

MEDTECH32

SOFTWARE LICENCE AND SUPPORT SERVICES TERMS AND CONDITIONS

1. Meaning of Words and General Interpretation:

1.1 In this Agreement, unless the context otherwise requires:

"Agreement" means the whole of this agreement including all its parts, sections and schedules, as amended from time to time in accordance with this agreement;

"Commencement Date" is the commencement date specified in the Software Licence and Support Services Schedules or such other date as the parties may agree;

"Compatible Hardware" means hardware meeting the minimum specification requirements as specified in the Software Licence and Support Services Schedules;

"Customer" means the customer specified in Part 1 of this Agreement;

"Database Conversion Fee" is the database conversion fee specified in the Software Licence and Support Services Schedules for the database conversion services provided under clause 4.2(b);

"Derivative Product" means any derivative work, technology, product or service based on the Licensed Software or any other intellectual property of the Licensor;

"Force Majeure" means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time any obligation under this Agreement. Such circumstance includes but is not limited to any act of God, lightning strikes, earthquakes, floods, storms, explosions, fires and/or any natural disasters;

"GST" means tax as defined in the Goods and Services Act 1985;

"Implementation Fee" is the implementation fee specified in the Software Licence and Support Services Schedules for the implementation services provided under clause 4.2(c);

"Initial Consultancy Fee" is the initial consultancy fee specified in the Software Licence and Support Services Schedules for the consultancy provided under clause 6.1;

"Intellectual Property" means all trademarks, service marks, inventions, patents, designs, copyrights, know-how and trade secrets, software products, brochures, documentation, all rights and interests of licences to use any of them and any other right or interest generally recognised as intellectual property;

"Licence" means the licence to use the Licensed Software listed in the Software Licence and Support Services Schedules granted by the Licensor to the Customer under clause 2.1 and this Agreement and where the context requires, means each individual licence extended to a Permitted User,;

"Licence Fee" is the aggregate of all licence fees for the Licensed Software as listed in the Software Licence and Support Services Schedules;

"Licence Term" means the licence term specified in the Software Licence and Support Services Schedules;

"Licensed Software" means the software specified in the Software Licence and Support Services Schedules and all other information, documentation and/or programs provided by the Licensor to the Customer to be used in conjunction with and/or in relation to such software, including any standard

upgrade and new version releases of the Licensed Software which the Licensor generally makes available to its customers;

"Licensor" means the licensor specified in Part 1 of this Agreement;

"Permitted Users" means associates and employees of the medical practice conducted by the Customer and/or any other medical practitioners authorised by the Customer for purposes connected with the conduct of the Customer's practice or business;

"Related Parties" means in relation to a company, such company's related companies (as defined in section 2(3) of the Companies Act 1993 and such company directors and shareholders as at the Commencement Date or at any later date;

"Representatives" means the employees, consultants, contractors and/or any other related party of the Licensor;

"Software Licence and Support Services Schedules" means the software licence and support services schedules appended to this Agreement;

"Support Services" means the support services described under clause 7.1 and any additional support services specified in the Software Licence and Support Services Schedules;

"Support Services Fee" is the support services fee specified in the Software Licence and Support Services Schedules for the Support Services provided under clause 7.1.

1.2 All definitions used in this Part 2 not otherwise defined in this Part 2 are as defined in the Software Licence and Support Services Schedules or elsewhere in the Agreement (as the case may be).

1.3 In this Agreement, unless the context otherwise requires:

(a) words denoting the singular shall include the plural and vice versa;

(b) words denoting persons shall include any individual, principal, corporation, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;

(c) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;

(d) reference to anything of a particular nature following upon a general statement shall not in any way derogate from or limit the application of the general statement unless the particular context requires such derogation or limitation;

(e) any reference to "month" or "monthly" shall mean respectively calendar month or calendar monthly;

(f) references to sections, clauses and schedules are references to sections, clauses and schedules in this Agreement;

(g) the section headings and clause headings have been inserted for convenience and a guide to the provisions of this Agreement and shall not form part of this Agreement or affect its interpretation in any way;

(h) references to this Agreement or any document or statement (however described)

- shall include references to that document as modified, novated, supplemented, varied or replaced from time to time;
- (i) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.
2. **Grant of Licence**
- 2.1 The Licensor grants to the Customer, and the Customer accepts from the Licensor, a non-exclusive, non-transferable and terminable licence for the Customer and/or its Permitted Users to use the Licensed Software on the terms of this Agreement. The extent of the Licence granted under this clause is strictly limited to the number of the Licensed Software licences specified in the Software Licence and Support Services Schedules.
- 2.2 The term of the Licence commences on the Commencement Date and continues for the initial period of the Licence Term specified in the Software Licence and Support Services Schedules (“**Initial Period**”) unless otherwise terminated under clause 15.1(b). Unless a party notifies the other party in writing not less than 3 months prior to the expiry of the Initial Period that it wishes to terminate the Licence at the expiry of the Initial Period, the Licence Term will renew automatically in accordance with clause 2.3.
- 2.3 At the expiry of the Initial Period, if the Licence Term has not been terminated by either party under clause 2.2, the Licence shall automatically renew for further terms of 1 year each until terminated by either party giving to the other party written notice not less than 3 months prior to the expiry of the then current annual term, or until otherwise terminated under clause 15.1.
- 2.4 The Customer shall use, and shall procure that its Permitted Users use, the Licensed Software only in the manner contemplated in this Agreement and otherwise in accordance with the Licensor’s reasonable instructions and, in particular, the Customer shall take reasonable steps to ensure that its Permitted Users comply with clauses 2.5, 2.6 and 8.3.
- 2.5 The Customer shall procure that each Permitted User is informed of the relevant terms of this Agreement and complies with such terms.
- 2.6 The Customer shall notify the Licensor immediately on becoming aware of the Licensed Software being used without authorisation and/or in breach of this Agreement.
3. **Licence Fee and Other Charges**
- 3.1 The Customer shall pay to the Licensor, in the manner specified in the Software Licence and Support Services Schedules, the:
- (a) Licence Fee, irrespective of whether the Customer uses the maximum number of the Licensed Software licences specified in the Software Licence and Support Services Schedules;
- (b) Database Conversion Fee;
- (c) Implementation Fee;
- (d) Initial Consultancy Fee; and
- (e) Support Services Fee.
- 3.2 Each of the fees specified in the Software Licence and Support Services Schedules and any other fee or charge payable under this Agreement is exclusive of GST, and all other taxes, duties and surcharges payable in respect of the Licensed Software and in respect of this Agreement. All such GST, other taxes, duties and/or surcharges are payable by the Customer to the Licensor at the same time and in the same manner as the payment of such fee and/or charge.
- 3.3 The Licensor may review the Support Services Fee in the following manner:
- (a) the Licensor may undertake such review on the 1st July each year;
- (b) the Support Services Fee payable by the Customer to the Licensor after any such review shall not be less than that payable immediately prior to such review;
- (c) any increase in the Support Services Fee will not exceed 10% per annum;
- (d) any such increase in the Support Services Fee shall take effect from the date that the Licensor gives written notice to the Customer of any increase of the Support Services Fee as a result of a review under this clause.
- 3.4 The Licensor reserves the right to charge the Customer interest in respect of the late payment of any sum due under this Agreement at the rate of 5% per annum above the prime lending rate from time to time of Westpac Banking Corporation from the due date thereof until payment and also to recover all costs incurred in relation to efforts to collect amounts due under this Agreement which are not paid by due date.
4. **Delivery and Installation**
- 4.1 The Licensor shall deliver the Licensed Software to the Delivery Location on or before the Commencement Date.
- 4.2 At the time of delivery under clause 4.1, or such other date or period as the parties may agree, the Licensor and/or its Representatives shall:
- (a) install the Licensed Software on such Compatible Hardware at the Delivery Location as reasonably directed by the Customer;
- (b) provide the Customer with database conversion services, which comprise of the conversion of the Customer’s front desk and/or clinical database operated under the Customer’s existing software to a database operated and supported by the Licensed Software;
- (c) provide the Customer with the implementation services, which comprise of the implementation of the Licensed Software at the medical practice/business of the Customer.
- 4.3 The Customer warrants to the Licensor that the hardware on which the Licensed Software is installed by the Licensor (at the direction of the Customer) is Compatible Hardware.
- 4.4 To enable the Licensor and/or its Representatives to perform its and/or their obligations under clause 4.2, the Customer shall allow and/or provide the Licensor and/or its Representatives with:
- (a) reasonable access to the Delivery Location;
- (b) access to the Customer’s front desk and/or clinical database, servers, computer workstations and/or any other equipment linked to and/or used in conjunction with such database, servers and/or computer workstations;
- (c) such assistance as may be reasonably required by the Licensor and/or its Representatives;
- (d) reasonable working conditions and adequate work space.
- 4.5 Risk of loss and/or damage to the Licensed Software shall pass to the Customer upon delivery of the Licensed Software to the Delivery Location.
5. **Acceptance**
- 5.1 The Customer is deemed to have accepted the Licensed Software if the Licensed Software does not fail to substantially perform in accordance with

- the Licensor's specifications upon installation under clause 4.2.
- 5.2 The Customer may not reject the Licensed Software if the reason for the failure of the Licensed Software arose (directly or indirectly) out of:
- (a) the server and/or computer workstations on which the Licensed Software is installed by the Licensor (at the direction of the Customer) is/are not Compatible Hardware;
 - (b) the failure of the Customer and/or its Permitted Users to use the Licensed Software in accordance with the Licensor's instructions and/or for a purpose for which they were not designed.
6. **Consultancy**
- 6.1 The Licensor will provide the Customer and/or its Permitted Users with initial consultancy on the use of the Licensed Software in the following manner:
- (a) the number of initial consultancy days to be provided is as specified in the Software Licence and Support Services Schedules;
 - (b) the initial consultancy will be provided at such time or times as the parties may agree;
 - (c) the initial consultancy will be provided at the Delivery Location or such other place as the parties may agree (but this may be subject to a further charge to the Customer to cover the travelling and other costs incurred by the Licensor and/or its Representatives).
- 6.2 The Licensor may provide the Customer and/or its Permitted Users with additional consultancy at the Licensor's then prevailing hourly rates.
7. **Support Services**
- 7.1 Subject to clause 7.2, the Licensor shall provide the Customer with the following Support Services:
- (a) provision of standard upgrade and new version releases of the Licensed Software which the Licensor generally makes available to its customers;
 - (b) provision of helpdesk services as set out in Appendix 1 – Helpdesk Services.
- 7.2 The Licensor is entitled to withhold the provision of any Support Services to the Customer if the Customer fails to make any payment under this Agreement.
8. **Modifications and Variations**
- 8.1 Upon any request by the Customer and subject to clause 8.2, the Licensor may (at its sole discretion) modify or vary the Licensed Software to improve its functions and/or capabilities.
- 8.2 The Licensor may charge the Customer a separate fee (at a rate agreed between the parties) if any such modifications or variations are, in the reasonable opinion of the Licensor, of such complexity and scope so as to justify a separate fee.
- 8.3 The Customer shall not, and shall procure that its Related Parties do not, either directly or indirectly, for themselves or on behalf of or in conjunction with any other person create a Derivative Product, modify, revise, vary and/or alter the whole or any part of the Licensed Software, and/or combine, merge or incorporate the whole or any part of the Licensed Software in any other program, software and/or system, without the prior written consent of the Licensor, such consent to be at the sole discretion of the Licensor (and which may be conditional upon the Customer paying an additional licence fee and/or any other charges to the Licensor). The Customer agrees that this clause is reasonable in its scope and duration having regard to the interests of each party to this Agreement and
- 8.4 goes no further than is reasonably necessary to protect the Licensor's interests.
- The Customer indemnifies the Licensor against all loss, cost, expense, claim and/or liability incurred and/or suffered by the Licensor arising (directly or indirectly) out of:
- (a) any breach of clause 8.3; or
 - (b) any of the Customer's modifications, revisions, variations and/or alterations of or to the Licensed Software, and/or combination, merger or incorporation of the Licensed Software into any other program, software and/or system, infringing the intellectual property rights of any third party (irrespective of whether the consent of the Licensor was obtained under clause 8.3).
9. **Copies**
- 9.1 Each installation of the Licensed Software on any server or computer workstation of the Customer and/or its Permitted Users must be subject to a Licensed Software licence as granted under clause 2.1, and must not be accessed, shared and/or used concurrently on or from another server and/or computer workstation (as the case may be).
- 9.2 Except for the purposes of back-up and security, the Customer must not, and must ensure that the Permitted Users do not, copy or reproduce, in whole or in part, the Licensed Software by any means or in any form. A back-up copy of the Licensed Software may only be used in lieu of the original copy of the Licensed Software. The terms of this Agreement shall apply to all copies of the Licensed Software.
- 9.3 The total number of copies of the Licensed Software installed on all server(s) and/or computer workstation(s) of the Customer and/or its Permitted Users must not exceed the maximum number of the Licensed Software licences granted under clause 2.1. Without limiting the generality of this clause and clause 9.1, the Customer agrees and acknowledges that where such total number exceeds such maximum number of the Licensed Software licences, and/or the Customer breaches clause 9.1, the Customer shall be deemed to have illegally copied the Licensed Software.
10. **Security**
- 10.1 The Customer shall, at all times during the term of this Agreement:
- (a) protect the Licensed Software from any unauthorised access, use and/or damage; and
 - (b) secure all its data used in connection with the Licensed Software, including but not limited to ensuring data back-up integrity and updating anti-virus software.
- The Licensor shall not be responsible for any of the Customer's or Permitted User's data, whether or not used in connection with the Licensed Software.
11. **Customer Restrictions and Indemnity**
- 11.1 The Customer shall not, and will ensure the Permitted Users do not:
- (a) adapt, decompile, disassemble and/or reverse engineer the Licensed Software or any part of the Licensed Software;
 - (b) Commit any act or omission the likely result of which is that the Licensor's reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on the Licensor's interests.
- 11.2 The Customer indemnifies the Licensor and the Licensor's Representatives and Related Parties (each an **Indemnified Person**) from and against any liability, damage, loss, cost or expense suffered or incurred as a direct or indirect result of any act of or omission by the Customer, the Customer's

- Representatives or Permitted Users in breach of this Agreement or any other negligence or recklessness of the Customer or its Representatives. The Customer acknowledges that for the purposes of the Contracts (Privity) Act 1982, the indemnity in this clause has been inserted for the benefit of each Indemnified Person, and is enforceable by each of them.
12. **Intellectual Property Usage and Ownership**
- 12.1 The Licensed Software contains confidential information of the Licensor and all Intellectual Property rights in the Licensed Software are the exclusive property of the Licensor.
- 12.2 This Agreement does not transfer to the Customer any right, entitlement or ownership in respect of the Licensed Software other than the rights of usage expressly contemplated in this Agreement.
- 12.3 The Licensor retains ownership of the Licensed Software, whether in its original form or as modified by the Customer during the term of the Licence (whether or not in compliance with the provisions of section 8). For the purposes of this section 12, "ownership" includes any direct and/or indirect interests of the Licensor in and to the Licensed Software and/or any right (whether acquired under licence or otherwise) to deal with the Licensed Software under this Agreement.
- 12.4 The Licensor also exclusively owns any and all Intellectual Property rights in any software generated, created and/or developed from, and/or which incorporates part of, the Licensed Software, whether or not such software is generated, created, developed, enhanced and/or otherwise resulted from the activities of the Customer and/or the Permitted Users during the term of this Agreement. The Customer must disclose all such generation, creation, development, and/or enhancement to the Licensor as soon as practicable. The Customer agrees to execute (upon request by the Licensor and in favour of the Licensor and/or its nominee) any instruments, applications for letters patent, document and/or any other similar protection as the Licensor may require to give effect to the provisions of this clause.
- 12.5 The Customer shall not, and shall procure the Permitted Users do not, at any time during or after the term of this Agreement, directly or indirectly challenge or contest the ownership of the Licensed Software (including all the Intellectual Property rights and acquired ownership interests under clause 12.3) of the Licensor.
- 12.7 The Customer shall retain the ownership of all its data, whether or not used in connection with the Licensed Software, and the Licensor and its Representatives shall keep confidential all such data.
13. **Warranties and limitations**
- 13.1 Subject to clauses 13.3 and 13.4, the Licensor warrants that:
- (a) the Licensed Software (including updates and/or any modifications or variations provided by the Licensor to the Customer) will, during the term of the Licence, perform substantially in accordance with the Licensor's specifications; and
- (b) it is entitled to grant the Licence to the Customer.
- 13.2 Subject to clauses 13.3 and 13.4, the Licensor shall indemnify the Customer against any claim made against the Customer by any third party alleging that the Licensed Software infringes the copyright of that third party. This indemnity is the sole remedy available to the Customer for breach of clause 13.1(b).
- 13.3 The Licensor shall not be liable to the Customer under clauses 13.1 and/or 13.2 if the Customer's claim has arisen, directly or indirectly, out of the use of the Licensed Software in conjunction with any equipment, hardware and/or software not supplied or previously approved by the Licensor, and/or if the Customer fails to maintain the minimum specification for Compatible Hardware advised to the Customer from time to time, and/or in a manner or for a purpose not reasonably contemplated or authorised by the Licensor.
- 13.4 In addition, the Licensor shall not be liable to the Customer under clauses 13.1 and/or 13.2 in relation to any claim made against the Customer by any third party alleging that the Licensed Software infringes the copyright of the third party, and the Customer shall indemnify the Licensor against all loss, cost, expense, claim and/or liability arising out of any such claim by any third party, if any of the following applies:
- (a) the third party's claim has arisen, directly or indirectly, out of the Customer's non-compliance with any aspect of this Agreement (including clause 8.3;
- (b) the Customer does not permit the Licensor to modify, alter or substitute the infringing part of the Licensed Software (at the cost of the Licensor) to render the Licensed Software non-infringing;
- (c) the Customer does not authorise the Licensor to procure for the Customer, from the third party alleging the infringement of copyright, the licence and/or any other right for the Customer to continue to use the Licensed Software in the manner contemplated under this Agreement notwithstanding any such alleged infringement;
- (d) the Customer does not notify the Licensor of the other party's claim of infringement of copyright within 7 days after becoming aware of the claim;
- (e) the Licensor's ability to defend the claim has been prejudiced by the Customer's non-compliance with any of its obligations under this Agreement;
- (f) the Customer does not give the Licensor reasonable assistance in defending the claim; and/or
- (g) the Customer does not permit the Licensor to have full control of the defence of the claim and all related settlement negotiations.
- 13.5 Subject to the foregoing, all conditions, warranties, terms and undertakings, expressed or implied, statutory or otherwise in respect of the Licensed Software and the provision of the Support Services are excluded. Without prejudice to this the Licensor does not warrant:
- (a) that the use of the Licensed Software (in accordance with this Agreement or otherwise) will meet the Customer's data processing, reporting or analytical requirements, or;
- (b) that the use or operation of the Licensed Software in accordance with this Agreement will be uninterrupted or error free.
14. **Limitation on liability**
- 14.1 The following provisions set out the Licensor's entire liability (including any liability for the acts and omissions of its Representatives) to the Customer in respect of:
- (a) any breach of its contractual obligations under this Agreement; and
- (b) any representation, statement or tortious act or omission including negligence (but excluding any of the same made fraudulently) arising under or in connection with this Agreement

AND THE CUSTOMER'S ATTENTION IS IN

- PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 14.
- 14.2 Any act or omission on the part of the Licensor or its Representatives falling within clause 14.1 above shall for the purposes of this clause 14 be known as an "Event of Default".
- 14.3 Subject to clause 14.4, 14.5 below, to the extent permitted by law, the Licensor shall not be liable to the Customer in respect of any Event of Default for any loss, cost, expense, claim and/or liability whatsoever, including any direct, indirect or consequential loss, incurred and/or suffered by the Customer and/or any other party in connection with any of the goods and/or services supplied under this Agreement even if such loss was reasonably foreseeable or the Licensor had been advised of the possibility of the Customer incurring the same.
- 14.4 To the extent permitted by law, the Licensor's liability to the Customer for death or injury resulting from its Representative's negligence shall be limited to the amount of \$1 million.
- 14.5 Subject to the limits set out in clause 14.6 below, the Licensor shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Licensor or its Representatives.
- 14.6 Subject to the provisions of clauses 14.3 and 14.4 above, the Licensor's liability in respect of an Event of Default, shall be limited to damages of an amount equal to the aggregate of the License Fees and Support Services Fees paid in the immediately preceding period of 12 months.
- 14.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 14.8 The Customer will afford the Licensor not less than 30 days (following notification thereof by the Customer) in which to remedy an Event of Default .
- 14.9 Except in the case of an Event of Default arising under clause 14.4 above, the Licensor shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon the Licensor within 1 year of the date it became aware of the circumstances giving rise to the Event of Default or the date it ought reasonably to have become so aware.
- 14.10 Nothing in this clause 14 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
15. **Termination**
- 15.1 This Agreement terminates:
- (a) at the expiry of the notice period of any termination notice given under clauses 2.2 or 2.3 (as the case may be); or
- (b) immediately, at the sole discretion of the Licensor, if:
- (i) the Customer fails to pay to the Licensor within 21 days after the due date for payment, any fee and/or price specified under the Software Licence and Support Services Schedules and/or any other fee, amount and/or charge payable under this Agreement; or
- (ii) the Customer breaches its obligations under clauses 8.3, 11.1 or 12; or
- (iii) the Customer is in breach of any of its material obligations under this Agreement and such breach has not been remedied within 21 days of the date the Licensor notifies the Customer of such breach, requiring that the breach be remedied (or such longer period as the Licensor may stipulate); or
- (iv) The Licensor reasonably believes that the Customer or any of the Customer's Representatives have committed a fraudulent act or have been guilty of misrepresentation in their dealings with it; or
- (iv) an event of Force Majeure which precludes the Customer from complying its obligations under this Agreement occurs and continues for more than 21 days; or
- (v) the Customer becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration.
- 15.2 The Customer may terminate this Agreement immediately at its sole discretion if;
- (a) the Licensor is in material breach of any of its material obligations under this Agreement and such breach has not been remedied within 21 days of the date the Customer notifies the Licensor of such breach, requiring that the breach be remedied (or such longer period as the Customer may stipulate); or
- (b) an event of Force Majeure which precludes the Licensor from complying its obligations under this Agreement occurs and continues for more than 21 days; or
- (c) the Licensor becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration.
- 15.3 Upon termination of this Agreement pursuant to clauses 15.2 or 27.1, the Licensor shall refund such amount of the Support Services Fee paid in advance by the Customer to the Licensor under this Agreement which relate to the period after the termination of this Agreement.
- 15.4 The Customer shall, within 14 days of the termination of this Agreement, at the sole option of the Licensor:
- (a) return to the Licensor all the original and copies of the Licensed Software and any material and/or documentation in relation to the Licensed Software provided by the Licensor and/or its Representatives to the Customer (including but without limitation all software or copies of software generated and/or developed from, and/or incorporating part of, the Licensed Software as contemplated under clause 12.4), and permanently delete any electronically and/or digitally stored copy of all such software, material and/or documentation from any media in or on which they are stored, and shall certify in writing to the Licensor that they have been so deleted; or
- (b) destroy and/or permanently delete all such software, material and/or documentation from any media in or on which they are stored, and shall certify in writing to the Licensor that they have been so destroyed and/or deleted.
- 15.5 Any termination of the Agreement shall not affect any accrued rights or liabilities of either party to this Agreement, nor shall it affect any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.

- 15.6 Clauses 3.4, 8.3, 8.4, 11,12, 13.3, 13.4, 13.5, 14, 15.3, 15.4, 16 and 17 will survive the expiry or termination of this Agreement.
16. **Force Majeure**
- 16.1 If a party is wholly or partially precluded from complying with its obligations under this Agreement by an event of Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the event of Force Majeure.
- 16.2 As soon as practicable after an event of Force Majeure arises, the party affected by the event must notify the other party to the extent to which the affected party is unable to perform its obligations under this Agreement.
- 16.3 The party affected by the event of Force Majeure must recommence the performance of its obligations under this Agreement immediately after the cessation of the event of Force Majeure and must immediately notify the same to the other party.
17. **Confidentiality**
- 17.1 Each of the parties to this Agreement undertakes to the other to keep confidential any information (written or oral) concerning the business and affairs of the other which was obtained during the course of this Agreement and its negotiations.
- 17.2 The confidentiality obligations set out in clause 17.1 shall not apply to the extent that:
- (a) the consent of the other party to this Agreement has been obtained in relation to the disclosure of any such confidential information;
 - (b) such confidential information has become public knowledge other than as a result of unauthorised disclosure by any party to this Agreement (or its Related Parties or Representatives), or where such information is already in the public domain;
 - (c) such confidential information is required to be disclosed to the auditors of either party or to any governmental agency or otherwise required by law; and/or
 - (d) the disclosure of such confidential information is reasonably required by a party to fulfil any conditions or obligations arising under this Agreement.
- 17.3 The Licensor understands that compliance with the Privacy Act 1993 and the Health Information Privacy Code 1994 is a priority for the Customer and the Permitted Users. The Licensor agrees to ensure that all its Representatives who are involved in the provision of services to the Customer are aware of and comply with the confidentiality requirements set out above.
18. **Relationship Between the Parties**
- 18.1 Nothing in this Agreement shall create or constitute, or be deemed to create or constitute, a partnership between the parties for any purpose whatsoever, or to constitute or create, or be deemed to create or constitute, a party as an agent of the other party except and to the extent as expressly provided for in this Agreement.
- 18.2 The Customer acknowledges and agrees with the Licensor that where any Permitted User and/or Related Party of the Customer does any act, matter or thing which if done by the Customer would constitute a breach of the obligations of the Customer under this Agreement, the Customer will be, or will be deemed to be, in breach of this Agreement.
- 18.3 The Customer acknowledges and agrees that all of the Licensor's obligations under this Agreement are owed to it by the Licensor (and any of its assignees), and not by any other party.
19. **Assignment**
- 19.1 The Customer shall not assign, transfer or sublicense, or attempt to assign, transfer or sublicense, any rights and/or obligations under this Agreement, without the prior written consent of the Licensor. The Licensor shall not unreasonably withhold such consent but may charge the Customer a reasonable processing fee for the grant of such consent.
- 19.2 The Licensor may transfer or assign any of its rights and/or obligations under this Agreement to any third party, without any notice to the Customer.
20. **Notice**
- 20.1 A notice required or authorised to be given or served on a party under this Agreement must be in writing and may be given or served by facsimile, post or hand to that party at its facsimile number or address advised by that party to the other from time to time.
- 20.2 A notice will be deemed to be received by the addressee:
- (a) in the case of a facsimile, on the working day on which it is despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a working day or, if despatched on a non-working day, on the next working day after the date of despatch;
 - (b) in the case of personal delivery, when delivered; or
 - (c) in the case of a postal delivery, on the third working day after posting.
- 20.3 The provisions of this clause 20 are in addition to any other mode of service permitted by law.
21. **Waiver**
- 21.1 No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by a party in respect of any breach of the other party's obligations under this Agreement is to:
- (a) operate as a waiver or prevent the subsequent enforcement of that obligation; and/or
 - (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.
22. **Entire Agreement**
- 22.1 This Agreement constitutes the entire understanding and agreement of the parties relating to the transactions contemplated by this Agreement.
- 22.2 No amendment to this Agreement will be effective unless it is in writing and signed by all the parties.
23. **Successors**
- 23.1 This Agreement shall be binding upon and enure for the benefit of the successors in title of the parties hereto.
24. **Severability**
- Any unlawful or voidable provision in this Agreement shall be read down as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without effecting the validity, legality or enforceability of the remaining provisions, provided the reading down or severing does not materially affect the purpose of or frustrate this Agreement.

25. **Execution**

25.1 This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

25.2 The parties acknowledge that this Agreement may be executed on the basis of an exchange of facsimile copies and confirm that their respective execution of this Agreement by such means shall be a valid and sufficient execution.

26. **Governing Law**

This Agreement shall be governed by and construed according to the law of the jurisdiction specified in the Software Licence and Support Services Schedules.

27. **Dispute Resolution**

If either party has any dispute with the other in connection with this Agreement, then:

- (a) the parties will use best endeavours to settle the dispute by agreement between them and act in good faith and co-operate with each other to resolve the dispute;
- (b) If the dispute is not settled by agreement between the parties within 30 days, then, unless both parties agree otherwise:
 - (i) full written particulars of the dispute must be promptly given to the other; and
 - (ii) mediation will be conducted by a single mediator agreed between the parties, or, if the parties can not agree on a mediator, a mediator will be nominated by LEADR or if LEADR no longer exists or is unable to nominate a mediator, the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:
 - (a) the mediator will not act as an expert or arbitrator;
 - (b) the mediator will determine the procedure and timetable for the mediation; and
 - (c) the cost of the mediation, including any cost associated with a referral to the New Zealand Law Society for the appointment of a mediator, will be shared equally between the parties, unless otherwise agreed.
 - (iii) if, at the conclusion of the mediation procedures as set out in clause 27.1(b), the dispute is not resolved to the satisfaction of either party, then that party may, by written notice to the other, terminate the Agreement by providing one month's notice in writing to the other party.

Neither party will initiate any litigation during the dispute resolution process outlined in clause 27.1(b) above, unless urgent proceedings are necessary to preserve a party's rights.

Both parties will continue to comply with all their respective obligations in the Agreement until the dispute is resolved, but payments may be withheld to the extent that they are disputed.

APPENDIX 1 – HELPDESK SERVICES

The Licensor shall provide to the Customer helpdesk services in the following manner:

- (a) the Licensor will provide the Customer with telephone support in relation to the Licensed Software, including providing assistance in investigating, diagnosing and recommending solutions for problems encountered during the use of the Licensed Software;
- (b) the telephone support will be available during the times specified in the Software Licence and Support Services Schedules. Any telephone support provided outside such times may be subject to an additional fee to the Customer;
- (c) the Licensor will use its best endeavour to respond to urgent calls within 20 minutes of the call being logged and to respond within the same day to email or facsimile requests;
- (d) the Licensor will provide limited telephone support in relation to aspects of Microsoft Word and Microsoft Excel that integrate with the Licensed Software, provided that the version of such Microsoft software being used by the Customer is the latest version available commercially or one version back;
- (e) the Licensor will use its best endeavours to refer any hardware faults identified from the telephone support to an appropriate hardware supplier and/or hardware service provider;
- (f) provision of on-site assistance if necessary, upon the request of the Customer. The Customer will pay for time and travel costs incurred by the Licensor and/or its Representatives in providing such on-site assistance.

The helpdesk services exclude each of the following services:

- (a) support for any third party software;
- (b) support for any operating systems supplied and/or installed by third party providers;
- (c) correction of any errors and/or defects caused by the operation of the Licensed Software in any manner other than that specified by the Licensor;
- (d) correction of any errors and/or defects which arose out of and/or caused by the Customer's modification, revision, variation and/or alteration of the Licensed Software not previously authorised by the Licensor under clause 8.3;
- (e) correction of any errors and/or defects arising from the improper use, operation or neglect of either the Licensed Software or the Compatible Hardware or the breach by the Customer of any obligation under any maintenance agreement in respect of the Compatible Hardware;
- (f) support services in relation to the Licensed Software if the Customer modified, revised, varied and/or altered the Licensed Software or the merger (in whole or in part) of the Licensed Software with any other software without the Licensor's prior written consent under clause 8.3;
- (g) consultancy other than the initial consultancy specified in clause 6.1;
- (h) rectification of operator errors;
- (i) modifications to and/or customisation of any software not provided by the Licensor to the Customer; and/or;
- (j) support services in relation to the Licensed Software if the Customer uses the Licensed Software on equipment other than Compatible Hardware;
- (k) support services in relation to the Licensed Software if the Customer fails to install and use, in substitution for the previous release, any standard upgrade or new version release of the Licensed Software within 60 days of receipt of same.