

**CONXEDGE GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF  
CONXEDGE HARDWARE AND SOFTWARE SERVICES BY  
HM TECHNOLOGIES PTY LTD**

**1. DEFINITIONS**

1.1 In the Agreement:

**"Agreement"** means these General Conditions of Contract for the Supply of Goods and Services and the Quotation.

**"API"** means the application programming interface for the Hosted Services defined by Supplier and made available by the Supplier to the Customer.

**"Australian Consumer Law"** and **"ACL"** means Schedule 2 of the *Competition and Consumer Act* (Cth) 2010.

**"\$A", "Dollar"** and **"\$"** mean Australian Dollars.

**"Authorised Users"** means the employees or contractors of the Customer specified in the Quotation otherwise approved by the Supplier.

**"Business Hours"** means the hours of 7.00am to 5.00pm Monday to Friday local time in Sydney, New South Wales, Australia, excluding public holidays.

**"Conditions Precedent"** means the conditions precedent, if any, included in the Quotation.

**"Confidential Information"** means in relation to a Party all Intellectual Property rights, trade secrets, ideas, concepts, know how, knowledge and any other information, whether in writing or otherwise, relating to any of that Party's products, services, systems, affairs, businesses, strategies, customers or employees, whether owned by, licensed to, or otherwise in possession or control of that Party, which are disclosed to the other Party by that Party or otherwise obtained by the other Party, its employees, agents, or contractors under, in contemplation of or in connection with this Agreement, but excluding any information which is generally and readily available in the public domain other than by a breach of this Agreement or any other agreement.

**"ConXedge Service"** means the provision of the ConXedge online web-based software system made available via the User Interface or API.

**"Contract Price"** means the price for the Goods and the Service Charges for any Services specified in the Quotation.

**"Customer"** means the person or entity specified in the Quotation.

**"Customer Data"** means all data, works and materials uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to Supplier for uploading to, transmission by or storage on the Platform; or generated by the Platform as

a result of the use of the Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files).

**"Customer Furnished Equipment"** or **"CFE"** means any equipment, or material supplied by or on behalf of the Customer to the Supplier to assist in the performance of the Agreement or for incorporation in the Goods produced pursuant to the Agreement.

**"Customer Furnished Information"** or **"CFI"** means those items of Information supplied by or on behalf of the Customer to the Supplier to assist in the performance of this Agreement.

**"Day"** or **"day"** means a calendar day.

**"Delivery Point"** means the place specified in the Quotation for delivery of the Goods.

**"Documentation"** means the documentation provided online as part of the ConXedge Service.

**"Effective Date"** means the date of acceptance of the Quotation by the Customer in accordance with Clause 2.1.

**"Goods"** means the equipment, articles, products, materials, supplies, parts and items (or any part of them) specified in the Quotation.

**"Hosted Service"** means the ConXedge Service made available to the Customer by the Supplier as a service via the Platform.

**"Information"** means all information in documentary or visual form supplied or to be supplied by a party to another party including (but not by way of limitation) plans, specifications, blueprints, performance details and other intellectual property.

**"Intellectual Property"** means all copyright, and all rights in relation to inventions, registered and unregistered trademarks (including service marks) registered designs, confidential information and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**"Maintenance Services"** means the services described in Clause 17.2.

**"Minimum Requirements"** means any device with a recommended screen size of 10 inches, that can operate the current version of Microsoft Edge, Internet Explorer, Safari or Chrome browsers.

**"Modules"** means any additional applications subscribed for by the Customer which may, subject to an additional fee, be added to the Hosted Service.

**"Platform"** means the platform managed and used by the Supplier to provide the Services,

including the application and database software for the Services, the system and Server software used to provide the Services, and the computer hardware on which that application, database, system and Server software is installed.

**"PPSA"** means the Personal Property Securities Act (Cth) 2009.

**"Quotation"** means the document headed "Quotation" or similar to which these General Conditions of Agreement are annexed or incorporated by reference.

**"Related Bodies Corporate"** has the meaning given in section 9 of the *Corporations Act 2000* (Cth);

**"Renewal Period"** means each 6 monthly or annual renewal following expiry of the initial Term, as specified in the Quotation.

**"Security"** means cash, a letter of credit, bank guarantee, or surety in a form acceptable to the Supplier.

**"Server"** means the server or servers located at the Supplier's premises or such other location as is nominated by the Supplier from time to time and includes the serving computers, hardware and operating systems necessary to operate and support the Service.

**"Services"** means the ConXedge Service, Support Services, Modules and other services which will be made available by the Supplier to the Customer as a service via the Platform.

**"Service Charges"** means the fees payable by the Customer in relation to the provision of the Services specified in the Quotation and other fees payable in accordance with this Agreement. Fees are payable 6 monthly or annually in advance in accordance with the Quotation.

**"Special Conditions"** means the special conditions, if any, included in the Quotation.

**"Specification"** means the specification, if any, included in the Quotation.

**"Supplier"** means HM Technologies Pty Ltd ACN 122 812 471 and includes its successors or assigns.

**"Support Services"** means the maintenance and support described in Clause 18.1 of this Agreement.

**"Term"** means the period during the Services are made available to the Customer. The Term commences and ends on the dates specified in the Quotation and includes any Renewal Period.

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“User Interface” means the interface for the Services designed to allow individual human users to access and use the Services

## **2. CONTRACT AND ACCEPTANCE**

2.1 The Customer shall be deemed to have accepted the Quotation and these General Conditions by directing the Supplier to proceed with the Supplier’s activities under this Agreement. If the Customer directs the Supplier to commence its activities after the expiry of any Quotation validity or acceptance period stated therein, the Supplier may by written notice reject Customer’s acceptance of the Quotation in which case the parties shall have no further obligations under the Agreement.

2.2 The Supplier shall supply the Goods and Services to the Customer for the Contract Price in accordance with the Agreement and in compliance with the CFI, if any.

2.3 Subject to the satisfaction of any applicable Conditions Precedent, the Contract shall enter into force on the Effective Date.

2.4 In the event of any inconsistency, the Special Conditions shall take precedence over these General Conditions of Agreement to the extent of such inconsistency.

## **3. SECURITY**

3.1 The Supplier may, before it commences any activities in connection with the Goods and Services, require the Customer to provide the Security specified in Quotation to secure the Customer’s obligations under the Agreement.

3.2 Until such Security is provided the Supplier shall be under no obligation to commence activities under this Agreement.

3.3 The Supplier shall have recourse to the Security if it remains unpaid after the time for payment where at least 5 days have elapsed since it notified the Customer of an intention to have recourse.

3.4 Upon the Supplier’s entitlement to Security ceasing, the Supplier shall release and return the Security (less any deductions) to the Customer.

## **4. CONTRACT PRICE**

4.1 The Customer shall be invoiced by the Supplier for the Contract Price at such times as stated in the Quotation.

4.2 The consideration for any supply under or in connection with this Agreement is exclusive of GST. If GST is payable, the Supplier will provide the Customer with a tax invoice or a document adequate to entitle the Customer to claim an input tax credit.

## **5. PAYMENT**

5.1 All invoices shall be due and payable within 30 days from the date of the invoice unless a different period is specified in the Quotation or the invoice.

5.2 All payments to be made by the Customer shall be made without set off or counterclaim and shall be free and clear of and without deduction to the bank account specified in the Quotation or as otherwise notified by the Supplier.

5.3 If the Contract Price or any instalment of it is not paid by the due date for payment, the Supplier may suspend all further deliveries of the Goods or Services to the Customer until payment is made in full on all outstanding invoices.

## **6. LATE PAYMENT FEE**

6.1 Without prejudice to any other right of the Supplier, the Supplier shall have the right to charge interest at its discretion computed on a daily basis at the rate of the then current Commonwealth Bank’s Corporate Overdraft Reference Rate plus 5% on any overdue amount from the date on which payment was due or such later date as the Supplier determines to that on which it was made (whether before or after judgment). The Customer shall reimburse the Supplier for all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any overdue amount. The Customer acknowledges and agrees that such charges are a reasonable estimate of the likely damage to be suffered by the Supplier for late payment.

## **7. DELIVERY AND RISK**

7.1 The delivery dates, if any, included in the Quotation are estimates only and are subject to the Supplier’s written confirmation. Time shall not be of the essence in relation to delivery.

7.2 Subject to this Clause 7, risk of loss or damage to the Goods and in each instalment thereof passes when delivery is affected at the Delivery Point. The Supplier may require the Customer or its nominee to sign a delivery docket in respect of the delivered Goods and such signed docket shall constitute evidence of receipt of the Goods. Failure of the Customer or its nominee to provide a signed delivery docket in respect of delivered Goods shall not, however, affect delivery in respect of those Goods.

7.3 If the Agreement provides for instalments, each instalment of the Goods shall be deemed to be the subject of a separate Agreement and no default or failure by the Supplier in respect of any one or more instalments of the Goods shall affect the Agreement in respect of the Goods previously delivered or undelivered.

7.4 The Customer may reject any delivery or any Goods or any instalment of the Goods if it gives the Supplier a notice of rejection within 5 Business Days of delivery and none of the events in Clause 25.5 apply. Otherwise, the Customer shall be deemed to have accepted those Goods.

7.5 If the Customer fails to take delivery of the Goods or any instalment of the Goods in accordance with the Agreement, the Supplier, upon giving written notice to the Customer, may store or arrange for the storage of the Goods or any of them at the risk of the Customer, and delivery shall be deemed to have taken place. The Customer shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.

7.6 If the Delivery Point is the Customer’s premises or other premises, the Customer shall ensure that the Supplier’s employees, agents or subcontractors are given reasonable access to the Delivery Point in connection with the performance of the Supplier’s obligations under this Agreement. In the event access conditions on the date of actual Delivery are different to those which the Supplier could have reasonably anticipated as at the date of the Quotation or did anticipate at the time of any pre-quotation inspection (if carried out), the Supplier may delay performance of the Agreement until such time as reasonable access is available to the Supplier.

7.7 If access to and/ or the conditions at the Delivery Point is materially different to that which the Supplier could have reasonably anticipated as at the date of the Quotation or did anticipate at the time of any pre-quotation inspection (if carried out), the Supplier shall be entitled to adjust the Contract Price for any extra time and materials incurred, including reasonable profit margin.

## **8. HEALTH AND SAFETY RISKS**

8.1 If the Delivery Point is the Customer’s premises or other premises, the Customer warrants that it has advised, and shall at all times keep advised, the Supplier of any conditions or matters which are known or which ought reasonably be known to the Customer, to exist at the Delivery Point which may pose a risk to the health and safety of the Supplier’s employees, agents or subcontractors.

## **9. TITLE**

9.1 Words and phrases used in this Clause 9 that have defined meanings in the PPSA have the same meaning as in the PPSA, unless the context indicates otherwise.

9.2 Title to any Goods delivered to the Customer will not pass to the Customer until the Customer has paid all amounts that it owes to

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the Supplier in full (including the purchase price for the Goods).

9.3 The Supplier only consents to the Customer selling or otherwise disposing of the Goods in the ordinary course of the Customer's ordinary business to bona fide customers and unrelated third parties on arm's length terms, while no default is subsisting.

9.4 Until full payment is received by the Supplier in respect of Goods and unless otherwise expressly agreed in writing by the Supplier, the Customer must not do any of the following in relation to any of the Goods except where expressly permitted by this Agreement:

- (1) create or allow any interest in, or dispose or part with possession of, the Goods;
- (2) allow the Goods to be taken outside Australia;
- (3) allow the Goods to become commingled with any other property; or
- (4) grant any security interest in respect of accounts owed to it in relation to the Goods.

9.5 If the Customer sells or disposes of any Goods before they have been paid in full, the Customer will hold the proceeds of sale or disposal on trust for the Supplier to secure payment of any amounts the Customer owes the Supplier for the Goods.

## **10. CUSTOMER OBLIGATIONS IN RELATION TO THE GOODS**

10.1 The Customer must not alter or interfere in any way with the Goods including removing any labelling or instructions provided with the Goods.

10.2 The Customer must not make any representation or give any warranty in relation to the Goods not expressly authorised by the Supplier in writing.

10.3 The Customer must not do anything which might affect the reputation of any of the Goods, the Supplier or the Supplier's Related Bodies Corporate.

10.4 The Customer must:

- (1) promptly inform the Supplier of all material complaints or claims in relation to the Goods;
- (2) not admit liability on behalf of the Supplier in respect of any complaint or claim in relation to the Goods;
- (3) not resolve or settle any complaint or claim in relation to the Goods which may result in the Supplier or its Related Bodies Corporate incurring any liability to any party; and

- (4) deal promptly with all complaints or claims in relation to the Goods which will not result in the Supplier or its Related Bodies Corporate incurring any liability.

## **11. CONXEDGE SOFTWARE SERVICES**

### **9.1 Service Charges**

In consideration of the payment of the Service Charges, Supplier will, for the Term and any Renewal Period, provide the Customer with:

- (1) web-based login access to use the Hosted Service and Documentation;
- (2) Updates from time to time;
- (3) the Maintenance Services; and
- (4) the Support Services,

in accordance with the terms and conditions of this Agreement.

### **9.2 Service Charges subject to change**

The Service Charges are subject to change. In the event Supplier decides to change the Service Charges, the change (increase or decrease) will take effect after the date of expiry of the Term or any Renewal Period for which they have been paid in advance. Supplier will attempt to give reasonable notice to the Customer of any upcoming change in the Service Charges but any such failure will not affect the change in Service Charges.

### **9.3 Access**

- (1) The Supplier will make the Hosted Service available for Customer's use during the Term and any Renewal Period on the Customer's computer systems that meet the Minimum Requirements for accessing the Hosted Service.
- (2) The Supplier will provide Customer with secure access to the latest supported version of the Hosted Service via the User Interface from the hosting facility Supplier has chosen to use for the Hosted Service on a 24 hours x 7 day basis (excludes scheduled downtime), subject to scheduled planned and unplanned maintenance as required and scheduled in advance by Supplier.
- (3) The Customer is responsible for obtaining and maintaining all equipment, computer hardware and software and all telecommunications services required by the Customer to access and use the Hosted Service and will ensure that all such equipment and services comply with the technical specifications provided by Supplier.

## **12. GRANT OF LICENCE**

### **12.1 Terms of licence**

Subject to payment of the Service Charges, Supplier grants to the Customer a non-transferable, non-exclusive licence for the Authorised Users to use the Hosted Services by means of the User Interface and API for the internal business purposes of the Customer and the Documentation during the Term and any Renewal Period in accordance with the terms and conditions of this Agreement.

### **12.2 Customer Obligations**

The Customer will:

- (1) comply will all applicable laws relating to the use of the Hosted Service;
- (2) only allow the Hosted Service and the Documentation to be used by the Authorised Users for the purpose of the Customer's business and for no other purpose;
- (3) ensure that the Hosted Service and the Documentation are protected at all times from misuse, destruction or any forms of unauthorised use;
- (4) ensure that any access codes and passwords are kept safe and only used by Authorised Users;
- (5) not allow the Hosted Service or the Documentation to be used or accessed by any third party;
- (6) immediately inform the Supplier if it becomes aware of any unauthorised use of the Hosted Services by any person;
- (7) not sell, sub-licence, assign or in any other way transfer the Hosted Service or the Documentation to any third party unless specifically authorised by the Supplier in writing and any such use will be subject to this Agreement and such other terms as may be specified by the Supplier in writing;
- (8) not use any unauthorised process or service to access and/or use the Hosted Service during the Term or otherwise;
- (9) not use any unauthorised means to modify or reroute, or attempt to modify or reroute, the Hosted Service or work around any of the technical limitations in the Service;
- (10) not modify, create derivative works from, reverse engineer, decompile or disassemble or otherwise attempt to discover any trade secret contained in the Hosted Service or in any technology, or system used by Supplier in connection with providing the Hosted Service;
- (11) not copy any ideas, features, functions or graphics of the Hosted Service;

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(12) not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Service;

(13) acknowledges and agrees that the API may only be used by an application or applications approved by Supplier in writing controlled by the Customer; and

(14) ensure that the User Interface is not used at any point in time by more than the number of concurrent user specified by Supplier.

#### 12.3 Documentation

Where Documentation is provided to the Customer, the Customer may make such additional copies of the Documentation as the Customer reasonably requires for use by the Authorised Users, provided that such copies will be owned by the Supplier and bear notices of Supplier's ownership of copyright.

#### 12.4 Compliance with Instructions

The Customer will:

- (1) comply with all reasonable instructions given by the Supplier from time to time with regard to the use of the Hosted Services and the Documentation by the Authorised Users; and
- (2) permit the Supplier, or its agent, at all reasonable times and at the Supplier's expense, to verify that the use of the Hosted Services and the Documentation by the Customer and the Authorised Users is in accordance with the terms of this Agreement.

### 13. SUPPLIER OBLIGATIONS

#### 13.1 System requirements and Access Codes

The Supplier will provide the Customer with:

- (1) technical specifications required for access and use of the Hosted Services by Authorised Users during the Term and any Renewal Period including supported platforms, connectivity and security;
- (2) technical advice and assistance as is reasonably required by the Customer to enable the Customer to establish its connection to the Hosted Services; and
- (3) usernames and passwords required by the Customer to enable access to the Hosted Services by the Authorised Users.

#### 13.2 Modifications

The Supplier reserves the right to make such amendments or modifications to the Hosted Service as required by law or which Supplier, in its sole discretion, decides are in the interest

of quality, efficiency and security of the Hosted Services as a whole.

### 14. CUSTOMER RESPONSIBILITIES

The Customer acknowledges and accepts that it is the Customer's sole responsibility to ensure that:

- (1) the Hosted Service is appropriate for the Customer's requirements;
- (2) the Customer's equipment and consumables are properly maintained and set up correctly;
- (3) the Customer's equipment connect to each other and has adequate mobile data coverage,

the Customer properly manages its concrete products including strength versus maturity calibrations, setting of targets, etc.

### 15. AVAILABILITY OF THE SERVICE

#### 15.1 Maintenance of Service

The Supplier will use reasonable endeavours to maintain the reliability and efficiency of the Hosted Services subject to:

- (1) scheduled downtime for Maintenance Services or other interruptions to the service specified in Clause 13.1; and
- (2) unscheduled interruptions to the availability of the Hosted Service due to factors beyond the control of Supplier including any actions of the Customer or third parties, including telecommunications providers.

#### 15.2 System performance

- (1) The Customer will communicate any difficulties encountered with the Hosted Services to the Supplier as soon as is reasonably practicable following detection.
- (2) The Customer acknowledges that the speed of response from the Hosted Service is dependent on the Customer's internet connection and performance of the Hosted Service may be affected by such external factors as speed of connection and infrastructure bandwidth from the Customer's equipment to the Platform and the number of users on the connection.
- (3) The Supplier takes no responsibility for any delay, malfunction, non-performance or other degradation of the Hosted Service caused by or resulting from any alteration, modifications or amendments to the Hosted Service requested by the Customer.

#### 15.3 Reinstatement after total failure

In the event of total systems failure resulting in the disruption of service to the Internet from the Platform, Supplier will endeavour to repair and reinstate the Hosted Services within twenty four (24) hours of detection depending on the severity of the failure.

### 16. SUSPENSION OF ACCESS

#### 16.1 Supplier right to suspend

Subject to Clause 16.2, the Supplier may suspend access to the Hosted Service:

- (1) if any Service Fees due to be paid by the Customer to Supplier under this Agreement is overdue, and Supplier has given to the Customer at least 30 days written notice, following the amount becoming overdue, of its intention to suspend the Hosted Service on this basis;
- (2) to carry out the Maintenance Services;
- (3) to carry out modifications or updates to the Hosted Service, including the uploading of Updates;
- (4) to preserve data and integrity;
- (5) in the event of a security breach; or
- (6) if the Platform malfunctions,

any in the event of such suspension the Customer shall not be entitled reimbursement of the Service Charges or part thereof paid in the advance.

#### 16.2 Supplier right to suspend or terminated in the event of breach

The Supplier reserves the right to terminate or suspend Customer access to the Hosted Service indefinitely and without refund or compensation in the event the Customer uses the Hosted Service, or appears to Supplier to be intending to use the Hosted Service in a manner reasonably deemed inappropriate by Supplier or which breaches the terms of this Agreement.

#### 16.3 Period of Suspension

Suspension of access to the Hosted Service will continue until the Maintenance Services, modifications or updates are carried out, the problem or breach is rectified, or until otherwise agreed in writing between the parties.

#### 16.4 No liability

The Supplier will not be liable to the Customer, its officers, employees, contractors or agents or any third party whatsoever as a result of

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exercising a right under this clause where such action is taken on a view which is formed on a reasonable basis by Supplier.

## 17. UPDATES AND MAINTENANCE

### 17.1 Updates

- (1) The Supplier may, in its sole discretion provide Updates from time to time.
- (2) The Supplier will upload any Updates to the Platform for access and use by the Customer through the Hosted Service as soon as reasonably practicable following the creation and general release of such Updates by the Supplier.
- (3) The Customer acknowledges that additional downtime for the Hosted Services over and above the levels specified in the Quotation of this Agreement may apply in the event the Supplier is required to upload Updates.
- (4) The Updates will be provided to the Customer through the Hosted Services free of charge subject to all Service Charges having been fully paid by the Customer for the Term or any Renewal Period as the case may be.
- (5) Use of the Updates by the Customer through the Hosted Service is subject to the terms and conditions of this Agreement.

### 17.2 Maintenance Services

The Supplier will perform such routine maintenance services as it considers necessary to ensure the proper functioning of the Hosted Service during the Term and any Renewal Period including:

- (1) the operation and general maintenance of the Platform;
- (2) reviewing the Hosted Services on a regular basis and applying Updates where appropriate; and
- (3) performing regular security and maintenance checks for evidence of security breaches, software malfunction and resource limit warnings.

### 17.3 Customer responsibility for maintenance

The Customer acknowledges that it is solely responsible for the support and maintenance of any computer hardware and non-Supplier software operated by the Customer.

## 18. SUPPORT SERVICES

### 18.1 Scope of Support Services

The Supplier will provide the Authorised Users with the following Support Services in relation

to the Hosted Services during the Term and any Renewal Period if:

- (1) the Hosted Services cannot be accessed by an Authorised User using the Minimum System Requirements;
- (2) an Authorised User's login details fail and the Authorised User cannot access the Hosted Services;
- (3) real-time data is not generated as advertised provided that, before contacting the Supplier, Authorised Users first confirm the fault is not a communications issue by troubleshooting equipment on the Customer's site;
- (4) there are signal/ communication issues on the Customer's site (assist remotely);
- (5) there is a lag in data being uploaded into the Hosted Service;
- (6) there is a possibility of system errors in calculations;
- (7) system/ email notifications/ alerts are not being generated or not being received.

### 18.2 Access

Support Services are available to the Authorised Users by:

- (1) telephoning the Supplier on +61 2 8315 8440 during Business Hours; or
- (2) e-mailing the Supplier at [support@conxedge.com.au](mailto:support@conxedge.com.au) upon receipt of which, the Supplier will use its best endeavours to provide a response to the Customer within two (2) Business Days.

### 18.3 Information to be provided

When reporting faults to the Supplier, the Authorised Users must provide an accurate description of the problems encountered including error messages and an accurate impact of the problem in order to facilitate the necessary corrective action by the Supplier.

## 19. CONFIDENTIAL INFORMATION

### 19.1 Disclosure of Confidential Information

No Confidential Information of a Party (**Disclosing Party**) may be disclosed by the Party receiving the Confidential Information (**Receiving Party**) to any person except:

- (1) to representatives of the Receiving Party or its Related Bodies Corporate requiring the information for the purposes of this Agreement;
- (2) with the written consent of the Disclosing Party which consent may be given or withheld in its absolute discretion;

- (3) if the Receiving Party requires the information for quality assurance and risk management purposes;
- (4) if the Receiving Party is required to do so by law or by a stock exchange; or
- (5) if the Receiving Party is required to do so in connection with legal proceedings relating to this Agreement.

### 19.2 Disclosure by recipient of Confidential Information

Any Party disclosing information under Clauses 19.1(1) or 19.1(2) must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in Clause 19.1.

### 19.3 Use of Confidential Information

A Receiving Party must not use Confidential Information of the Disclosing Party except to the extent necessary for the purposes of exercising its rights or performing its obligations under this Agreement.

### 19.4 Excluded Information

Clauses 19.1, 19.2 and 19.3 do not apply to the Excluded Information.

### 19.5 Return of Confidential Information

A Receiving Party must, on the request of the Disclosing Party, promptly deliver to the Disclosing Party all documents or other materials containing or referring to the Confidential Information of the Disclosing Party in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under Clauses 19.1(1) or 19.1(2).

## 20. HOSTED SERVICES WARRANTY AND REMEDIES

### 20.1 Supplier warranty

The Supplier warrants the Hosted Service will conform with the Specifications or any description of the service provided by the Supplier and that other services provided by the Supplier under this Agreement will be performed with due care and skill and within the timeframes specified in this Agreement or where no timeframes are specified, within a reasonable time.

### 20.2 No warranty that service is error free

The Supplier does not warrant that the operation of the Hosted Service will be

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uninterrupted or error free or that any third party components used in the service will be accurate or error free or that the Hosted Services will be compatible with any application, program or software not specifically identified as compatible by the Supplier.

### 20.3 Rights and remedies

To the extent permitted by law, the Supplier's obligation and the Customer's exclusive remedy for any defect in the Hosted Service is limited, in Supplier's absolute discretion, to:

- (1) the Supplier, at its own expense, using all reasonable endeavours to rectify any non-conformance of the Hosted Service by repair (by way of a patch, work around, correction or otherwise) within a reasonable period of time; or
- (2) a refund of any of the Service Charges paid if, in the Supplier's reasonable opinion, it is unable to rectify such non-conformance within a reasonable time or at an economic cost.

## 21. INDEMNITIES

### 21.1 Indemnity by Supplier

The Supplier will indemnify the Customer and hold the Customer harmless against and loss or damage suffered by the Customer arising from a claim by a third party that the licence granted to the Customer under Clause 12.1 infringes the Intellectual Property rights of such party.

### 21.2 Indemnity by Customer

The Customer will indemnify the Supplier and hold Supplier harmless against and loss or damage suffered by Supplier arising from:

- (1) a breach of the Customer's obligations under this Agreement; and
- (2) a claim by a third party that the licence granted to the Supplier under Clause 27.4 in respect of Customer Data infringes the Intellectual Property rights of such party.

## 22. EARLY TERMINATION OF SERVICES BY SUPPLIER

### 22.1 Termination by Supplier

In addition to any other rights it has under the Agreement, Supplier may at any time terminate the provision of the Services or reduce the scope of the provision of the Services by notifying the Customer in writing.

### 22.2 Repayment of charges

- (1) If the Supplier issues a notice under Clause 22.1, the Supplier shall only be

liable to repay to the Customer the proportion of the Service Charges which constitute a payment in advance, if any, for the remaining Term, as at the date of termination.

- (2) The Customer acknowledges and agrees that it has no other claims, and releases Supplier from all other claims, associated with termination by the Supplier pursuant to this clause.

## 23. TERMINATION FOR BREACH, INSOLVENCY AND NON-PAYMENT BY CUSTOMER

### 23.1 Termination for breach

Either party may terminate this Agreement with immediate effect by giving notice to the other party if:

- (1) the other party breaches any of its obligations under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so; or
- (2) the other party breaches any of its obligations under this Agreement incapable of remedy; or
- (3) any event referred to in Clause 23.2 occurs in relation to the other party.

### 23.2 Insolvency

Each party will notify the other immediately if:

- (1) it ceases to carry on business;
- (2) it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (3) any step is taken to enter into any arrangement between that party and its creditors;
- (4) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of its assets or business; or
- (5) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator of the whole or any part of its assets or business.

### 23.3 Non-payment by Customer

Supplier may, with immediate effect, terminate this Agreement or suspend any services provided under this Agreement if the Customer fails to pay any amount due within 30 days after the due date for payment of those monies.

## 24. EFFECT OF TERMINATION

### 24.1 Termination of licence

Upon the expiry or termination of the Term or any Renewal Period:

- (1) the non-exclusive licence granted to the Customer to use the Hosted Service and the Documentation will immediately terminate;
- (2) the Supplier will immediately terminate the Customer's connection to the Service and cease providing all services to the Customer under this Agreement.
- (3) the Customer must immediately:
  - (a) cease to access and use the Hosted Service;
  - (b) return the Documentation and any copies of the Documentation to the Supplier or destroy the same in the manner specified by the Supplier in writing; and
  - (c) pay any monies payable to the Supplier pursuant to this Agreement; and
- (4) each party must:
  - (a) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
  - (b) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
  - (c) on request, certify in writing to the other party that it has complied with the requirements of this Clause **Error! Reference source not found.**

### 24.2 Deletion of Customer Data

The Supplier may, at any time after 90 days from date of expiry or termination of this Agreement or the Term or any Renewal Period, delete the Customer Data from the Hosted Service. If the Customer wishes to be provided with the Customer Data it must make such a request in writing before the expiry of the 90 day period referred to above and pay the fee notified by the Supplier in which case the Supplier will provide the information in .csv format.

### 24.3 Rights not affected

Termination of this Agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Agreement that existed at or before the date of termination.

24.4 The following clauses survive termination or expiry of this Agreement together with any

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other term which by its nature is intended to do so:

- (1) Clause 24 (Effect of Termination);
- (2) Clause 25 (Warranties and limit of liability in respect of Goods and Services);
- (3) Clause 19 (Confidentiality);
- (4) Clause 40 (Governing law).

**25. WARRANTIES AND LIMIT OF LIABILITY IN RESPECT OF GOODS AND SERVICES**

25.1 The Supplier warrants that the Goods supplied under the Agreement are free of defects due to faulty workmanship or materials, other than in respect of material supplied by the Customer.

25.2 The duration of the Supplier's warranty in Clause 25.1 is for the period of 18 months from the date of delivery or 36 months from date of delivery if the affected Goods are returned to the Supplier within 18 months of delivery (+/-1 one month) for service calibration undertaken at the Customer's cost.

25.3 To the maximum extent permitted by law all other express and implied terms, liabilities, representations, conditions and warranties are hereby expressly negated and excluded.

25.4 The Customer must notify the Supplier in writing as soon as it becomes aware of any defect in the Goods or if intends to engage a third party to remedy such defect (**Defect Claim**). All Defects Claims must be emailed to the address [warranty@hmtechno.com](mailto:warranty@hmtechno.com). The Customer must promptly provide all relevant information (including photographs) to support a Defect Claim including information requested by the Supplier. The Supplier will investigate the Defect Claim and provide a written response in relation to the Defect Claim.

25.5 The following shall not constitute a defect in respect of goods:

- (1) damage caused by external causes including environmental conditions;
- (2) normal wear and tear and the need for regular maintenance;
- (3) damage caused by failure to install, operate, maintain or repair goods in accordance with reasonable or recommended operation, maintenance or repair procedures;
- (4) damage resulting from contaminated fluids, abuse, lightning, power surges, acts of God or the public enemy, sabotage, fire, terrorism, riot or vandalism;
- (5) damage resulting from the continued operation of the goods or any of their

components after the detection of an alleged defect;

- (6) failure of common consumable articles with an expected limited lifetime;
- (7) failures or defects attributable to inadequacies or deficiencies in any Information supplied by the Customer;
- (8) damage resulting from misuse or abuse of the goods or use of the goods contrary to the Supplier's recommended conditions of use;
- (9) the Customer alters or modifies the Goods without the prior written consent of the Supplier;
- (10) liability arising from incorrect calibration of Goods by the Customer;
- (11) damage arising from an unauthorised modification to the Goods or use of any non-genuine manufacturer parts.

25.6 Notwithstanding any other provision of this Agreement, the Supplier will not be liable to the Customer in respect of any loss or damage which may be suffered or incurred by the Customer arising from:

- (1) access to, or use of, the Hosted Services by the Customer;
- (2) any defect, malfunction, error, loss, delay or breakdown in the transmission, reception, use or storage of information or records including Customer Data;
- (3) any suspension of access to the Hosted Services by the Supplier pursuant to this Agreement;
- (4) delays in transmission, communications failures or internet access difficulties caused by third party service providers beyond the Supplier's reasonable control;
- (5) introduction of viruses affecting the functioning of the Hosted Services;
- (6) malfunction of third party equipment or software on which the Hosted Service relies; or
- (7) any other act or omission by any third party which affects the ability of the Customer to access, or use, the Hosted Services.

25.7 The Customer shall be liable for any transportation costs of any returned or replaced defective Goods or labour costs and associated expenses relating to removal or installation of repaired or replaced defective Goods.

25.8 If any Goods supplied under this Agreement are supplied to the Customer as a "consumer" of goods or services within the meaning of that term in ACL (as amended) or relevant state legislation, the consumer will

have the benefit of certain non-excludable rights and remedies in respect of the goods or services. Nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the ACL or similar legislation is so conferred. If the product is a product not ordinarily acquired for personal, domestic or household use or consumption, under section 64A of the ACL and similar provisions of relevant state legislation the Supplier is limited to:

- (1) in the case of defective goods (excluding services), at the option of the Supplier, any one or more of the following:
  - (a) replace the defective goods or supply equivalent goods;
  - (b) repair the defective goods;
  - (c) reimburse the Customer for the cost of replacing the defective goods or acquiring equivalent goods;
  - (d) reimburse the Customer for the cost of repairing the defective goods;
  - (e) if the Customer has not paid the Contract Price for defective goods, release the Customer from any obligation to pay the Contract Price; or
  - (f) if the Customer has paid the Contract Price for defective goods, refund the Contract Price for the defective goods, subject to the Customer first restoring unencumbered title to the defective goods; and
- (2) in the case of services, at the option of the Supplier, either:
  - (a) the supplying of the defective services again; or
  - (b) the payment of the cost of having the defective services supplied again.

25.9 Subject to all rights and remedies which are provided pursuant to legislation and which by law cannot be excluded by agreements between the Parties, the amount the Supplier may be obliged to pay to the Customer for breach (or series of breaches) of the Supplier's obligations under this Agreement shall not in respect of the Goods, exceed the total amount paid for those Goods and, in respect of the Services, the total amount paid for the Service Charges.

25.10 Notwithstanding any other clause of this Agreement and subject to the ACL, the Supplier, its officers, directors or employees, shall not be liable to the Customer under the Agreement, in tort, in contract, in equity, by operation of statute or otherwise for any kind of indirect or consequential loss; loss of opportunity; loss of revenue; loss of profit or anticipated profit; loss of contracts; loss of goodwill; loss arising from business interruption; or liability arising out of or in connection with pollution or contamination,

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arising out of or in connection with this Agreement, or the work conducted under it, incurred or suffered by a party, or any other person.

25.11 The Parties agree that, to the extent permitted by law, the remedies of the Customer under this clause are the only remedies of the Customer and are to the exclusion of all other remedies under the Agreement, in tort, in contract, in equity, by operation of statute or otherwise.

25.12 The Supplier's obligations under this Agreement shall be reduced to the extent the Customer's acts or omissions have contributed to any losses, including provision of ambiguous, erroneous, defective or incomplete CFI or CFE.

## **26. FORCE MAJEURE**

26.1 Notwithstanding any other provision of the Agreement the Supplier shall not be liable for any:

- (1) delays;
- (2) damage generated by delays; or
- (3) inability to perform any of its duties or obligations under the Agreement;

directly or indirectly resulting from or due to or as a consequence of acts of God, strikes or other labour disturbances or disputes, factory shutdowns, prolonged failure of any energy or fuel supply, accidents, epidemic, pandemic or any cause of delay whatsoever, whether or not of a kind previously specified in this Clause 26.1 or of a different kind reasonably beyond the control of the Supplier whether or not its occurrence could be foreseen at the Effective Date.

26.2 The Supplier shall notify the Customer in writing of any such occurrence as soon as possible after the occurrence comes to its notice. The Supplier shall also notify the Customer in writing after the occurrence has ceased or been overcome, and shall provide a statement of:

- (1) the reasons why these occurrences were beyond the reasonable control of the Supplier;
- (2) the effect of these occurrences on the Supplier's performance of its obligations under the Agreement; and
- (3) the period of delay and extension of time required as a result.

## **27. INTELLECTUAL PROPERTY RIGHTS**

27.1 The Customer acknowledges that all Intellectual Property:

- (1) developed by the Supplier while performing the Agreement; or

- (2) transmitted by the Supplier to the Customer during the performance of the Agreement;

is and remains under the exclusive ownership of the Supplier and shall not be used by the Customer for any purpose other than that for which it was supplied.

27.2 Intellectual Property of the Customer contained in CFI shall remain under the ownership of the Customer. The Customer grants to the Supplier a royalty-free, non-exclusive and perpetual licence to use, copy, modify and reproduce the Customer's IP in order for the Supplier to perform its obligations under the Agreement.

### **27.3 Ownership of Customer Data**

The Supplier acknowledges and agrees that all rights, title and interest including all Intellectual Property rights in Customer Data vest in the Customer.

### **27.4 Licence to use Customer Data**

The Customer grants to the Supplier a non-exclusive, non-transferable, royalty free licence for the Term and any Renewal Period to use the Customer Data to the extent necessary for Supplier to perform its obligations under this Agreement.

## **28. SUBCONTRACTING**

28.1 The Supplier may, without the consent of the Customer, subcontract any part of the work under this Agreement to a third party. Except where the Agreement otherwise provides, the Supplier shall be liable to the Customer for the acts, defaults and omissions of subcontractors as if they were those of the Supplier.

## **29. MEDIA ANNOUNCEMENTS**

29.1 A party may not make or send any public announcement, communication or circular relating to the subject matter of this Agreement unless the other party has consented to the announcement, communication or circular in writing (including the timing, form and content of that disclosure).

## **30. ASSIGNMENT**

The Supplier may assign or novate all or any of its rights, obligations or interests under the Agreement without the prior written consent of the Customer and if requested the Customer shall provide an executed deed of assignment or novation in a form acceptable to the Supplier within 7 days of receipt.

## **31. SET OFF**

31.1 The Supplier may deduct any amount due and payable by the Customer from amounts otherwise due and payable to the Customer

under or in connection with this Agreement or any other agreement between the Supplier and the Customer.

31.2 Any exercise by the Supplier of its rights under Clause 31.1 does not limit or affect any other rights or remedies available to the Supplier under this Agreement or otherwise.

## **32. VARIATION**

32.1 An amendment or variation of any term of this agreement must be in writing and signed by each party.

## **33. PERSONAL PROPERTY AND SECURITIES ACT**

Defined terms in this clause have the same meaning as given to them in the PPSA.

33.1 This agreement is a security agreement for the purposes of the PPSA. The Customer acknowledges that it has granted the Supplier a security interest in the Goods and their proceeds which is a purchase money security interest to the extent that it secures payment of all or part of the purchase price for particular goods.

33.2 The Customer consents to the Supplier perfecting any security interest arising in connection with this Agreement by registering a financing statement on the PPSR and any other applicable security registers in any manner it considers appropriate. The Customer agrees to do anything the Supplier reasonably asks to ensure that the security interest:

- (1) is enforceable, perfected and otherwise effective; and
- (2) has priority over all other security interests.

33.3 The Customer agrees to pay or reimburse the Supplier for any fees or charges for the PPSR or other registrations contemplated by this clause.

33.4 The Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA unless the notice is required by the PPSA and cannot be excluded.

33.5 The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. This does not limit the Customer's rights to request information other than under section 275 of the PPSA. Neither the Customer nor the Supplier will disclose any information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies.

33.6 To the extent permitted by law, the parties contract out of and the Customer waives its rights under the following provisions of Chapter 4 of the PPSA:



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- (1) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;
- (2) section 96 (when a person with an interest in the whole may retain an accession);
- (3) section 121(4) (enforcement of liquid assets - notice to grantor);
- (4) section 125 (obligation to dispose of or retain collateral);
- (5) section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Customer;
- (6) section 132(3)(d) (contents of statement of account after disposal);
- (7) section 132(4) (statement of account if no disposal);
- (8) section 142 (redemption of collateral); and
- (9) section 143 (reinstatement of security agreement).

**34. SERVERABILITY**

34.1 If the whole or any part of a provision of this Agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

34.2 Clause 34.1 does not apply if the severance of a provision of this Agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Agreement.

**35. NO MERGER**

35.1 On completion or termination of this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

**36. RELATIONSHIP OF PARTIES**

36.1 Nothing in this Agreement gives a party authority to bind any other party in any way.

36.2 Nothing in this Agreement imposes any fiduciary duties on a party in relation to any other party.

**37. REMEDIES CUMULATIVE**

37.1 Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this Agreement.

**38. ENTIRE AGREEMENT**

38.1 This Agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements,

understandings, negotiations and discussions in respect of its subject matter.

**39. NO RELIANCE**

39.1 No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this Agreement.

**40. GOVERNING LAW**

40.1 This Agreement is governed by the laws of the state of New South Wales.

**41. PRIVACY**

41.1 Definitions

- (1) **APPs** means the Australian Privacy Principles.
- (2) **Personal Information** has the meaning given to it in section 6 of the Privacy Act.
- (3) **Privacy Act** means the Privacy Act 1988 (Cth) as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2013 (Cth) as and when the amendments come into force.
- (4) **Privacy Statement** means Supplier's privacy statement which can be accessed on its website at [www.hmtechno.com/privacy](http://www.hmtechno.com/privacy)

41.2 Warranties

- (1) The Supplier warrants that for the purposes of this Agreement, it agrees it is an APP Entity and complies with and will continue to comply with the Privacy Act and all other applicable privacy laws;
- (2) Supplier warrants that it complies and will at all times comply with the Privacy Act and all other applicable privacy laws or for the purposes of this Agreement, it agrees it is an APP Entity and complies with and will continue to comply with the Privacy Act and all other applicable privacy laws;

41.3 Collection of Personal Information by Supplier

To the extent Supplier collects, holds, uses or discloses Personal Information of an Authorised User in the course of or relating to this Agreement, it:

- (1) shall handle all such Personal Information in accordance with Supplier's Privacy Statement to the extent that policy is not inconsistent with the requirements of this clause or this Agreement;
- (2) shall only use such Personal Information for the purpose of making the Services available to the Customer and performing its obligations under this Agreement (**Purpose**);

(3) may, in relation to the Purpose, disclose such Personal Information to a person (including a related entity or subcontractor) who is located overseas and, in the case of services provided by a third party such as Microsoft Azure, is located in the USA and such person:

- (a) Suppliers not accountable under the Privacy Act;
- (b) is subject to foreign laws that could compel the disclosure of such information to a third party such as an overseas authority;
- (c) is not compelled to comply with the APPs in relation to the collection, use, disclosure, storage and destruction or de-identification of Personal Information disclosed to it in the course of this Agreement.

41.4 Provision of third party Personal Information by Customer

If the Customer provides Personal Information to Supplier about another person, such as an Authorised User, the Customer warrants that it is entitled to disclose such information to Supplier and that, without Supplier taking any further steps, Supplier may collect, use and disclose that information for the Purpose. The Customer warrants that the individual concerned is aware of the various matters detailed in this clause and the Privacy Statement, as those matters relate to that individual, including Supplier's identity, how to contact Supplier, its purposes of collection, its information disclosure practices (including disclosure to overseas recipients), the individual's right to obtain access to the information and make complaints about the handling of the information, and the consequences if the information is not provided such as our inability to provide services or the inability of that person to use the Platform.