

Common Business Terms

POS Works Pty Ltd and Dispense Works Pty Ltd

15th October 2024

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1. Definitions and interpretation

1.1 Definitions

Agreement has the meaning given to it in clause 2.1.

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

Authorised Officer of a party which is a corporation means:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of the Agreement and notified to the others.

Background Intellectual Property Rights means all Intellectual Property Rights that were pre-existing and belonging to one party, whether by ownership, license to use or otherwise, prior to entering into the Agreement, or created independently of the Agreement.

Business Day means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to the Agreement.

Change of Control means a change in: control of the composition of the board of directors of the corporation; control of more than half the voting rights attaching to shares in the corporation; or control of more than half the issued shares of the corporation (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital).

Commencement Date for an Agreement means the commencement date specified in the applicable Statement of Work, or if none is specified, means the date on which the last of the parties executed the Statement of Work.

Committed Store means a Store that the Group commits to rollout Products and Services, as specified in a Statement of Work.

Common Business Terms means the terms and conditions in this document as amended from time to time in accordance with clause 22.7 (Variation).

Confidential Information means, in relation to each party (for the purposes of this definition, **Discloser**), all

information disclosed by or on behalf of the Discloser, concerning or relating to:

- (a) the fee and remuneration structure set out in the Statement of Work;
- (b) know-how, trade secrets, ideas, marketing strategies, operational information, technical information and financial information;
- (c) proprietary software tools, business processes, project management methodologies and tools, software testing and verification methods, solution architecture models and solutions;
- (d) its business affairs (including products, services, customers and suppliers); and
- (e) other information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential,

but excluding any such information:

- (f) which is publicly known;
- (g) which is disclosed to the other party without restriction by a third party (other than the Discloser) and without any breach of confidentiality by that third party; or
- (h) which is developed independently by other party without reliance on any of the confidential information.

Consequential Loss means any of the following:

- (a) loss of revenue;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of data;
- (e) loss of business;
- (f) loss of business opportunity;
- (g) loss of use or amenity, or loss of anticipated savings;
- (h) special, exemplary or punitive damages; and
- (i) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into the Agreement,

including any of the above types of loss arising from an interruption to a business or activity.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the Consumer Price Index Number (All Groups) in Brisbane published by the Australian Bureau of Statistics or, if that index does not exist, the nearest equivalent index.

Customer means the party named as Customer in the applicable Statement of Work.

Customer Data means all data uploaded by the Customer (or its Personnel), or provided to Supplier to upload, to infrastructure utilised by Supplier to provide the Products

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and Services to the Customer (excluding anything embodying the proprietary rights, including Intellectual Property Rights, of Supplier or its Related Entities) and is Confidential Information for the purposes of the Agreement including:

- (a) stock, customer and sales record data of Customer or a Site (or a which will become a Site) which is processed and/or stored in the applicable software Product;
- (b) all of the information, documents and other data provided by Customer to Supplier to allow Supplier to provide the Products or Services and to fulfil its obligations under the Agreement; and
- (c) information stored in the Customer Environment, but excluding Supplier Data.

Customer Data Incident has the meaning given in clause 10.

Customer Environment means Customer's computing environment (consisting of hardware, software, the cloud environment and telecommunications networks) whether operated, maintained or utilised by or on behalf of the Customer.

Customer IP means the Intellectual Property Rights of the Customer which are created independently of the Agreement and includes the Customer's Background Intellectual Property Rights.

Dispute has the meaning given in clause 21.

Exceptional Circumstance means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under the Agreement. Such circumstances include:

- (a) adverse changes in government regulations;
- (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (d) strikes or industrial disputes; and
- (e) acts or omissions of any third party network providers (such as internet, telephony or power provider).

Fees means the fee payable by the Customer for the Products or Services (or both), as set out in the applicable Statement of Work, and may include, but is not limited to any monthly subscription fees, fees for Services, and any fees for additional services pursuant to clause 3.4.

Government Body means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and

- (c) any person deriving a power directly or indirectly from any other Government Body.

Group includes the licensor or franchisor of a retail or pharmacy group and includes its Related Entities, but excludes Stores.

GST means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST.

GST Law means the GST Law as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means an event of bankruptcy or insolvency, an assignment for the benefit of creditors, the appointment of a receiver, receiver and manager, provisional liquidator, administrator, liquidator and official manager or any similar person to any assets of a person, a failure to comply with a statutory demand, or anything else which occurs which is analogous or has a substantially similar effect, under the laws of any jurisdiction, or the person is otherwise insolvent or unable to pay its debts as and when they fall due.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Law means any statute, rule, regulation, proclamation, order in council, ordinance, local law or by-law, whether:

- (a) present or future; or
- (b) state, federal or otherwise.

Liability means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person. **Liable** has a corresponding meaning.

Liability Limit means an amount equal to the sum of the Fees paid or payable for the applicable Products or Services by Customer to Supplier in the 12 months prior to the date the liability arose.

Login means the username and password individually used by authorised Users.

Loss means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

Material means property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

New IP means any and all Intellectual Property Rights created in the course of, or connection with, the Agreement, including the provision of the Products and the performance of the Services.

Notice of Dispute has the meaning given in clause 21.

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Personal Information has the meaning given in the Privacy Act 1988 (Cth) and includes Sensitive Information as defined in the Privacy Act.

Personnel means in relation to a party, any Related Body Corporate, Related Entity, employee, officer, agent or contractor of that party (and, for the avoidance of doubt, where the party is a Group, does not include the personnel of a Store).

Privacy Laws means all laws which regulate the access to or the use, disclosure, retention or processing of Personal Information including but not limited to the *Privacy Act 1988* (Cth), the *Privacy and Data Protection Act 2014* (Vic), the *Health Records and Information Privacy Act 2002* (NSW) and the *Spam Act 2003* (Cth).

Product(s) means the software, hardware and/or tangible deliverable(s) to be provided by Supplier to Customer as detailed in a Statement of Work.

Related Body Corporate includes any corporation that is deemed to be related to a person by virtue of the provisions of the *Corporations Act*.

Related Entity means a person which is a related entity within the meaning of that term in section 9 of the *Corporations Act*.

Services means the services to be provided by Supplier from time to time during the Term of the Agreement, and include Support Services.

Site includes a site of the Customer in respect of which Products and/or Services are licensed for use under the Agreement, such as a head office, corporate office, warehouse, packaging facility, distribution centre or retail store, or any logical or managerial division thereof, and includes a server installed at any of those locations.

Specifications means the specifications (if any) expressly set out in the Reference Schedule to the applicable Statement of Work.

Statement of Work means:

- (a) where the Customer is a Group, a document styled "Statement of Work" prepared by Supplier and signed by the parties detailing the specific Products and Services to be provided to the Customer and any other special terms and conditions that apply to those Products and Services; or
- (b) where the Customer is a Store, a document styled "Store Licence" prepared by Supplier and signed by the parties detailing the specific Products and Services to be provided to the Customer, at or in connection with one or more of Customer's Sites, including any special terms and conditions that apply to those Products and Services.

Store means a person who has entered into an agreement with a Group, under which the Group provides services to the Store and grants to the Store a licence to use the Group's trade marks and operational systems in return for payment of specified fees. For the purposes of this Agreement, a Store may comprise a single or multiple Sites.

Supplier means POS Works Pty Ltd or Dispense Works Pty Ltd, as specified in the applicable Statement of Work.

Supplier Data means all data which:

- (a) is in an aggregate and de-identified form so that it cannot be used to identify the Customer or an identified or identifiable individual; or
- (b) is held by, or disclosed to, Supplier independently of the Agreement.

Supplier IP means all Intellectual Property Rights created, owned or licensed by Supplier independently of the Agreement or any provision of Products or Services to Customer, and includes the Supplier Data.

Support Services means the Services to be performed by Supplier to provide the Customer with support in relation to the Products or other software licensed under the applicable Statement of Work.

System Requirements means the system requirements for the Products and Services as set out in any Statement of Work(s), and otherwise as advised by Supplier from time to time.

Tax means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

Tax Invoice means a "tax invoice" compliant with the requirements of the GST Law.

Term means the duration of the Agreement, until it is terminated or expires in accordance with the terms of the Agreement.

Third Party means any third party to the Agreement, other than any Related Bodies Corporate of a party.

Third Party Content means any software, Intellectual Property Rights or Material which is owned by a Third Party and includes (but is not limited to) open source software.

User means each of Customer's Personnel, consultants or any individual who is authorised to access or use the Products and/or Services under the Agreement.

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in the Agreement to:
 - (1) the Agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, the Agreement and a reference to the Agreement includes any schedule or attachment;

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- (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of the Agreement.
- (e) A provision of the Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

1.3 Business Days

- (a) If anything under the Agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

1.4 Parties

- (a) If a party consists of more than one person, the Agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

2. Formation, Precedence and Term of Agreement

2.1 Formation of Agreement

- (a) The following are comprised in an Agreement:
 - (1) the Common Business Terms;
 - (2) the applicable Statement of Work or Store Licence; and

- (3) any other document forming part of the Agreement as agreed to in writing by the parties,

together an **Agreement**.

- (b) Where the Common Business Terms are incorporated in an Agreement under clause 2.1, a reference to "Supplier" in the Common Business Terms is read to mean the party identified as the "Supplier" in the Statement of Work or Store Licence (as applicable).
- (c) For the avoidance of doubt, each Agreement operates as a separate agreement and the numbering in the clauses incorporated under clause 2.1(a) are incorporated into the Agreement mutatis mutandis.

2.2 Precedence for Agreement

In the event of any conflict or inconsistency between one or more of the documents making up the Agreement, for interpretation, the following will be the order of precedence (highest precedence to lowest precedence):

- (a) the identification of the "Supplier" and "Supplier's Address Details" in the Statement of Work;
- (b) the other provisions of the Statement of Work; and
- (c) the provisions of this document as incorporated under clause 2.1; and
- (d) unless specified otherwise in the Statement of Work or Store Licence (as applicable), any other document forming part of the Agreement as agreed to in writing by the parties.

2.3 Agreement term

- (a) The Term of each Agreement starts on the date specified in the applicable Statement of Work and remains in force until terminated in accordance with clause 15 or it expires in accordance with the terms of the applicable Statement of Work.
- (b) If a party terminates an Agreement in accordance with clause 15 (Termination), then that termination shall operate with respect to that Agreement, without affecting the continued operation of any remaining agreements (if any).
- (c) If the Statement of Work fixes a Term and, for whatever reason, Supplier is engaged by the Customer to perform the Services or provide Products after expiry of the Term, then the terms and conditions of Agreement will continue to apply to the continuing engagement, with such variations as the circumstances of the continuing engagement require.

3. Products and Services

3.1 Products and Services

Supplier agrees to provide the Products and Services to the Customer in accordance with the terms of the Agreement.

3.2 Relationship

The parties' relationship is one of principal and independent contractor, not one of employer and employee, agency or partnership.

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3.3 Scope

- (a) The parties agree that the scope of the Products and/or Services to be provided to the Customer are as set out in the respective Statement of Work.
- (b) If the Customer wishes to engage Supplier for the provision of any additional Products or Services beyond what is captured under a Statement of Work, it must enter into a separate Statement of Work or other written agreement in relation to those additional Products or Services, otherwise it acknowledges that such additional Products or Services will be charged in accordance with the rates and fees determined by Supplier and disclosed to the Customer by notice in writing.
- (c) Subject to the express requirements agreed within a Statement of Work, Supplier is not subject to the direction or control of the Customer as to the manner in which any Services and/or Products are performed or provided.

3.4 Outside scope

Any services, including but not limited to any services provided on a time basis, provided to Customer by Supplier, which:

- (a) are not expressly included in a Statement of Work;
- (b) are performed as a result of a deficiency in the Customer's hardware, software or infrastructure, or the Customer's failure to adhere to the System Requirements of any Product or Service;
- (c) are performed as a result of the Customer's failure to engage Supplier for Services for any amount of time;
- (d) are performed as a result of undue delay or other deficiency as deemed by Supplier (acting reasonably) on the part of the Customer in respect to the Customer's obligations under the Agreement; or
- (e) which are performed as a necessity due to a change in Law not anticipated by the Agreement,

will be charged to the Customer in accordance with the rates and fees as reasonably determined by Supplier and disclosed to the Customer by notice in writing.

3.5 Statement of Work

- (a) Each Statement of Work:
 - (1) must be agreed in writing by both parties;
 - (2) forms part of an Agreement in the manner required by clause 2.1; and
 - (3) must endeavour to specify the following:
 - (A) a description of the Products or Services to be provided;
 - (B) the number of User(s) and Sites (if applicable);
 - (C) the applicable Fees and applicable payment schedule; and
 - (D) any special terms and conditions not addressed under this document.

- (b) The parties may, by mutual agreement, agree to any variations or revisions to the Statement of Work.

3.6 Subcontractors

- (a) Supplier may subcontract or delegate the performance of all or any part of the of its obligations under the Agreement.
- (b) Supplier is not released from any of its obligations or liabilities under the Agreement and all acts and omissions of a subcontractor are deemed to be acts or omissions of Supplier.
- (c) Supplier is fully responsible for the performance of the Services and the provision of Products under Agreement and all costs incurred with respect to Supplier's subcontractors (including expenses such subcontractors incur in performing that work unless agreed otherwise by the parties in writing).

3.7 Insurance

- (a) Supplier will take out and maintain insurances during the Term of the Agreement:
 - (1) general liability insurance for a maximum of \$5 million per claim and \$10 million in the aggregate;
 - (2) cyber liability and privacy protection insurance of \$2 million per occurrence and \$2 million in the aggregate;
 - (3) professional indemnity insurance for no less than \$5 million per occurrence and \$5 million in the aggregate (such insurance to be maintained for three years following the termination or expiry of the Agreement); and
 - (4) workers compensation insurance, as required by law.
- (b) Supplier will provide the Customer with certificates of currency for the insurance policies required under clause 3.7(a) at the Customer's request, and not more than once in any 12 months.
- (c) Supplier will take commercially reasonable steps to require that any subcontractor performing any of Supplier's obligations under the Agreement procures and maintains for the duration of the Agreement insurance policies of the type and level of cover specified in clause 4.7(a) but will not be liable to the Customer for any failure of subcontractor to do so.

4. General obligations

4.1 Customer's obligations

Customer must (in addition to any other obligations set out in the Statement of Work(s)):

- (a) ensure that its User(s) have the relevant training to enable interaction with Supplier in performing the Services and providing the Products, where applicable;
- (b) provide Supplier with all reasonable information and access to its premises, Sites, computers and network systems as required by Supplier to provide

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the Products or Services in accordance with the terms of the Agreement;

- (c) provide reasonable assistance to Supplier to ensure Services occur expeditiously;
- (d) provide Supplier with a list of Customer staff authorised to provide instructions and approve any Statement of Work or other requests for services subsequent to entering into the Agreement;
- (e) promptly notify Supplier of any event or incident that will, or is likely to, impact on the provision of any Services or the Products (if applicable) or the performance by Supplier of any obligation (including but not limited to Exceptional Circumstances);
- (f) notify Supplier in writing promptly and not fewer than 30 days before any scheduled or proposed upgrades, patches, or changes to, or installation of, Customer software, which may affect Supplier's ability to perform any Services or provide the Products (if applicable);
- (g) depending on the Services or Products provided by Supplier (if any), comply with the backup procedures recommended by Supplier, to the extent such backup procedures are required for the effective provision of such Services; and
- (h) comply with any reasonable direction of Supplier relating to, or in connection with, the Services or Products, in order for Supplier to supply the Services or Products and comply with its obligations under the Agreement.

4.2 Sites and Users

- (a) The Customer must ensure that:
 - (1) its Personnel's access and use of the Products and Services; and
 - (2) the use of the Products and Services by Users and Sites authorised and registered to use the Products and Services,are strictly in accordance with the terms of the Agreement.
- (b) The Customer acknowledges and agrees that:
 - (1) the Customer determines the Sites;
 - (2) the applicable Fees may increase if there is any increase or change in the number of Sites from time to time;
 - (3) the Customer is responsible for its Personnel's, use of the Products and Services, and all access to, security of, and use of the Logins associated with the Customer;
 - (4) the Customer controls each User's and Site's level of access to the Products and Services at all times and can revoke or change a User's or Site's access, or level of access, at any time for any reason, in which case that person or entity will cease to be a User or Site, or will have that different level of access, as the case may be.

4.3 Third party dealings

Customer agrees to use the Products for its sole benefit and must not redistribute the Services or the Products to a Third Party unless otherwise expressly included in a Statement of Work.

4.4 Limitation on Supplier performance

Customer acknowledges and agrees that:

- (a) Supplier's ability, and obligation, to provide the Products and perform the Services is subject to Customer complying with its obligations under clause 4.1 and any other limitation or exclusion set out in this document or the applicable Statement of Work;
- (b) unless otherwise expressly included in the Statement of Work, the cost of third party application support consumables, software, network upgrades and any associated products or services are outside the scope of the Agreement and are the full responsibility of the Customer;
- (c) unless otherwise expressly included in a Statement of Work, the provision of Support Services are outside the scope of the Agreement;
- (d) unless otherwise expressly included in a Statement of Work, Supplier is under no obligation to backup or otherwise retain Customer Data or data or software not related to the Customer's use of the Products or Services; and
- (e) Supplier's obligations under the Agreement do not extend to delivering the Products or Services compatible with new platforms or operating environments not specifically detailed in a Statement of Work or other document forming part of the Agreement as agreed to in writing by the parties (including new versions or releases of operating systems).

5. Fees and payment

5.1 Payment of Fees (variable Fees)

Subject to receipt of Supplier's valid tax invoice, Customer will pay the variable Fees payable under the Agreement on a monthly basis by Electronic Funds Transfer to Supplier's nominated bank account.

5.2 Payment of Fees (recurring Fees)

- (a) Customer agrees that Supplier will debit recurring Fees on a monthly recurring basis from the account nominated in Customer's Bank Details in the Statement of Work (or as otherwise notified by Customer under clause 5.3(a)), and Customer authorises Supplier to draw the Fees in this manner and frequency.
- (b) Supplier will debit (draw) the Fees under this clause 5.2 on an agreed day as may be detailed in the Statement of Work, or if none detailed then on the last Business day of each calendar month.
- (c) Customer warrants that the account details and authorisation provided in the Statement of Work(s) are accurate and reflect the account signing instruction held by the relevant financial institution with which the account is held.

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5.3 Availability of Funds for direct debit

- (a) Customer will provide Supplier with 10 Business Days' prior notice of any changes to Customer's nominated account details.
- (b) Where three or more attempts to debit Customer's account fail, for whatever reason, Supplier may require Customer to:
 - (1) prepay and maintain on deposit with Supplier funds equal to 90 days of recurring fees; or
 - (2) provide alternative direct debit account details.

5.4 Fee reviews (Changes for CPI)

Supplier may by written notice to the Customer vary the Fees as provided in a Statement of Work once each year of the Agreement in line with movements in CPI.

5.5 Fee reviews (material change in costs)

If:

- (a) Supplier's rights, or ability to perform its obligations under the Agreement, are or may be adversely affected by; or
- (b) Supplier's cost of providing any Service in accordance with the Agreement may materially increase because of,

a change in:

- (c) Customer's policies or directions to the Supplier;
- (d) Law, including but not limited to a policy or directive of a Government Body;
- (e) costs of obtaining or providing third party software licences or services which may be required for delivery of the Products or Services such as but not limited to: MIMS or AusDI drug interactions licencing, or licences of or access to eRx, Active Script List, Pharmx or MVX; or
- (f) other relevant circumstances,

then Supplier may notify the Customer and the parties will meet as soon as practicable (and within 10 Business Days) to negotiate such amendments to the Agreement as are necessary or appropriate to:

- (g) address Supplier's reasonable concerns in respect of the change;
- (h) ensure the Agreement does not and will not require either party to breach the applicable Law, condition, directive, standard, code, notice, exemption, determination, rules, or undertaking; and
- (i) review the Fees to address any material change in cost to Supplier of providing the Products or Services in accordance with the Agreement arising from the relevant event.

6. Suspension

6.1 Suspension

Subject to clause 6.2, Supplier may temporarily suspend (in part or whole) the provision of the Products or Services to Customer if:

- (a) Supplier is required by Law to do so;
- (b) an event of Exceptional Circumstances occurs, which affects, or may affect, Supplier's ability to provide the Products and/or Services;
- (c) such suspension is due to the failure by Customer to pay the variable Fees as per clause 5.1 and the Supplier has provided written notification of the failure to the Customer under clause 6.2 and 30 days have elapsed from the due date for payment;
- (d) such suspension is due to the failure by Customer to pay the recurring Fees as per clause 5.2 and the Supplier has provided written notification of the failure to the Customer under clause 6.2; or
- (e) the Customer is in breach of the Agreement and has not remediated the breach within the time required by the Supplier's written notice under clause 6.2(d).

6.2 Notice of suspension

The Supplier will give to the Customer written notice of suspension under clause 6.1:

- (a) promptly after becoming aware of the legal requirement to suspend provision of the Products or Services;
- (b) promptly after becoming aware that an event of Exceptional Circumstances has or may occur which affects, or may affect, Supplier's ability to provide the Products and/or Services;
- (c) where the suspension is due to Customer's failure to pay the Fees per clause 5—no fewer than 5 Business Days before the date on which suspension would occur; or
- (d) where the Customer is in breach of the Agreement—a reasonable period before the date on which the suspension would occur. The Supplier's notice under this clause 6.2(d) will identify the breach and require it to be remedied within the timeframe given in the notice (such timeframe to be not more than the number of days provided in clause 15.1).

6.3 Effect of suspension

Suspension in accordance with clause 6.1 will not affect any rights or obligations (including the obligation to pay the Fees) which accrue prior to, or after, suspension of Customer's obligations under the Agreement.

7. Intellectual Property Rights

7.1 Background Intellectual Property Rights

Notwithstanding anything to the contrary in the Agreement, each party retains ownership to its Background Intellectual Property Rights.

7.2 Customer IP

- (a) No rights of ownership to the Customer IP are transferred under the Agreement.
- (b) Where the nature of the specific Products or Services provided to Customer under the Agreement requires, Customer grants to Supplier a

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non-exclusive, non-transferable licence to use its Intellectual Property Rights in the Customer IP during the Term, but only for the purpose of Supplier providing the Products or Services to the Customer.

7.3 Supplier IP

- (a) No rights of ownership to the Supplier IP are transferred under the Agreement.
- (b) Supplier grants Customer a non-exclusive, non-transferable, irrevocable (except pursuant to clause 15), royalty-free licence to the Intellectual Property Rights in the Supplier IP, but only to the extent necessary for the Customer to use any Services or Products embodying such rights during the Term.

7.4 Provision and ownership of New IP

- (a) Upon its creation, all New IP will be owned by, vest in, and (to the extent required) be assigned to, Supplier unless specified otherwise in the applicable Statement of Work.
- (b) Supplier acknowledges that any Customer Material provided by Customer to Supplier to assist in the development of any New IP, and all Intellectual Property Rights in such Customer Material, will remain the property of Customer or its licensors.

7.5 Customer Data

All Customer Data remains owned by the Customer.

7.6 Prohibited activities

Each party must not do or permit or omit to do any act which infringes the Intellectual Property Rights of the other party (or its licensors).

7.7 Notification of infringement claim

The Customer must notify the Supplier within 5 Business Days if it becomes aware of:

- (a) any actual or suspected infringement by a third party of a party's Intellectual Property Rights; or
- (b) any actual or threatened Claim by a third party that its Intellectual Property Rights have or will be infringed in connection with the Agreement.

7.8 Publicity

Supplier may make public announcements regarding the existence of the Agreement and to identify Customer as a client or customer of Supplier in advertising or marketing Materials with the Customer's prior written consent.

8. Third Party software licences

8.1 Third Party Content

The Customer acknowledges and agrees that:

- (a) Supplier can (in its sole discretion) incorporate Third Party Content into the Products and Services, unless otherwise expressly agreed to by the parties in writing; and
- (b) Third Party Content may be subject to licences or other terms and conditions provided by the relevant Third Party.

8.2 Compliance

(a) Customer must comply with:

- (1) the licence terms of all Supplier software; and
- (2) the licence terms of Third Party Content (where notified of the terms by the Supplier)

installed or used in the provision of the Products or Services.

- (b) Customer must not do or permit to do any act that breaches, or causes Supplier to breach, a software licence installed or used in the provision of the Products or Services.

9. Confidential Information

9.1 Disclosure

- (a) A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) Each party must take all reasonable steps to ensure that its employees and agents, any sub-contractors, or persons otherwise engaged by either party, do not make public or disclose the other party's Confidential Information.
- (c) A party is not in breach of this clause 9.1 in circumstance where it is legally compelled to disclose the other party's Confidential Information.
- (d) Notwithstanding any other provision of this clause 9.1, the parties may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

9.2 Return of Confidential Information

Each party must on demand, return to the other party any Confidential Information supplied by the other party in connection with the Agreement.

9.3 Security and unauthorised access

- (a) Each party must ensure that all information and Materials of the other party (or its agents or contractors) in the custody of that party for purposes connected with the Agreement are protected at all times from unauthorised access or use by a third party, and from misuse, damage or destruction by any person.
- (b) Each party must ensure compliance with all reasonable security regulations, procedures or directions as may be given by the other party from time to time relating to the Confidential Information or access to the other party's Confidential Information.

9.4 Survival and indemnity

- (a) This clause survives the termination of the Agreement.
- (b) Customer agrees to indemnify, and keep indemnified, Supplier in relation to any and all Loss

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it incurs as a result of Customer's breach of this clause 9.

- (c) Supplier agrees to indemnify, and keep indemnified, Customer in relation to any and all Loss it incurs as a result of Supplier's breach of this clause 9.

10. Privacy Law; Data security

10.1 Compliance with Privacy Laws

- (a) Each party agrees to comply with all applicable Privacy Laws in relation to any and all Personal Information that it collects, uses or discloses in connection with the Agreement.
- (b) Each party will comply any reasonable and lawful directions given by the other party in relation to any Personal Information received from that other party.
- (c) Supplier will take all reasonable steps to protect Personal Information that is provided to it under or in connection with the Services against misuse, interference and loss, and from unauthorised access, modification or disclosure.

10.2 Data security

- (a) Supplier will, in relation to its own IT environment or software development practices:
 - (1) segment Customer Data from other data held by Supplier in line with industry practice so that the Customer Data remains physically and logically separate from any other data of a third person;
 - (2) maintain documented processes in line with industry practice and applicable legislative requirements:
 - (A) user access control;
 - (B) onboarding and offboarding procedures for Personnel;
 - (C) information security awareness training to Supplier's Personnel;
 - (D) information security threat monitoring alerts and logs;
 - (E) patch and vulnerability management process;
 - (F) data breach procedures, including notification of a data breach to Customer when there is unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information, this is likely to result in serious harm to one or more individuals, and the organisation has not been able to prevent the likely risk of serious harm with remedial action;
 - (G) disaster recovery response and escalation procedures;

- (H) store all Customer Data in Australian regions unless agreed otherwise with Customer; and
- (I) use multifactor authentication on all business-critical systems.

- (b) Where Supplier downloads Customer Data for any reason, Supplier undertakes to delete the Customer Data within seven (7) days of completion of the task for which the Customer Data was downloaded.

10.3 Customer Data Incidents

Supplier will:

- (a) promptly notify the Customer if it becomes aware of any suspected or actual unauthorised access to, or unauthorised disclosure of, Customer Data under its control by virtue of the Agreement (**Customer Data Incident**);
- (b) conduct or assist Customer in conducting a reasonable and expeditious assessment of a Customer Data Incident;
- (c) take all necessary steps to remediate the Customer Data Incident (including discussing proposed remediation steps with the Customer) and to prevent further unauthorised access to, use or disclosure of the Customer Data;
- (d) comply with applicable mandatory data breach reporting obligations in relation to the Customer Data Incident.

11. Liability

11.1 Exclusion of liability

- (a) To the extent permitted by Law, in no event will a party be Liable to the other party for Consequential Loss, even if the other party has been made aware of the possibility of such Consequential Loss prior to entering into the Agreement.
- (b) The Customer acknowledges and agrees that to the extent a Product includes software, that software is never error or defect free, and that the mere presence of defects or errors in software will not constitute a breach of Supplier's obligations under the Agreement.
- (c) The Customer acknowledges and agrees that the effectiveness of any application, methodology or process used by Supplier in delivering the Products and Services may be dependent on external factors controlled by Third Parties, and any errors, incompatibilities or adverse effects that occur as a result of Third Party actions including but not limited to:
 - (1) changes in algorithms, processes, upgrades, updates, new releases and patches; or
 - (2) any other changes to variables relied on by Supplier to deliver the Products or Services,

do not constitute a breach of Supplier's obligations under the Agreement.

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(d) Unless otherwise specified, neither party is liable to Third Parties regarding, or arising out of or in connection with, the Agreement.

11.2 Implied terms

(a) To the full extent permitted by Law, any term which would otherwise be implied into the Agreement is excluded.

(b) In the event any Law implies or imposes terms into the Agreement which cannot be lawfully excluded, such terms will apply, save that the liability of Supplier for breach of any such term will be limited in accordance with clause 11.3.

11.3 Limitation of liability

(a) Re-performance

Subject to the cap in clause 11.3(b), to the extent Supplier is found Liable in connection with the Agreement, its Liability shall be limited (at the option of Supplier) to any one or more of the following:

- (1) re-supplying Products or Services to which the Liability relates or the supply of equivalent products and/or services; or
- (2) reimbursing Customer for Products or Services to which the Liability relates.

(b) Liability cap

If Supplier is Liable in connection with the Agreement (whether in contract, tort, or under statute), then irrespective of anything else in the Agreement, Supplier's cumulative Liability in the aggregate (to the fullest extent permitted by Law) shall in no event exceed the Liability Limit.

12. Indemnity

12.1 Customer indemnity

Customer indemnifies, and will keep indemnified, Supplier and Supplier's Personnel against any:

- (a) Claims against Supplier; or
- (b) Loss suffered by Supplier,

arising from:

- (c) any fraud or wilful misconduct of the Customer or its Personnel under or in connection with the Agreement;
- (d) the negligent acts or omissions of Customer or its Personnel under or in connection with the Agreement; or
- (e) Customer's breach of clause 8.2 in relation to Third Party Content terms,

provided that the Customer's obligation to indemnify will be reduced to the extent that the Supplier or Supplier's Personnel caused or contributed to the Claim or Loss.

12.2 Supplier indemnity

Supplier indemnifies, and will keep indemnified, Customer (and Customer's Personnel) against any:

- (a) Claims (including reasonable attorney's fees and disbursements) made against the Customer; or

(b) Loss suffered by the Customer, arising from or in connection with:

- (c) any fraud or wilful misconduct of the Supplier or its Personnel under or in connection with the Agreement;
- (d) the negligent acts or omissions of Supplier or its Personnel under or in connection with the Agreement; or
- (e) Supplier's alleged infringement or misappropriation of a third party's Intellectual Property Rights subsisting in Australia,

provided that the Supplier's obligation to indemnify will be reduced to the extent that the Customer or Customer's Personnel caused or contributed to the Claim or Loss.

13. Warranty

13.1 Supplier warranty

(a) Subject to clause 13.1(b), Supplier warrants to the Customer:

- (1) that to the extent (if any) the Agreement requires that the Products or Services comply with the Specifications, Supplier's provision of the Products or Services (as applicable) will conform to those Specifications;
- (2) to the best of its knowledge and belief, the provisions of the Products and Services provided to Customer and its use by Customer in accordance with the applicable Statement of Work will not infringe the rights of any third party (including any Intellectual Property Right) in Australia or breach any applicable Law;
- (3) that the Supplier is licensed or otherwise entitled to use all third party software (if any) which has been used in the development of the Products;
- (4) Supplier will use its best endeavours to resolve software bugs or issues that have been referred to Supplier in accordance with the Supplier's support obligations under the applicable Statement of Work; and
- (5) will take all reasonable steps solely within Supplier's sphere of control to adequately protect Customer Data against unauthorised access and viruses and other malicious or destructive code;
- (6) that the Supplier's Personnel are appropriately qualified, skilled, experienced and trained for the tasks they are to perform;
- (7) that Supplier's Personnel will act at all times in a fit and proper manner during the performance of the Services at a Site;
- (8) that it has the full right and title to enter into the Agreement and to grant the rights it sets out to the Customer; and

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- (9) that the Products will be provided and any Services performed with due care and diligence.
- (b) Supplier makes no warranty in relation to the compatibility of any Products or Services it provides with the Customer's infrastructure, IT systems, websites, webpages, or web content including add-ons and widgets.

13.2 Customer warranty

Customer warrants to Supplier:

- (a) that it has full right and title to enter into the Agreement and to grant the rights it sets out to Supplier;
- (b) that no information has been withheld from Supplier that may affect the Supplier's decision to enter into the Agreement; and
- (c) that it has satisfied itself of the content of the Agreement and, if necessary, obtained independent advice from a relevant expert to confirm same before entering into it.

14. Emergency action

14.1 Damage by Customer resources

- (a) Should Supplier form the opinion that any resources (including any application, system, network or other resource or asset within Customer's or its Sites' computing environment) owned or operated by the Customer may interfere with, damage or alter the usual function or operation of any Supplier's Products or Services or Third Party software or products, Supplier may do anything within its power and control as necessary to avoid such damage, alteration or interference from arising or cause the damaging resources to cease operation.
- (b) Where reasonably practicable, Supplier will notify Customer in writing before acting under clause 14.1(a) but will not be liable to Customer or any third party for any failure to do so. Supplier's written notice will identify and describe the issue and state what remedial action is required (or what remedial action was required if the written notice is being provided after Customer has acted because it was not practicable for Supplier to provide the written notice beforehand).
- (c) Customer will promptly pay or reimburse Supplier for any Loss (excluding any Consequential Loss) suffered by Supplier (acting reasonably) in taking action under this clause 14.

15. Termination

15.1 Termination of Agreement

- (a) Either party may terminate the Agreement immediately by written notice upon the occurrence of one of the following events:
 - (1) if the other party is in breach of the Agreement and the breach is incapable of remedy;

- (2) if the other party is in breach of the Agreement and that other party has failed to remedy that breach within 30 days (or such longer time as the parties may mutually agree) of a written notice to it from the first-mentioned party, specifying the breach and requiring it to be remedied; or
- (3) an Insolvency Event occurs in respect of the other party.

- (b) For the avoidance of doubt, where a particular Agreement is terminated, all other remaining Agreements are to remain on foot.

15.2 No prejudice of rights

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

15.3 Survival

The following clauses survive termination of the Agreement: Clause 5.5 (Intellectual Property Rights), Clause 7.8 (Third Party Software), Clause 9 (Confidentiality), Clause 10 (Liability), Clause 12 (Indemnity), this clause 15.3, Clause 16 (Consequences of Termination), Clause 21 (Dispute Resolution), and Clause 22.10 (Indemnities).

16. Consequences of Termination

16.1 General consequences

Upon termination or expiration of an Agreement:

- (a) except as may be required by clause 17, Supplier will cease performing the Services and providing Products;
- (b) all money due by Customer to Supplier under any Agreement must be paid in full;
- (c) except to the extent otherwise specified to survive termination on the relevant Agreement or provided under clause 17 (Transition out) below, the Customer's right and licence to use the Product or a Service the subject of the Agreement terminates and is revoked;
- (d) each party must promptly (and within 10 Business Days) return to the other party, or (if requested by the other party) destroy, all Confidential Information belonging to the other party;
- (e) the Customer must promptly (and within 10 Business Days) return to Supplier or (if requested by Supplier) destroy, all materials incorporating Supplier IP or New IP in its possession or control;
- (f) subject to any longer retention period as required or authorised by Law, Supplier will destroy all Customer Data (if any, and to the extent within its possession or control) which holds under the Agreement, and will certify the destruction in writing to Customer within 60 days of the effective date of termination or expiry of Agreement;
- (g) Supplier acknowledges and agrees that Customer will be supplied a data extract to preserve POS/trading or dispensing history (as applicable); and

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- (h) the Customer must grant Supplier or its authorised representatives or agents, the right of reasonable access to any of its records, sites and Materials that are related to the Agreement.

17. Transition out

17.1 Application

This clause 17 applies if, by not fewer than 3 months prior to the effective expiry or termination of the Agreement, Customer gives a written notice to Supplier that Customer intends to transition all or part of the Products or Services to Customer or its nominee upon such termination or expiration (a **Transition Out Notice**).

17.2 Transition Out Services

If Customer gives a Transition Out Notice to Supplier in accordance with clause 17.1, and provided that Customer is not in breach of the Agreement (or any other agreement with Supplier), the following provisions will apply:

- (a) The Transition Out Notice will not affect Customer's obligations under clause 5 (Payment) or any other obligations to pay money to Supplier under this or any other Agreement;
- (b) Within 60 days of receipt of the Transition Out Notice, Supplier will provide Customer with a means of downloading or obtaining Customer Data stored on any Supplier software making up the Products, such means being at Supplier's absolute discretion; and
- (c) Supplier will provide such additional assistance as is reasonably necessary to facilitate an orderly transition of the applicable Products or Services to Customer or Customer's replacement services provider, during a time period to be agreed between Customer and Supplier and not to exceed 3 months (unless otherwise agreed by the parties in writing) (**Transition Out Period**); and
- (d) Subject to clause 17.4, during the Transition Out Period, Supplier agrees to answer questions and provide such other information as may be reasonably sought in relation to the transition by Customer or Customer's nominee,

together, (b), (c) and (d) are the **Transition Out Services**.

17.3 Fees for Transition Out Services

Customer acknowledges and agrees that the fees for the Transition Out Services are additional to the Fees payable for the Products or Services during the Transition Out Period, and will be provided pursuant to the rates agreed between the parties or (in absence of such agreement) at the Supplier's standards rates and charges), and that such fees are payable to Supplier under clause 5.1.

17.4 Limitation on information sharing

Nothing in this clause 17 requires Supplier to disclose any proprietary or confidential information of Supplier, including its systems architecture or configurations, or system documentation, in the performance of the Transition Out Services.

18. Force Majeure

18.1 Suspension of obligations

If a party (**Affected Party**):

- (a) is prevented from, or delayed in, performance of an obligation (other than an obligation of the Customer to pay money) by an event of Exceptional Circumstance; and
- (b) the Affected Party, as soon as possible after the event of Exceptional Circumstance notifies the other party providing particulars of:
- (1) the event of Exceptional Circumstance;
 - (2) the anticipated period of delay; and
 - (3) the action (if any action is reasonably possible) the Affected Party intends to take to mitigate the effect of the delay,

then those obligations of the Affected Party are suspended for the duration of the event of Exceptional Circumstance.

18.2 Obligations on other party

The party which is not the Affected Party must use all reasonable endeavours to remove or mitigate its Loss arising from, and the effects of, the event of Exceptional Circumstance.

19. Goods and Services Tax

19.1 GST exclusive

Unless expressly stated to the contrary, all amounts expressed in the Agreement are exclusive of GST.

19.2 Recipient to pay Supplier

- (a) If a party (the **Supplier**) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (the Recipient) under the Agreement, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.
- (b) The Recipient must pay the amount referred to in clause 19.2(a) and any interests, penalties, fines or expenses relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

19.3 Tax Invoice

If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by clause 19.2.

20. Governing law and jurisdiction

20.1 Governing law

The Agreement is governed by and construed in accordance with the laws of Queensland.

20.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect

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to any proceedings which may be brought at any time relating to the Agreement; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 20.2(a).

21. Dispute Resolution

21.1 Dispute Resolution Process

- (a) Subject to this clause 21.1, a party claiming that a dispute or disagreement has arisen out of, or in connection with, the Agreement (**Dispute**) will, within 5 Business Days of the Dispute arising, give written notice to the other party providing particulars of the Dispute (**Notice of Dispute**) and designating which of its Authorised Officers has authority to settle the Dispute.
- (b) The Parties must, at such location as agreed between the Parties in writing within 5 Business Days of receipt of the Notice of Dispute in accordance with subclause 21.1(a), seek to resolve the Dispute amicably.
- (c) If the Dispute has not been resolved within 10 Business Days (or such other time as mutually agreed between the parties) of receipt of the Notice of Dispute in accordance with subclause 21.1(a), the Parties agree to refer the dispute to mediation administered by a mediator recommended and accredited by Resolution Institute (or its successor in title, as the case may be) in accordance with its professional mediation rules.
- (d) If the Dispute has not been resolved within 20 Business Days of receipt of the Notice of Dispute in accordance with subclause 21.1(a) then (on the basis that the exhaustion of the dispute resolution process set out in this clause 21.1 is a condition precedent to the right of either party to commence court proceedings in relation to the Dispute) the party who first served the Notice of Dispute may commence litigation.
- (e) Any mediation discussions and proceedings undertaken in accordance with clause 21.1 constitute Confidential Information and must take place in Brisbane, Australia (or such other location as the Parties may agree between themselves in writing).
- (f) The parties agree that the mediator's fee shall be split equally between the parties and that each party shall be responsible for its costs, legal and otherwise, in relation to the mediation.
- (g) No party shall commence legal proceedings without first undergoing the process noted in clause 21.1(a)-(f) above.

21.2 Urgent relief

Despite the condition precedent referred to in subclause 21.1(c), nothing in the Agreement shall prevent either party seeking injunctive or urgent declaratory relief for any matter (including to protect Confidential Information) arising out of, or in connection with, the Agreement.

21.3 Obligations continue

Despite the existence of a Dispute, each party will at all times continue to fulfil all obligations under the Agreement, including in respect of confidentiality and payment of Fees.

22. Miscellaneous

22.1 Notices

The parties may give each other notice under this agreement by email or other electronic communication, or by post, at the address details as specified in the Reference Schedule to the applicable Statement of Work or otherwise notified to the other party from time to time.

22.2 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to the Agreement will not prevent any other exercise of that right or the exercise of any other right.

22.3 Assignment

- (a) Assignment by Supplier

Supplier can assign its obligations in the Agreement by providing the Customer with 30 days' prior written notice of such assignment.

- (b) Assignment by Customer

The Customer must not assign, transfer or novate all or any part of its rights or obligations under or relating to the Agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of Supplier. Supplier may withhold its consent in its sole discretion.

- (c) Change of Control

For the purposes of this clause 22.3, a Change of Control in respect of the Customer will be deemed to be an assignment enlivening the operation of clause 22.3(b).

22.4 Severability

If a provision of the Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of the Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

22.5 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to the Agreement and the transactions contemplated by it.

22.6 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of the Agreement including legal costs.

22.7 Variation

- (a) Subject to clause 22.7(b), all variations to the terms of the Agreement must be agreed between the parties in writing.
- (b) Provided that the Supplier's proposed amendments would not materially adversely affect the Customer's rights under the Agreement, the Supplier may vary these Common Business Terms by written notice to the Customer. The Common

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Business Terms as varied will take effect on the date notified to Customer (but not fewer than 60 days after Supplier's notice under this clause).

22.8 **Waiver**

- (a) A party's waiver of a right under or relating to the Agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

22.9 **Counterparts**

The Agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of the Agreement may deliver it to, or exchange it with, another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party.

22.10 **Indemnities**

Subject to any other provision of the Agreement, the indemnities in the Agreement are continuing obligations, independent from the other obligations of the parties under the Agreement and continue after the Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under the Agreement.

22.11 **Whole agreement**

The Agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of the Agreement; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.