made pursuant to an Agreement bears notice of the Company's ownership of Intellectual Property Rights and a notice stipulating that the Products contain Confidential Information belonging or relating to the Company. The Customer must comply with any directions of the Company as to the form or content of such notices.
- (h) If requested by the Company, the Customer must issue a notice in a form approved by the Company to all of the Customer's Personnel and other authorised users of the Products and Hardware under its direction or control, advising such persons of the Customer's obligations under the Agreement.
- (i) The Customer must not modify or alter the Products or merge all or any part of the Products with any other products without the Company's prior written consent.
- (j) The Products as modified or altered remain the property of the Company in all respects, whether modified by the Customer, the Company or a third party and whether or not authorised pursuant to the Agreement. The Customer, by this Master Services Agreement, assigns absolutely to the Company all Intellectual Property Rights in or arising out of any modifications to the Products and if requested by the Company, the Customer agrees to execute, and agrees to procure any applicable Customer's Personnel to execute, such documents and perform such other acts as are necessary in order to give effect to such assignment and to waive any associated moral rights.
- (k) Each Agreement applies to the Products supplied under that Agreement as varied.
- (l) The Customer and the Customer's Personnel must not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Products or the Hardware.
- (m) While the Products, Hardware or Documentation are in the Customer's possession, power or control, the Customer is solely responsible for the use, supervision, security, management and control of the Products, Hardware and Documentation at the Sites.
- (n) The Customer must ensure that the Products, the Hardware and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use.
- (o) The Customer must keep accurate records of use, copying, modification and disclosure of the Products. The Customer must permit the Company to inspect such records on seven (7) days' notice to the Customer during the Customer's normal business hours. If the Company requests, the Customer must furnish to the Company a copy of all or any part of such records.

- (p) The Customer's Right to Use the Hardware is a non-transferable right to exclusively use the Hardware on the terms of the Agreement together with and in conjunction with a non-exclusive, non-transferable, revocable for cause, right to use (but not the right to grant further rights to use) the Operating Software solely in conjunction with and as part of the Hardware for the purposes set out in the Agreement and otherwise on the terms applicable from time to time on which the Operating Software is supplied to the Company by the applicable software proprietor, which are available Microsoft's website at <https://www.microsoft.com/en-us/useterms>.
- (q) The Customer agrees to comply, and agrees to procure that its Personnel comply, with the terms and conditions applicable to the Operating Software as provided to the Customer by the Company.

7.7 Covenants regarding possession and use of Hardware

- (a) The Customer must always keep and maintain the Hardware properly serviced, in proper working order and condition and in good and substantial repair. The Company will make due allowance for normal wear and tear but the Hardware must always be capable of being operated fully and efficiently for the purpose, and to the capacity, for which the Hardware is intended.
- (b) The Customer must only operate and maintain the Hardware in accordance with the Agreement and the Documentation.
- (c) The Customer must comply, and must ensure that all Customer's Personnel operating the Hardware comply, in all respects with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Hardware.
- (d) The Customer grants the Company the right, and will use its best endeavours to ensure that the Customer's Personnel permit the Company the right, at all reasonable times upon the Company giving the Customer reasonable notice and without unduly interfering with the Customer's operations, to:
 - (i) enter with its servants, agents and experts upon or into the Sites;
 - (ii) inspect the state of repair of the Hardware and the Operating Software;
 - (iii) carry out such tests on the Hardware and the Operating Software as may seem necessary to the Company;
 - (iv) observe the use of the Hardware and the Operating Software;
 - (v) inspect any maintenance records in respect of the Hardware and the Operating Software; and
 - (vi) do any act, matter or thing which may be required to be done to give proper effect to the terms of the Agreement or to protect the Company's rights in the Hardware.
- (e) In the case of an emergency (determined in the Company's reasonable opinion) no notice will be required to be given by the Company to the Customer under clause 7.7(d) and the requirement in that clause on the Company not to unduly interfere with the Customer's operations only applies to the extent reasonably applicable having regard to the nature of the emergency.
- (f) The Customer must not at any time or from time to time attach, affix or secure the Hardware upon or to any Site unless the use so requires and the prior written consent of the Company has been obtained in relation to that Site.
- (g) Without limiting the generality of this clause 7.7, the Hardware is agreed and deemed not to be a fixture. Accordingly, the Parties agree that:
 - (i) the Hardware may be removed by the Company at any time in accordance with the provisions of an Agreement;
 - (ii) the Company will be entitled to enter upon any Site on twelve (12) hours' written notice for the purpose of removing the Hardware and will not be liable in respect of loss or damage arising from such entry or from the removal of the Hardware; and
 - (iii) if the Sites is owned by the Customer and is to become the subject of a mortgage or charge then, before the Customer gives the mortgage or charge, then on receipt of a written request from the Company, the Customer must obtain the written acknowledgment of the proposed mortgagee or chargee (as the case may be) that:
 - a. the Hardware is not a fixture for the purposes of the proposed mortgage or charge;
 - b. the mortgagee or chargee will not make any claim in relation to the Hardware; and
 - c. the mortgagee or chargee will permit the Company (whether or not there has been any default under the proposed mortgage or charge) to enter upon the Sites and to remove the Hardware.
- (h) Prior to the Hardware becoming attached, affixed or secured to a Sites which is not owned by the Customer, the Customer must obtain the written consent of the owner of the Sites to the entry by the Company and the removal of the Hardware as required by clause 7.7(g)(ii). As between the Company and the Customer, the Company will have the same rights of entry and removal as set out in clause 7.7(g).
- (i) The Customer must not without the Company's prior written consent, remove, change, alter or deface any name, name plate, identification number, trade mark or any other identifying mark or number on the Hardware, except so as to indicate any replacement, alteration or addition.
- (j) The Customer must notify any person seizing or attempting to seize the Hardware of the ownership of the Company and must give immediate written notice to the Company of such seizure or attempted seizure.
- (k) The Customer must not without the Company's prior written consent:
 - (i) conceal or alter the Hardware or make any addition to the Hardware except as required pursuant to this clause 7; or
 - (ii) allow any third party other than the Company to provide support or maintenance services in respect of the Hardware.
- (l) If the Hardware is delivered to a Site prior to the Company's Personnel attending the Site to install the Hardware, the Customer agrees to store the Hardware in a safe and secure manner and otherwise in accordance with the Company's reasonable directions and instructions. The Company does not accept any liability for faulty or damaged Hardware as a result of the Customer failing to comply with its obligations under this clause 7.7(l).

- (m) Other than the Operating Software, the Customer must not use or operate any computer programs on the Hardware unless the Company has provided prior written approval of or supplied the relevant computer program to the Customer and otherwise complied with its obligations under the SLA to ensure that:
 - (i) errors or defects in the Products and Hardware identified by the Customer or which otherwise come to the attention of the Company are rectified in accordance with the SLA;
 - (ii) the Products and Hardware remain in conformity with the Documentation; and
 - (iii) the Documentation is maintained and updated.
- (n) During the period during which the Hardware is in the Customer's possession, power or control, the Customer is solely responsible for the use, supervision, management and control of the Hardware and the Documentation at the Sites.
- (o) The Customer must ensure that the Hardware and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use.

7.8 Additional Services and Products

- (a) If after the Company has given a Completion Notice to the Customer under an Agreement, the Customer wishes to procure Additional Services and Products, the Customer and Company must comply with the process described in clause 3 of this Master Services Agreement to procure those Additional Services and Products. If the Customer wishes to procure Additional Services or Products prior to the Company giving a Completion Notice to the Customer, the Customer and the Company must comply with the Change Request procedure described in clause 10.4 to procure those Additional Services and Products.
- (b) If the Company gives a written notice to the Customer pursuant to clause 3(b)(ii) of this Master Services Agreement that the Additional Services and Products may be supplied to the Customer by way of variation to an existing Agreement, the parties must comply with the provisions of the Order Form to effect the variation.

8. SUPPORT SERVICES, UPDATES AND NEW RELEASES

8.1 Support Services

Subject to the terms of each Agreement, the Company will provide the Support Services in accordance with the SLA.

8.2 Nature of Services

The Company will provide the Support Services in accordance with the procedure specified in the SLA.

8.3 Updates and New Releases

- (a) Subject to the terms of each Agreement, the Company will provide, and the Customer must accept, Updates and New Releases as notified by the Company to the Customer from time to time.
- (b) New Releases will be provided by the Company as they become available.
- (c) If the Customer refuses to accept an Update or New Release, the Company may at its election terminate the Agreement on 30 days' written notice to the Customer.

8.4 Where the Customer accepts an Update or New Release this Master Services Agreement applies in all respects to that Update and New Release to the extent that it is incorporated into or replaces the Products.

9. OPERATING SOFTWARE

9.1 If the Customer wishes to install computer programs other than the Operating Software or computer programs supplied and/or approved by the Company onto the Hardware:

- (a) the Customer must obtain the written approval of the Company prior to performing any such installation;
- (b) the Company reserves the right to charge the Customer an Additional Charge for validating that the computer program is likely to operate in conformity with the Operating Software and with any other computer programs supplied and/or approved by the Company, which the Customer agrees to pay within 30 days of receiving an invoice from the Company for such Additional Charge; and
- (c) the Customer unconditionally and irrevocably acknowledges and agrees that:
 - (i) the installation and use of such computer programs is entirely at the risk of the Customer, except where agreed otherwise in writing; and
 - (ii) any approval given by the Company to the Customer pursuant to clause 9.1(a) only constitutes an approval of the relevant computer program at the time of testing and the Company makes no warranty or representation that future updates to the Operating Software will not render the approved computer program inoperable or otherwise cause the computer program to malfunction or not to operate in accordance with the Documentation.

9.2 To the extent that:

- (a) the Company's right of use of the Operating Software is terminated at any time; or
- (b) the Operating Software no longer functions in accordance with the Documentation (other than due to a breach by the Customer of its obligations under an Agreement) as determined in the sole discretion of the Company; or
- (c) the Company is required to change, upgrade, update or apply a patch to or in respect of the Operating Software for the proper functioning of the Hardware and the Products,

the Customer acknowledges and agrees that the Company may in its absolute discretion and on no less than thirty (30) days' written notice to the Customer do any of the following (as applicable):

- (d) substitute the existing Operating Software with and to implement a reasonable equivalent thereof on terms which comply with the requirements of the Hardware; and
- (e) change, upgrade, update or apply a patch to or in respect of the Operating Software for the proper functioning of the Hardware and the Products,

at no additional cost of the Customer.

- (f) The Company agrees that any changes to the Operating Software made in accordance with clause 9.2 will have no material adverse effect on the Customer's use of the Hardware and Products and the Company further agrees to consult in good faith with the Customer in response to any concerns raised by the Customer in relation to the proposed substitution, change, upgrade, update or application of a patch to or in respect of the Operating Software.

10. PROVISION OF SERVICES

10.1 Services

In respect of each Agreement, the Company will provide the Services and the Documentation to the Customer in accordance with the Order Form and any Additional Documents.

10.2 Excluded Services

The Services do not include the Excluded Services. The Customer may request the Company to carry out the Excluded Services but the Company is under no obligation to agree to carry out the Excluded Services for the Customer.

10.3 Site/s and Delay

- (a) The Customer must prepare the Sites for the Company's provision of the Services under an Agreement in accordance with an Order Form and any Additional Documents and otherwise in accordance with the Company's reasonable directions and instructions.
- (b) If:
 - (i) the Customer does not comply (either fully or partially) with its obligations to prepare a Sites; and/or
 - (ii) the Customer delays in carrying out its obligations under the Agreement,

and such failure causes a material delay in the Company's provision of the Services to the Customer at a Sites (such materiality to be determined by the Company, acting reasonably) the Company must, as soon as reasonably practicable after the Company has determined that the delay is material (or is likely to be material), give written notice to the Customer setting out:

- (iii) the consequences of the delay on the Company's provision of the Services under the relevant Agreement; and
- (iv) whether, as a result of the delay, the Order Form or the Additional Documents will require variation.
- (c) If the Company gives a notice pursuant to clause 10.3(b) and the notice specifies that the Order Form or the Additional Documents will require variation, senior representatives of the Parties must meet within three (3) Business Days of the Company's notice and discuss in good faith the measures to be put in place to minimise the consequences of the delay and to agree on the variations to the Order Form or the Additional Documents. Any variations to the Order Form or any Additional Documents that are agreed between the Parties must be documented in the form of a Change Request, except that the Parties will be deemed to have agreed to the Change Request by executing a copy of the Change Request and clauses 10.4(c) - 10.4(g) (both clauses inclusive) will not apply to that Change Request.
- (d) The Customer unconditionally and irrevocably acknowledges and agrees that the Company is in no way liable for any loss, cost, and expense or claim made to, or incurred by, the Customer as a result of a delay to the provision of the Services caused by the Customer, whether such delay is a result of the Customer's failure to prepare a Site in accordance with the Order Form or the Additional Documents or otherwise.
- (e) If within five (5) Business Days of the Parties' senior representatives meeting pursuant to clause 10.3(c), the Parties do not reach agreement on the measures to be taken to minimise the consequences of the delay or agree on any necessary variations to the Order Form or the Additional Documents:
 - (i) the Company may immediately terminate the Agreement on written notice to the Customer;
 - (ii) the Parties will not be required to resolve the dispute in accordance with the dispute resolution procedure set out in clause 21; and
 - (iii) clause 19.6(c) will apply.

10.4 Change Request

- (a) The Parties agree that in respect of each Agreement a Change Request can only be requested and made in accordance with this clause 10.4 in the period prior to the time and date on which the Company gives a Completion Notice to the Customer.
- (b) In relation to each Agreement, where:
 - (i) an Agreement expressly requires or allows the Parties to document a variation to an Order Form or the Additional Documents by a Change Request; or
 - (ii) either Party wishes to vary an Order Form or the Additional Documents, including by increasing or decreasing the scope of the Services, the Number of Subscriptions, the number of modules of Product or the number of items of Hardware,

then the following procedure must be followed:

- (iii) if the Customer is requesting the variation, the Customer must submit to the Company a request in writing for variation detailing the type of change requested; and/or
- (iv) if the Company agrees to the variation requested by the Customer pursuant to clause 10.4(b)(iii), or if the Company wishes to request a variation; or
- (v) where the Parties are required to document a variation by Change Request pursuant this Master Services Agreement or an Agreement, the Company will as soon as reasonably practicable issue to the Customer in writing a document which must include:

- (vi) the title of the change;
- (vii) the reason for the change;
- (viii) full details of the change;
- (ix) whether the change is a material change to the Order Form or the Additional Documents which will mean that the Company will charge an Additional Charge for any part of the Services, Products, Hardware and Support Services, and the amount of that Additional Charge; and/or
- (x) whether the Customer's non-acceptance of the Change Request will mean that the Company is unable to carry out Services substantially in accordance with the Agreement,

paragraph (vi) through (x) above, being a **(Change Request)**.

- (c) If the Customer gives a notice to the Company pursuant to clause 10.4(b)(iii) for a Change Request but the Company does not agree to the Change Request, the Company is under no obligation to issue the Change Request. The Company will not unreasonably withhold its agreement to issue a Change Request in response to a notice given by the Customer pursuant to clause 10.4(b)(iii).
- (d) If the Company wishes to request a variation and issues a Change Request to the Customer pursuant to clause 10.4(b)(iv), the Customer must accept or reject the Change Request in writing to the Company within five (5) Business Days of the Company's provision of the Change Request to the Customer. If the Customer does not give a notice to accept or reject a Change Request within the period specified in this clause 10.4(d), the Customer will be deemed to have given a notice to accept the Change Request and clause 10.4(h) will apply with effect from the expiry of the five (5) Business Day period from the Company's provision of the Change Request to the Customer.
- (e) If the Company notifies the Customer in the Change Request in accordance with clause 10.4(b)(x) that the Customer's non-acceptance of the Change Request will mean that the Company is unable to carry out the Services under the Agreement, and the Customer rejects the Change Request in the time required by clause 10.4(d):
 - (i) senior representatives of the Parties must meet within three (3) Business Days of the Customer's notice given in accordance with clause 10.4(d) to discuss in good faith the basis on which the Services may be able to be carried out by the Company having regard to the matters identified in the Change Request;
 - (ii) if the Company and the Customer have not agreed in writing upon the basis on which the Services can be carried out by the Company in accordance with the Agreement having regard to the matters identified in the Change Request within seven (7) days of the senior representatives first meeting, the Company may immediately terminate the Agreement on written notice to the Customer;
 - (iii) the Parties will not be required to resolve the dispute in accordance with the dispute resolution procedure set out in clause 21; and
 - (iv) clause 19.6(c) will apply.
- (f) If the Company notifies the Customer in the Change Request in accordance with clause 10.4(v)(ix) that the Company will charge an Additional Charge for a part of the Services and the Customer accepts the Change Request pursuant to clause 10.4 (d), clause 5.6 will apply. The Parties agree to use their reasonable endeavours to at all times ensure that Additional Charges are kept to a minimum and to, where possible, investigate and implement alternate solutions to issues arising from Change Requests that do not require the Customer to pay an Additional Charge to the Company.
- (g) Subject to clause 10.4(e), if the Customer rejects the Change Request pursuant to clause 10.4(d), the Agreement will continue in full force and effect on the same terms and conditions that applied immediately before the Change Request was made.
- (h) Change Requests agreed between the Parties in accordance with this clause 10.4 will be deemed to be incorporated into the Agreement with effect from the date the Change Request is accepted by a Party or deemed to be accepted by a Party pursuant to and in accordance with this Master Services Agreement.

10.5 Assumptions, Dependencies and Variations

- (a) The Parties expressly acknowledge and agree that in respect of each Agreement:
 - (i) the Assumptions and Dependencies are based solely on information provided by the Customer to the Company; and
 - (ii) if at any time during the Company's provision of the Services under an Agreement, the Assumptions and Dependencies prove incorrect in a material manner (determined by the Company, acting reasonably) the Customer acknowledges and agrees that the Company may advise the Customer in writing whether, as a result of the relevant Assumption or Dependency proving incorrect:
 - a. the Company intends to charge the Customer an Additional Charge for a part of the Services under the Agreement, and the amount of that Additional Charge; and/or
 - b. the Order Form will require variation by Change Request.
- (b) If the Company gives a notice to the Customer pursuant to clause 10.5(a)(ii)a, clause 5.6(d) will apply.
- (c) The Company and the Customer must agree on any amendments and variations of the type referred to in clause 10.5(a)(ii)b in the form of a Change Request.

10.6 Implementation Planning Study

- (a) In respect of each Agreement, prior to, or as soon as reasonably practicable after the Commencement Date, the Company will conduct and complete a study and analysis of the requirements of the Customer in relation to the Services to be delivered under that Agreement to allow the Company to perform its obligations under that Agreement (**Implementation Planning Study**).
- (b) The Customer will provide such information and assistance as the Company reasonably requires enabling the Company to complete the Implementation Planning Study.
- (c) Following the completion of the Implementation Planning Study, the Company may:
 - (i) advise the Customer in writing of the variations required to be made to the Order Form or the Additional Documents as a result of the Implementation Planning Study; and/or
 - (ii) advise the Customer in writing that, as a result of a material issue arising out of the Implementation Planning Study (such materiality to be determined by the Company, acting reasonably), the Company intends to charge the Customer an Additional Charge for a part of the Services to be provided under the Agreement. Such notice must specify the amount of the Additional Charge proposed to be charged by the Company.
- (d) If the Company gives a notice to the Customer pursuant to clause 10.6(c)(ii), clause 5.6(d) will apply.
- (e) The Company and the Customer must agree on the variations referred to in clause 10.6(c)(i) in the form of a Change Request.

10.7 Personnel

- (a) For each Agreement for the provision of Services, as soon as practicable after the Commencement Date, the Parties will each appoint the key Personnel of that Party, including a Party representative, in accordance with the Order Form.
- (b) Each Party agrees to procure its Personnel to at all times reasonably and in good faith cooperate with the other Party in a professional and courteous manner to perform that Personnel's obligations under the Agreement.

10.8 Completion of Services

- (a) At the completion of a supply of Services under an Agreement (such completion to be determined by the Company, acting reasonably), the Company will provide the Customer with written notice of the completion of the Services (**Completion Notice**).
- (b) With effect from the time and date on which the Company gives the Customer a Completion Notice, the Company's obligations to supply the Services come to an end unless the Order Form provides otherwise.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Company's Intellectual Property Rights

- (a) The Company owns, or is entitled to use and to grant the Right to Use, the Intellectual Property Rights in the Products, the Hardware, the Operating Software and the Documentation.
- (b) An Agreement does not confer any Intellectual Property Rights or other proprietary rights concerning the Products (including Updates and New Releases), the Hardware, the Operating Software, the Support Services or the Documentation on the Customer other than as set out in this Master Services Agreement or an Agreement.
- (c) The Customer acknowledges that the Products and the Documentation are Confidential Information belonging or relating to the Company and, except as otherwise provided in this Master Services Agreement, must not be disclosed or allowed to be disclosed to any third party in any form whatsoever without the prior written permission of the Company in its absolute discretion.
- (d) The Customer must ensure any copy of the Products and Documentation made pursuant to an Agreement bears notice of the Company's ownership and a notice stipulating that the Products and Documentation contain the Confidential Information belonging or relating to the Company. The Customer must comply with any directions of the Company as to the form or content of such notices.
- (e) The Customer acknowledges and agrees that the Company may in its absolute discretion deal with the Products, the Hardware, the Operating Software, the Documentation and the Intellectual Property Rights in the Products, the Hardware, the Operating Software and the Documentation as owner or licensee (subject to the terms of an Agreement).

11.2 Licence to use Data

- (a) The Customer grants to the Company a perpetual, royalty free and fee-free licence to aggregate and de-identify the Data.
- (b) The Customer acknowledges and agrees that the Company will process, aggregate, and analyse the Data using systems, methods, procedures, and technologies which are proprietary to the Company.
- (c) Without limiting clause 11.2(a), the Parties unconditionally and irrevocably acknowledge and agree that any and all De-identified Data which results from and which is produced by the Company's aggregation and de-identification of Data referred to in clause 11.2(a) (**De-identified Data**):
 - (i) vests in or is assigned to the Company immediately on the aggregation and de-identification of the relevant Data; and
 - (ii) is deemed Project IP for the purposes of this Master Services Agreement and each Agreement.

11.3 Project IP

- (a) Unless specified otherwise in an Order Form, the Customer acknowledges that the Intellectual Property Rights (including rights pertaining to Confidential Information) in the Project IP:
 - (i) hereby vests in the Company as and when such rights are brought into existence;

- (ii) are agreed to be the absolute and exclusive property of the Company; and
 - (iii) to the extent necessary are hereby assigned absolutely to the Company.
- (a) The Company grants to the Customer a non-exclusive, non-transferable licence to use the Project IP solely for the purpose of utilising the Services.

11.4 The Company's use of Project IP

The Customer unconditionally and irrevocably acknowledges and agrees that the Company is entitled to use, sell, sub-licence and otherwise distribute the Project IP anywhere in the world and to any third party, provided it does not use or include:

- (a) the Customer's Confidential Information;
- (b) Customer's Background IP in the Project IP; or
- (c) Personally Identifiable Data.

11.5 Background IP, Third Party IP & Right to Use

To the extent the Project IP includes Background IP and/or Third Party IP, the Parties acknowledge and agree that:

- (a) subject to clauses 11.4(b) and 11.4(c), nothing in this Master Services Agreement or an Agreement affects any Party's existing ownership rights in any Background IP or any third party's ownership rights in any Third-Party IP;
- (b) subject to:
 - (i) the Customer's compliance with the Agreement, including the payments of all Fees in accordance with the Agreement; and
 - (ii) any restrictions specified in an Order Form or any Additional Documents,
 the Company grants to the Customer a non-exclusive, non-transferable right to use (but not the right to grant further rights in) the Company's Background IP solely for the purpose of the Company's provision of the Deliverables in accordance with the terms of the Agreement; and
- (c) the Customer grants the Company a non-exclusive, non-transferable right to use (but not the right to grant further rights in) the Customer's Background IP solely for the purpose of the Company's provision of the Deliverables in accordance with the terms of an Agreement.
- (d) the Company will grant the Customer a non-exclusive, non-transferable right to use the Third-Party IP solely for the use of the Project IP and subject to any terms on which the right to use such Third-Party IP is granted to the Company.

11.6 Customer's Personnel

On the written request of the Company, the Customer agrees to procure the irrevocable consent of the Customer's Personnel not to enforce any and all moral rights that those Personnel may have, presently or in the future, arising from the provision of the Products and/or the performance of the Services by the Company under an Agreement and/or the Intellectual Property Rights in the Project IP owned by the Company under clause 11.2 and 11.3, including the execution of any moral rights consent required by the Company. Without limitation, the Customer warrants that the Company may:

- (a) exercise any and all rights without identifying any person as the individual responsible for creating any particular material; and
- (b) modify, alter, adapt, distort or otherwise change any material as provided under an Agreement, without adversely affecting the Customer's right to use the Project IP.

11.7 Further acts

The Customer will, and will procure its Personnel to, upon request by the Company, execute such documentation and comply with such other formalities, at its own expense, as may be required in order to complete the assignment of the Intellectual Property Rights in the Project IP referred to in clause 11.3(a)(iii) and to do all things reasonably necessary or required to give full effect to clause 11.5.

11.8 Infringement

- (a) Subject to clauses 11.8(b) and 11.8(c), the Company indemnifies the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determines that the Customer's use of the Project IP constitutes an infringement of any Intellectual Property Right in the Products or Services.
- (b) The Company will not be required to indemnify the Customer as provided in clause 11.8(a) unless the Customer:
 - (i) notifies the Company in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - (ii) gives the Company the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
 - (iii) provides the Company with reasonable assistance in conducting the defence of such a claim; and
 - (iv) permits the Company to modify, alter or substitute the infringing part of the Project IP in the Deliverables at its own expense in order to avoid continuing infringement (provided such modification, alteration or substitution does not cause the Deliverables to malfunction), or authorises the Company to procure for the Customer the authority to continue the use and possession of the infringing the Deliverables.
- (c) The Company does not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from:
 - (i) use of the Deliverables in combination by any means and in any form with other products not specifically approved by the Company;

- (ii) use of the Deliverables in a manner or for a purpose not reasonably approved or not authorised by the Company;
 - (iii) modification or alteration of the Deliverables without the prior written consent of the Company;
 - (iv) any transaction entered into by the Customer relating to the Deliverables that is not expressly permitted by an Agreement or without the Company's prior consent in writing; or
 - (v) the Customer's Background IP or its inclusion in the Deliverables.
- (d) If proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of the Deliverables constitutes an infringement of Intellectual Property, the Company may at its option and at its own expense conduct the defence of such proceedings. The Customer shall provide all necessary cooperation, information and assistance to the Company in the conduct of the defence of such proceedings.
- (e) The Customer indemnifies and will keep indemnified the Company against any direct loss, costs, expenses, demands or liability, arising out of a claim by a third party alleging such infringement if:
- (i) the claim arises from an event specified in clause 11.5(c); or
 - (ii) the ability of the Company to defend the claim has been prejudiced by the failure of the Customer to comply with any requirements of clauses 11.7 or 11.8(b).

12. CONFIDENTIALITY, PRIVACY AND DATA PROTECTION

12.1 Confidentiality

- (a) A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- (b) A Party will not be in breach of clause 12.1(a) in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- (c) Each Party will take all reasonable steps to ensure that it and its Personnel engaged for the purposes of an Agreement, do not make public or disclose the other Party's Confidential Information.
- (d) Notwithstanding any other provision of this clause 12, a Party may disclose the terms of this Master Services Agreement, an Order Form or the Additional Documents to its Related Bodies Corporate, solicitors, auditors, insurers or accountants on a confidential basis no less onerous than those set out in this Master Services Agreement.
- (e) A Party will not directly or indirectly permit or cause to be used, any of the other Party's Confidential Information for any purpose other than solely for the purpose for which it was provided and in accordance with the terms of the Agreement.
- (f) A Party shall protect the other Party's Confidential Information in its possession or under its control by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks to that Confidential Information.
- (g) A Party shall have in place reasonable data recovery arrangements to ensure that the digitised records of any of the other Party's Confidential Information it holds will not be lost in the event of an emergency and any potential data loss can be recovered.

12.2 Privacy and Data protection

- (a) The Parties confirm that, in so far as such definition is relevant within the applicable Privacy Laws, the Customer is the Data Controller of the Data and the Company is the Data Processor of the Data. Further, each Party undertakes to:
 - (i) only collect, use, disclose and store Personally Identifiable Data in a manner and to the extent permitted by the Privacy Laws that apply to that Party; and
 - (ii) otherwise comply in all respects with the Privacy Laws that apply to that Party.
- (b) The Customer and the Company unconditionally and irrevocably acknowledge and agree that:
 - (i) the Customer is solely responsible for obtaining and will so obtain the consent of its patients in writing to the:
 - (A) disclosure of Personally Identifiable Data by the Customer to the Company for the purposes of the Company's provision of the Deliverables to the Customer;
 - (B) collection by the Company from the Customer of the Personally Identifiable Data for the purposes of the Company's provision of the Deliverables to the Customer;
 - (C) use by the Company of Personally Identifiable Data received from the Customer for the purposes of the Company's provision of the Deliverables to the Customer;
 - (D) Company's storage of the Data in encrypted form in a cloud sever located in the Cloud Server Location; and
 - (E) creation, collection, dealing with and use by the Company of De-identified Data for statistical purposes only;
 - (ii) subject to clause 11.2(a), the Company collects, uses and stores the Personally Identifiable Data solely for the purpose of providing the Deliverables to the Customer and De-Identified Data for research and development or statistical purposes only;
 - (iii) each Party must comply with any request or direction of the other Party arising directly from or in connection with the exercise of the functions of the Privacy Laws including the issuing by the Customer to its patients of any notice (including a collection notice) to the Customer's patients concerning the Company's collection, use, disclosure and storage of Data; and
 - (iii) the Parties must co-operate with each other in any reasonable action which either Party may take to protect the security or integrity of the Data.

- (c) The Customer acknowledges and agrees that the Company will protect Personally Identifiable Data using proprietary and open-source systems, methods, procedures, and technologies.
- (d) Each Party will indemnify and will keep indemnified the other Party for any and all direct losses, costs, expenses or penalties incurred by a Party arising from or in connection with a Party's failure to comply with this clause 12, except to the extent such loss, cost, expense or penalty was caused by contributed to by the other Party.
- (e) Nothing in this clause 12 is intended to limit or restrict the Company's licence rights pursuant to clause 11.2 or the Company's ownership of De-identified Data pursuant to clauses 11.3 and 11.4 of this Master Services Agreement.

13. PUBLIC ANNOUNCEMENTS

The Parties agree not to issue or make statements to the public, the press or other persons (including by uploading any material on the relevant Party's website or on social media) or authorise any party to do such things regarding any Agreement formed between the Parties or any matters in relation to it without the other Party's written consent, which will not be unreasonably withheld.

14. NON-SOLICITATION

14.1 Customer non-solicitation

The Customer will not, within any country in which the Company has supplied the Deliverables to the Customer under an Agreement:

- (a) solicit for employment, either directly or indirectly, any person who is employed or contracted by the Company or its Related Bodies Corporate in the country in which the Deliverables are supplied under the relevant Agreement;
- (b) counsel, procure or otherwise assist any person to do any of the acts referred to in clause 14.1(a),

during the Term of this Master Services Agreement and for the following periods:

- (c) 1 year after the termination or expiry of this Master Services Agreement, or if that is not enforceable;
- (d) 6 months after the termination or expiry of this Master Services Agreement, or if that is not enforceable;
- (e) 3 months after the termination or expiry of this Master Services Agreement,

either:

- (f) on the Customer's own account;
- (g) jointly with or on behalf of any person, firm or company; or
- (h) as a consultant, contractor, agent, employee, manager, director, shareholder, member, partner, joint venturer participant, or in any other capacity.

14.2 Provisions severable

Each sub-clause of clause 14.1 must be read and construed and will have effect as if it were a separate independent clause with each such paragraph being severable from the others to the extent that any such paragraph will be invalid or unenforceable for any reason. If a prohibition or restriction contained in clause 14.1 is void or voidable by either Party or unenforceable or illegal, but would not be void or voidable or unenforceable or illegal if it were read down, and it is capable of being read down, it will be read down accordingly, and if notwithstanding the foregoing, a prohibition or restriction contained in clause 14.1 is still void or voidable or unenforceable or illegal:

- (a) if the prohibition or restriction would not be void or voidable or unenforceable or illegal if a word or those words (as the case may be) were omitted, that word or those words are severed; and
- (b) in any other case, the whole of the prohibition or restriction is severed,

and the remainder of this clause 14 has full force and effect.

14.3 Provisions reasonable

The Customer warrants that it understands the provisions of this clause 14 and/or has received independent legal advice with respect to the provisions of this clause 14 and considers such provisions to be fair and reasonable and that such provisions go no further than reasonably necessary to protect the goodwill of the Company.

15. WARRANTIES

15.1 Warranties given by both parties

Each of the Parties warrants in favour of the other Party that it:

- (a) has the power, legal capacity and is duly authorised to enter into this Master Services Agreement and each Agreement and perform the obligations therein; and
- (b) it is duly registered or incorporated in its place of registration or incorporation.

15.2 Warranties given by the Company

- (a) The Company warrants in favour of the Customer that:
 - (i) the Company has the authority to grant the Right to Use to the Customer on the terms of each Agreement;
 - (ii) the Customer's use of the Products will not infringe the Intellectual Property Rights of any third party;

- (iii) the Products, Hardware and Support Services provided by the Company will be of merchantable quality and fit for the purposes described in the relevant Agreement and the Documentation;
 - (iv) the Products and the Hardware will function substantially in accordance with the functionality specified by the Company in the Documentation; and
 - (v) the Services and the Support Services will be performed in a professional and workmanlike manner by individuals with the requisite training, skill and expertise.
- (b) The Company agrees to procure for the Customer the benefit of any manufacturers' warranties relevant to the Hardware.
- (c) The Customer agrees that to the full extent permitted by law neither the Company gives, nor any agent, other previous owner of the Hardware or any person purporting to act with the authority of the Company has given, any condition, warranty (other than the warranties given in clause 15.2) or representation whatsoever in favour of the Customer:
- (i) as to the condition or quality of the Hardware including, without limitation, latent and other defects and whether or not discoverable by the Company or the Customer;
 - (ii) as to the suitability or fitness for any special use or purpose of the Hardware; or
 - (iii) as to the correspondence by the Hardware to any description of it, other than as expressly set out in an Agreement.

16. LIABILITY OF COMPANY

16.1 Statutory limitation of liability

To the extent permitted by law, all express or implied warranties in respect of the Deliverables supplied by the Company under an Agreement are excluded. If any statute implies terms into this Master Services Agreement or an Agreement (including an Order Form) which cannot be excluded, such terms will apply to this Master Services Agreement or the Agreement (including an Order Form). However, the liability of the Company for breach of any such implied term will be limited to any one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of those goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
 - (i) supplying those services again; or
 - (ii) the payment of the cost of having the services supplied again.

16.2 Limitation of liability – generally

Subject to clause 16.1 and to the extent permitted by law, the Company's maximum total aggregate liability (including the liability of the Company's Personnel and including liability under clause 11.8(a) or 12.2(d) for any direct loss, costs, claims or damages under an Agreement in contract, tort, statute or in any other way arising from or in connection with:

- (a) the Customer's or the Customer's Personnel's operation or use or attempted operation or use of the Deliverables;
- (b) the Company's provision of the Deliverables;
- (c) any failure by the Company to perform any obligation under an Agreement; or
- (d) any act or omission or failure of the Company or its Personnel,

will:

- (i) be reduced proportionally to the extent the Customer, the Customer's Personnel or a third party contributed to the relevant liability; and
- (ii) under no circumstances exceed the amount of the Fees actually paid by the Customer to the Company under the relevant Agreement in the immediately preceding two (2) year period calculated from the date on which the claim is first made by the Customer.

16.3 No Limitation

Nothing in this Master Services Agreement or any Agreement limits or excludes the liability of either Party for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation.

16.4 Exclusion of Consequential Loss

The Company and Customer will not be liable to each other or any other party for any Consequential Loss incurred in connection with an Agreement however caused, and regardless of whether a Party has been advised of the possibility of such loss.

16.5 Time for claims

The Customer unconditionally and irrevocably acknowledges and agrees that the Company will have no liability to the Customer (other than liability for personal injury (including sickness and death) which is caused or contributed to by the Company's negligence) unless the Customer gives written notice of the claim to the Company within 30 days of the cause of action first arising.

17. RELEASE AND INDEMNITY BY THE CUSTOMER

- 17.1 The Customer agrees that the Company will have no responsibility or liability for any loss or damage to any property of the Customer. To the fullest extent permitted by law the Customer releases and discharges the Company and its Personnel from:
- (a) all loss or damage incurred by the Customer; and
 - (b) any loss or damage whatsoever and whenever caused to the Customer, its Personnel or its patients whether by way of damage to person, property, delay, financial loss or otherwise,
arising directly or indirectly from or incidental to a breakdown of, or defect in, the Products, Hardware or Services or any accident to or involving the Products or Hardware or their use, operation, repair, maintenance or storage but excluding as a result of the Company's negligence.
- 17.2 Without limiting any other indemnity given by the Customer in favour of the Company under this Master Services Agreement, the Customer indemnifies and will keep indemnified the Company against any direct loss or damage, costs (including legal costs), expenses, demands or liability:
- (a) which the Company pays, suffers, incurs or is liable for; or
 - (b) for any claims by third parties,
 - (c) as a result of or arising from, whether directly or indirectly:
 - (d) the Customer's or the Customer's Personnel's' negligent use of the Products or the Hardware or use of the Products or the Hardware in breach of the terms of an Agreement;
 - (e) any other breach by the Customer of any of its obligations under an Agreement;
 - (f) theft, loss or damage to the Hardware of the kind specified in clause 18.8;
 - (g) the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Company under an Agreement, including all amounts incurred in repossessing the Hardware from the Customer under an Agreement and in enforcing the Agreement generally; or
 - (h) any wilful, unlawful or negligent act or omission of the Customer or the Customer's Personnel,
- except to the extent such loss, damage, costs, expense, demand or liability is caused by the negligent act or omission of the Company.
- 17.3 Subject to clause 16, the Company indemnifies and will keep indemnified the Customer against any direct loss or damage, costs (including legal fees), expenses, demands or liability:
- (a) which the Customer pays, suffers, incurs or is liable for; or
 - (b) for any claims by third parties,
 - (c) as a result of or arising from, whether directly or indirectly:
 - (d) any breach by the Company of any of its obligations under an Agreement; and
 - (e) any other wilful, unlawful or negligent act or omission of the Company or the Company's Personnel,
- except to the extent such loss, damage, costs, expense, demand or liability is caused by the negligent act or omission of the Customer.

18. INSURANCE, REPLACEMENT AND REPAIR

- 18.1 The Customer must take out and maintain while an Agreement is on foot at its own cost and expense a public and products liability insurance policy (with an insurer approved by the Company) for at least US\$20 million or currency equivalent for any one occurrence and in the aggregate for products liability.
- 18.2 With respect to the insurance policy referred to in clause 18.1:
- (a) on request by the Company the Customer must provide the Company with a copy of the certificate of currency for the policy; and
 - (b) the Customer must immediately notify the Company in writing of any cancellation or threatened cancellation of its insurance required under clause 18.1.
- 18.3 If the Customer does not comply with all or any of the obligations contained in clause 18.1, the Company may terminate an Agreement in accordance with clause 19.2(a).
- 18.4 Subject to clause 17 and 18.8, the Parties acknowledge and agree that the Company will insure all Hardware for its full replacement value located at the Sites and bear the risk of loss or damage to the Hardware occurring in the ordinary course. The Customer acknowledges and agrees that it must:
- (a) not do or allow any act or thing in or on the Sites whereby any insurance policy effected by the Company or the Customer may be vitiated or rendered void or voidable or whereby the rate of premium payable under that policy of insurance is liable to increase;
 - (b) not use, keep, deal with the Hardware in any manner which would permit an insurer under any insurance policy effected by the Company to decline a claim, whether under any condition or exclusion contained in the policy or otherwise; and
 - (c) notify the Company if anything happens which gives rise, or may give rise, to an insurance claim under any insurance policy effected by the Customer or the Company that relates to Services, Products, Hardware or Support Services.

- 18.5 If any Hardware is stolen, lost or damaged the Customer must notify the Company in writing immediately. On the receipt of such notification the Company may at its election:
- (a) repair the damaged Hardware;
 - (b) replace the stolen, lost or damaged Hardware with hardware of similar age and condition (but not necessarily the same make or model); or
 - (c) release the Customer from future payment obligations in respect of the Product and Hardware Fees (except for any Product or Hardware Fees in arrears at the time the loss or damage claim is made) if the Customer notifies the Company that it does not wish the relevant Hardware to be repaired or replaced.
- 18.6 If the Company elects to repair the Hardware pursuant to clause 18.5(a):
- (a) the Company will use all reasonable endeavours to repair the Hardware within sixty (60) days of the Company's election given pursuant to clause 18.5;
 - (b) the Company reserves the right to select any suitably qualified repairer to carry out repairs;
 - (c) the Company will have no obligation to supply any Products or Support Services in connection with the damaged Hardware in the period prior to that Hardware being repaired and re-connected at the relevant Site;
 - (d) the Customer will be required to continue to pay the Product and Hardware Fee in respect of the relevant Hardware while the repairs are being carried out and until the relevant Hardware is repaired.
- 18.7 If the Company elects to replace the Hardware pursuant to clause 18.5(b):
- (a) the Company will use all reasonable endeavours to replace the relevant Hardware within ninety (90) days of receiving the Customer's notification pursuant to clause 18.5;
 - (b) the Company will have no obligation to supply any Products or Support Services in connection with the stolen, lost or damaged Hardware in the period prior to that Hardware being replaced and re-connected at the relevant Sites; and
 - (c) the Customer will be required to continue to pay the Product and Hardware Fee in respect of the relevant Hardware in the period prior to relevant Hardware being replaced and until the relevant Hardware is replaced, capped to an amount equal to one month's Product and Hardware Fee.
- 18.8 Notwithstanding clause 18.4, the Company will not pay for, and the Customer will assume and bear the risk of, any loss, theft or damage to any Hardware:
- (a) which is not accidental loss or damage;
 - (b) where at the time of the loss, theft or damage, the Customer is in arrears with the Product and Hardware Fee;
 - (c) arising from theft, misappropriation, fraudulent, intentional or dishonest acts, or malicious damage by the Customer, the Customer's Personnel or any person who has unrestricted access to the Hardware;
 - (d) arising from theft, attempted theft or loss:
 - (i) from an unoccupied Site unless the theft or loss resulted directly from a violent and forcible entry to the Site;
 - (ii) from an unoccupied vehicle under any circumstances where the Hardware was stored or left unless the vehicle was locked and the theft or loss resulted directly from a violent or forcible entry to the locked vehicle and the Hardware was in a locked compartment concealed from sight; or
 - (iii) from any public place or any place where the Hardware was left unattended.
 - (e) If the Customer notifies the Company pursuant to clause 18.5(c) that the Customer does not wish the relevant Hardware to be repaired or replaced, the Agreement will terminate in respect of the relevant Hardware (and if applicable, the Products installed on the Hardware) and the relevant Hardware and Products (as applicable) will be deemed Terminated Products and Hardware for the purposes of clause 19.6(f). The Agreement will continue in respect of the remainder of the Hardware and Products (as applicable) (if any) at a revised Product and Hardware Fee calculated by the Company having regard to:
 - (i) the number of items of Hardware which continue to be supplied pursuant to the Agreement; and
 - (ii) if applicable the Number of Subscriptions to Products which continue to be supplied pursuant to the Agreement.
- The revised Product and Hardware Fee will be advised by the Company to the Customer in writing.

19. TERMINATION

19.1 Termination of Master Services Agreement

Either Party may terminate this Master Services Agreement immediately on written notice where the other Party is the subject of an Insolvency Event.

19.2 Termination of an Agreement by the Company

- (a) The Company may terminate an Agreement (and the Right to Use if applicable):
 - (i) by written notice to the Customer where the Customer has committed a material breach of an Agreement (including where the Customer has not paid an amount due and payable under that Agreement) and:

- a. the Company has given the Customer written notice of that breach; and
 - b. the Customer has not remedied the breach within thirty (30) days of the Company's notice.
- (ii) in respect of some or all of the Products and/or Hardware the subject of an Agreement immediately on written notice to the Customer if:
- a. the Customer for any reason destroys or disposes of or loses custody of the Products, Hardware or the Documentation; or
 - b. the Hardware and/or Products is abandoned or condemned or is seized or appropriated and not released within 21 days or is attached, sequestered, impounded or restrained upon and not released within 21 days;
- (iii) in respect of some or all Products and/or Hardware supplied under an Agreement:
- a. if the Customer fails to accept an Update and New Release in accordance with a direction given by the Company in accordance with clause 8.3(c);
 - b. if the Products and/or Hardware are stolen, lost or damaged to the extent that the Company cannot reasonably continue to perform the Services under the Contract, on thirty (30) days' written notice to the Customer; or
 - c. in accordance with clause 20 (Force Majeure); and
- (iv) without cause on twenty-four (24) months written notice to the Customer.
- (a) Notwithstanding anything in this clause 19 to the contrary, if the Customer fails to make any payment of an amount due to the Company on any due date, the Company will have the right to suspend the Services under an Agreement in respect of which the amounts were due and payable and, if such failure to make payment has not been remedied within thirty (30) days of a notice of breach given by the Company under clause 19.2(a)(i)a, the Company may terminate the Agreement under clause 19.2(a)(i)b.

19.3 Termination of an Agreement by the Customer

- (a) The Customer may terminate an Agreement by immediate written notice to the Company:
- (i) where the Company has committed a material breach of an Agreement; and
 - (ii) the Company has not remedied the breach within thirty (30) days of the Customer's notice.
- (a) The Customer may terminate an Agreement without cause by on thirty (30) days' written notice to the Company.

19.4 Agreements

For the avoidance of doubt:

- (a) a Party's notice to terminate this Master Services Agreement under clause 19.1 (termination of Master Services Agreement) will be deemed to be a notice to terminate all Agreements then on foot between the Company and the Customer; and
- (b) subject to clause 4 and clause 19.1, termination of an Agreement does not affect this Master Services Agreement or any other Agreement.

19.5 Accrued rights

- (a) Termination of an Agreement will not affect any accrued rights or obligations of either Party as of the effective date of such termination with respect to that Agreement, nor will it affect any rights or obligations of either Party, which are intended by the Parties to survive any such termination.
- (b) On termination or expiration of an Agreement, the Parties must immediately pay to each other all amounts owed to each other under that Agreement.

19.6 Consequences of termination

- (a) If the Company terminates an Agreement pursuant to clause 19.1 or 19.2 or an Agreement expires the Company may:
- (i) repossess the Deliverables if payment of the Fees is not complete;
 - (ii) retain any moneys paid prior to the notice of termination;
 - (iii) charge a reasonable sum for work performed in respect of which work or sum has not been previously charged;
 - (iv) be regarded as discharged from any further obligations under the Agreement; and
 - (v) pursue any additional or alternative remedies provided by law.
- (b) In respect of an Agreement for the provision of Services:
- (i) if:
 - a. the Customer terminates an Agreement (and any Right to Use) in accordance with clause 19.3(a) (termination by the Customer for convenience); or
 - b. the Company terminates an Agreement (and any Right to Use) in accordance with clauses 19.2 (termination by the Company) or 19.1 (termination for insolvency),
 the Customer unconditionally and irrevocably acknowledges and agrees that:
 - c. in respect of any Additional Charges that have been paid to the Company as at the date of termination the Customer is not entitled to a refund of any of those amounts paid by the Customer prior to termination; and

- d. the balance of any Additional Charges payable by the Customer to the Company will become immediately due and payable by the Customer on the Customer's notice of termination to the Company; and
- (ii) the Customer unconditionally and irrevocably acknowledges and agrees that the Additional Charges retained by, or payable to, the Company pursuant to clauses 19.6(b)(i)c and 19.6(b)(i)d are a genuine and reasonable pre-estimate of the Company's loss and damage in the event of termination of such Agreement.
- (c) Without limiting the Parties' rights or obligations under this Master Services Agreement, on a termination of an Agreement for any reason or expiration of the Agreement, and subject to clause 19.6(f), the Parties unconditionally and irrevocably acknowledge and agree that:
 - (i) the Company will cease performing the Services with effect from the effective date of termination or expiration of the Agreement;
 - (ii) neither Party will have any obligation to the other under the Agreement with effect from the effective date of termination or expiration of the Agreement;
 - (iii) the Customer's Right to Use and access the Products, Hardware, Documentation, the Company's Background IP and the Third-Party IP in connection with the Agreement will terminate with effect from the effective date of termination or expiration of the Agreement;
 - (iv) if requested by the Company in writing, the Customer must return or delete all copies of the Products, Documentation and all components of the Project IP, Background IP or Third Party IP from the Customer's computer systems and digital storage devices (or, if requested by the Company, provide evidence that the applicable material has been destroyed);
 - (v) the Customer must immediately pay or reimburse the Company for any amounts which the Customer has agreed to pay or reimburse pursuant to the Agreement;
 - (vi) the Customer must within thirty (30) days of the effective date of termination or expiration of the Agreement return any Products and/or Hardware located at the Customer's Sites to the Company (or alternatively allow the Company to retrieve the Products and/or Hardware on two (2) Business Days' notice) at the Company's sole cost and in the same condition as when delivered to the Customer (fair wear and tear excepted);
 - (vii) the Customer grants the Company access to the Sites and the Customer's own hardware to verify compliance with this clause 19.6(c); and
 - (viii) within 30 days of termination or expiration of the Agreement, the Company will make available to the Customer in encrypted, electronic downloadable form any Data (other than De-identified Data) in the Company's possession as a result of performing the Services under the relevant Agreement in accordance with clause 19.6(e).
- (d) The Customer unconditionally and irrevocably acknowledges and agrees that if the Products, Hardware and the Documentation are not returned to the Company as and when required by clause 19.6(c), the Company may retake possession of the Products, Hardware and the Documentation using whatever lawful means are available (including for the avoidance of doubt by exercising its rights to enter the Customer's Sites pursuant to clause 7.7(d)(i). The Customer unconditionally and irrevocably acknowledges and agrees that if the Company exercises its rights pursuant to clause 7.7(d)(i) to enter the Customer's Sites for the purpose of retaking possession of Terminated Products and Hardware:
 - (i) the Company is not required to give notice to the Customer of its intention to enter the Sites for the purposes of retaking possession of the Terminated Products and Hardware; and
 - (ii) the Company may recover all costs reasonably associated with entering the Sites to retake possession of the Terminated Products and Hardware, without liability accruing to the Company or its representatives for or by reason of such entry or taking of possession (or attempted entry or possession) whether for restoration of damage to property caused by such taking or otherwise.
- (e) In relation to the Data to be made available by the Company to the Customer pursuant to clause 19.6(c)(viii):
 - (i) within the 30 day period from termination or expiration referred to in clause 19.6(c)(viii), the Company will give written notice to the Customer of the date on which the Data (other than De-identified Data) will become available to the Customer;
 - (ii) such Data will be available for download by the Customer for a period of no more than fourteen (14) days from the date of the Company's notice given in accordance with clause 19.6(e)(i) (**Data Availability Period**);
 - (iii) with effect from the download of such Data by the Customer in accordance with clause 19.6(e)(ii) or the expiry of the Data Availability Period (whichever is the earlier), the Customer unconditionally and irrevocably agrees:
 - a. that to the extent permitted by law the Company is entitled to, and will, destroy all such Data and copies of all such Data to the extent it remains in the possession of the Company;
 - b. that the Company has no liability to the Customer or any other party in connection with the Data; and
 - c. to release the Company from any loss, damage, costs (including legal costs), expenses, demands or liability incurred by the Customer in connection with the Data, including the destruction of the Data by the Company in accordance with clause 19.6(iii)a.
 - (f) On termination of an Agreement in respect of some, but not all of the Products and/or Hardware under an Agreement for any reason or expiration of an Agreement (for the purposes of this clause 19.6, **Terminated Products and Hardware**), the parties unconditionally and irrevocably agree that provisions of clause 19.6(c), (d) and (e) will only apply in respect of the Terminated Products and Hardware. If an Agreement is terminated or expires in respect of some, but not all, Products and/or Hardware the Agreement, the Parties' rights and obligations under the Agreement will continue on the same terms and conditions in respect of continuing Products, Hardware and Support Services.

19.7 Survival

Clauses 1, 2, 5 in respect of Fees outstanding at the date of termination or expiration, 11, 12, 13, 14, 15, 16, 17, 19.4, 19.5, 19.6, 19.7, 21, 22.4, 22.7 and 22.9 survive termination or expiry of this Master Services Agreement and an Agreement.

20. FORCE MAJEURE

- (a) If either Party is for the time being rendered unable wholly or in part by Force Majeure to carry out its obligations under an Agreement, that Party will give to the other Party prompt written notice of the Force Majeure with reasonably full particulars and the Agreement will continue and remain in full force and effect but the obligations of the Party giving the notice, so far as they are affected by the Force Majeure, will be suspended (other than obligations relating to the payment of any money) provided that the Party giving such notice uses all reasonable possible diligence to remove the Force Majeure as reasonably quickly as possible.
- (b) If a delay or failure by a Party to perform its obligations under an Agreement due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

21. DISPUTE RESOLUTION

21.1 Dispute

If a dispute arises in relation to this Master Services Agreement or an Agreement, including any dispute as to the breach of, termination of or the rights or obligations of a Party under this Master Services Agreement or an Agreement or as to any claim in tort, in equity or under any law, the Parties must comply with this clause 21.

21.2 Dispute Notice

A Party claiming that a dispute has arisen under or in relation to this Master Services Agreement or an Agreement must give written notice to the other Party specifying the nature of the dispute (**Dispute Notice**).

21.3 Negotiation of dispute

If a Party gives the other Party a Dispute Notice, the Parties must use their best endeavours to reach agreement as to the matters in dispute within ten (10) Business Days of the service of such Dispute Notice.

21.4 Outstanding dispute

If the matter or matters in dispute are not resolved within ten (10) Business Days of receipt of a Dispute Notice, such matter or matters must be dealt with in accordance with clause 21.5.

21.5 Mediation

- (a) The Parties must endeavour in good faith to resolve the dispute expeditiously using mediation techniques agreed by them.
- (b) If the Parties do not agree within fifteen (15) Business Days of receipt of the Dispute Notice (or a further period as agreed in writing by them) as to:
 - (i) the place of mediation;
 - (ii) the mediation technique and procedure to be adopted;
 - (iii) the timetable for all steps in the mediation procedures; and
 - (iv) the selection and compensation of the independent person required for the mediation,

the dispute(s) shall be submitted to mediation for resolution in accordance with clause 21.5(c), 21.5(d), 21.5(e) or 21.5(f) (as applicable).

- (c) If the Deliverables are supplied to the Customer in an ASEAN Country:
 - (i) the place of mediation of disputes will be Singapore; and
 - (ii) the mediation will be conducted by the Singapore Mediation Centre and in accordance with its mediation rules.
- (d) If the Deliverables are supplied to a Customer in Australia:
 - (i) the place of mediation of disputes will be Victoria, Australia;
 - (ii) the mediation will be conducted in accordance with mediation rules of the Resolution Institute (Institute); and
 - (iii) the President (or other person appointed for nominating mediators) of the Institute or his/her nominee will select the mediator and determine the mediator's remuneration, to be paid by the disputing Party in equal proportions.
- (e) If the Deliverables are supplied to a Customer in an EU Country the place of mediation of disputes will be The Hague; and
 - (i) the mediation will be conducted in accordance with the CEDR Model Mediation Procedure.
- (f) If the Deliverables are supplied to a Customer in a country other than an ASEAN Country, Australia or an EU Country, the place of mediation of disputes will be the place to where the Deliverables are supplied.
- (g) The Parties agree to participate in mediation conducted in accordance with clauses 21.5(c), 21.5(d), 21.5(e) or 21.5(f) in good faith and undertake to abide by the terms of any settlement reached. The mediator's remuneration will be paid by the Parties in equal proportion.

21.6 Termination of mediation

The mediation process will terminate within ten (10) Business Days of the commencement of the mediation or the appointment of the mediator (whichever date is later). Once the mediation is terminated, either Party will be entitled to commence court proceedings in relation to the matter or matters in dispute.

21.7 Injunctive or interim relief

Nothing in this clause 21 prevents a Party seeking urgent injunctive or similar interim relief from a court.

22. MISCELLANEOUS

22.1 Further acts

Each Party agrees to do all things that may be necessary or desirable to give full effect to every part of this Master Services Agreement or an Agreement if asked in writing by another Party to do so.

22.2 Assignment

The rights and the obligations of the Customer under this Master Services Agreement or an Agreement may not be assigned, transferred or otherwise disposed of, in whole or in part, without the prior written consent of the Company which consent shall not be unreasonably withheld. The Company may assign, transfer or otherwise dispose of, in whole or in part, its rights and obligations under this Master Services Agreement or an Agreement on written notice to the Customer.

22.3 Waiver

- (a) No failure to exercise or delay in exercising any right given by or under this agreement to a Party constitutes a waiver and the Party may still exercise that right in the future.
- (b) Waiver of any provision of an Agreement or a right created under it must be in writing signed by the Party giving the waiver and is only effective to the extent set out in that written waiver.

22.4 Notices

- (a) Any notice, demand or other communication (**Notice**) to be given or required to be made pursuant to this Master Services Agreement or an Agreement is to be in writing and is to be given by post, email or hand:

If to the Company: to person and to the address set out in the Order Form.

If to the Customer: to the person and to the address set out in the Order Form.

- (b) A Notice is deemed to be given or served:

- (i) where sent by express post, on the fifth day following the day on which it was posted;
- (ii) where transmitted by email, when the email enters the recipient's mail server;
- (iii) where delivered by hand, on the day that it is handed to an officer, representative or employee of the Party to which it is addressed.

22.5 Costs

Each Party is responsible for its own costs in relation to the preparation and execution of this Master Services Agreement and each Agreement.

22.6 Provisions severable

If any provision of this agreement is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not be affected and such invalid, illegal or unenforceable provision is to be severed from this Master Services Agreement and each Agreement.

22.7 Governing law and choice of jurisdiction

The governing law and choice of jurisdiction will be determined by reference to the country (and if applicable, state or territory) in which the Deliverables are supplied to a Customer under the relevant Agreement (**Jurisdiction**) and the Parties agree to submit to the non-exclusive jurisdiction of the courts of that Jurisdiction and the courts of appeal therefrom.

22.8 Variation

No part of this Master Services Agreement or any Agreement may be amended or modified unless agreed in writing (including electronically) making specific reference to the applicable document and signed (including electronically) by the Parties or their authorised representatives.

22.9 Contracts (Rights of Third Parties) Act

Except as expressly provided in this Master Services Agreement or an Agreement, a person who is not a party to this Master Services Agreement or an Agreement has no rights under the Contracts (Rights of Third Parties) Act to enforce any terms in this Master Services Agreement or an Agreement.

22.10 Entire agreement

In respect of an Agreement, this Master Services Agreement, the Order Form and any Additional Documents sets out the entire agreement and understanding between the Parties and supersede all prior agreements, understandings and representations.

22.11 Subcontracting

The Company may subcontract all or part of the provision of the Products and/or the Services on written notice to the Customer.