TERMS AND CONDITIONS

1. Definitions

Acceptance Button means the GUI button on the Acceptance Pop-Up that denotes acceptance of the Agreement. The exact text of the button may, but is not limited to, the words "I Accept" or "Continue".

Acceptance Pop-Up means a GUI that overlays above the Software and imposes upon the intended use of the Software in a way that requires acceptance before commencing or continuing use of the Software.

Affiliates include any entity that directly or indirectly controls, is controlled by, is under common control with or is otherwise in the same group of entities as SupportAbility.

Agreement means those documents set out in clause 3.2 and any other documents expressly stated as being included.

Business Day means a day other than a day falling on a weekend or proclaimed public holiday in the Jurisdiction.

Cancellation Fee means a fee payable by the Customer to SupportAbility for the repayment of costs reasonably incurred in the supply of Software or Software Services by SupportAbility to the Customer according to the Agreement.

Claim means, any claim made (whether in the form of an action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action, or right of set-off of any kind) under or in connection with the Agreement its subject matter, however it arises whether:

(a)   it is present, unascertained, immediate, future, or contingent;

(b)   it is based in contract (including under any warranty or indemnity or any other breach, actual or anticipatory), tort, equity, in restitution, negligence or any other tort, strict liability, under statute, or otherwise at all; or

(c)   it involves a third-party or a Party.

Customer Data mean any data that is inputted or generated by end users by using the Software.

Customer Input means suggestions, enhancement requests, recommendations or other feedback provided by the Customer, its employees, contractors, and agents relating to the operation or functionality of the Software.

Documentation means hard-copy or electronically reproducible technical and/or user documents associated with the use of the Software, or where applicable, Hardware, and provided by SupportAbility or otherwise agreed in writing between the Parties.

Enhancements mean changes or improvements to the Software that extend beyond the original scope or specifications as set out in the Documentation.

Fair Use Policy means SupportAbility's Fair Use Policy as provided in Schedule A and updated as notified to the Customer from time to time.

Fees mean the applicable payment annual rates specified in the Order Form or as otherwise notified to the Customer in writing prior to the time of order for the Software and Software Services and any subsequent year rates as informed by SupportAbility no less than 45 days prior to the annual anniversary of the Agreement.

Force Majeure Event means any circumstance not within a Party's reasonable control, including: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iii) nuclear, chemical or biological contamination or sonic boom; (iv) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, or quota or prohibition,, restrictions on movement; (v) collapse of buildings, fire, explosion or accident; and (vi) any labour or trade dispute, strikes, industrial action or lockouts (other than, in each case, by the Party seeking to rely on this clause, or its Affiliates).

GUI means the graphical user interface of the Software.

IP Rights mean all intellectual property rights throughout the world (existing before the date of the Agreement and arising as part of the Agreement), including any copyright, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name or any other proprietary right, and any right of registration of such rights.

Implementation Activities mean any activities required to implement, install, or otherwise setup the Software with the Customer's existing infrastructure.

Jurisdiction means Queensland, Australia.

Law means any and all applicable laws as adjudicated by a court in the Jurisdiction.

Late Payment Fee means an additional fee on any unpaid balances owed under the Fees from the due date until paid (whether before or after judgment) equal to the lesser of 3% (accrued monthly), or the maximum amount allowable at Law.

Launch Date means the date on which the Customer first uses the Software to process its daily business relative to the functions that the Software automates.

Licence Allocation means the quantity or extent of a license to the Software or particular modules, as specified in the Order Form. The Order Form may specify that the license is measured by number of Permitted Users, number of Workstations, specific Customer Sites, or another form of classification.

Minimum System Requirements mean the minimum system requirements set forth in the Order Form, Documentation, and any further requirements provided by SupportAbility.

New Software Feature means any Enhancement, feature, or module for the Software that SupportAbility may or may not market or license (at SupportAbility's sole and absolute discretion) to Customer for additional fees, separately from Updates.

Operating System means the low-level software that controls the operation of a computer, and includes any third-party software required to be installed to properly support the operation of the Software.

Opt-Out Period means the 30 day period that a Party must observe to give notice of non-renewal of a Licence Term under clause 15.2.

Order Form means the applicable form titled "Order" or "Order Form" as provided by SupportAbility to the Customer, which may include multiple Order Forms. To the extent that there is any inconsistency between Order Forms relating to the same site, the most recent Order Form will have priority.

Party means a party to the Agreement.

Permitted Users mean the Customer's Representatives, subject to the limitations of the Licence Allocation specified in the Order Form.

Software Services mean software-related services provided by SupportAbility to the Customer, and includes Technical Support, Implementation Activities, documentation management, and ongoing maintenance.

Software means SupportAbility's software listed in the Order Form, including: any digital software product licenced by SupportAbility to the Customer; and any Updates made to the digital software.

Representatives mean staff, personnel, and advisors, and includes the employees, contractors, subcontractors, consultants, and in the sole case of SupportAbility, Affiliates.

Standard Rates mean SupportAbility's standard and commercially reasonable payment rates at the time of the relevant incident, request, or charge.

Technical Support means any support services required to assist with the Customer's ongoing use of the Software.

Third-Party Materials mean any software which is developed by a third-party and not SupportAbility but may be provided by SupportAbility in support of the Software.

Taxes mean any applicable government taxes applicable to the Software or Software Services, and includes the Goods and Services Tax in Australia.

Updates mean the latest modifications or improvements to the Software, including corrections of bugs, issues or errors, which relate to the operating performance but do not change the basic functionality of the Software. Updates do not include New Software Features.

2. Interpretation

2.1. Unless the context otherwise requires, words in the singular will include the plural, and in the plural will include the singular.

2.2. No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of the Agreement or any part of it.

2.3. A reference to a statute or statutory provision will include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.

2.4. Any words following the terms "including", "include", "in particular", "such as", or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase, or term preceding those terms.

2.5. Any words following the term "means" will be construed as exhaustive and will limit the sense of the words, description, definition, phrase, or term preceding those terms.

3. Acceptance & Precedence

3.1. The Customer acknowledges and agrees that any of the following constitutes acceptance of the terms of the Agreement:

(a) the Customer signs an Order Form;

(b) SupportAbility receives instructions from the Customer for the supply of the Software;

(c) the Customer accepts, uses, or takes into their possession, any or all of the Software, supplied by SupportAbility; or

(d) where the Agreement has appeared as an Acceptance Pop-Up and the Customer (or an employee of the Customer) has clicked the Acceptance Button on that Acceptance Pop-Up.

3.2. The Agreement is comprised of these terms and conditions, the Order Form, the Documentation; and the Fair Use Policy.

3.3. To the extent there is any conflict between the documents listed in clause 3.2, unless expressly agreed between the parties in writing, these terms and conditions will prevail, followed by the Order Form, then the Documentation, and the Fair Use Policy.

4. Implementation

4.1. If indicated on the Order Form, SupportAbility will provide Software Services for the Customer.

4.2. Unless stated otherwise in the Order Form, the Software Services will be held during business hours on Business Days at a time agreed between the Parties (a *Service Appointment*). If the Customer needs to reschedule a confirmed Service Appointment, SupportAbility will make

commercially reasonable efforts to accommodate the Customer's request.

4.3. If the Customer cancels a scheduled and confirmed Service Appointment within 15 Business Days of the scheduled time, the Customer will be liable to pay a Cancellation Fee for SupportAbility's reasonably incurred losses.

4.4. If the Customer requires SupportAbility to provide Software Services at the Customer's site, all travel and related expenses will be reimbursed by the Customer to SupportAbility. Such travel and related expenses will be specified in the Order Form, or otherwise notified to the Customer in advance and not incurred by SupportAbility unless approved by the Customer in writing.

4.5. Unless otherwise specified in the Order Form the Customer must complete online training or Software maintenance within 6 months of the Customer's receipt of the Software.

5. Grant of Licence

5.1. Permitted Use

(a) SupportAbility grants to the Customer a limited, non-exclusive, non-transferrable licence to use the Software for its own internal business operations during the Licence Term (as defined in the Order Form) (the *Purpose*), subject to the Agreement. The Customer must use and must require all Permitted Users to use the Software for the Permitted Purpose and in accordance with the Fair Use Policy. The Customer is responsible for Permitted Users' compliance.

(b) The Customer acknowledges that the Software may require activation by way of an activation key on initial installation and from time to time based on certain events, including, without limitation, Updates, and changes to hardware on which the Software is installed. The activation keys and internal controls in the Software do not necessarily restrict usage to the Licence Allocation, and thus further controls may be required on the Customer's behalf to ensure compliance.

5.2. Ownership of IP Rights

(a) SupportAbility retains all title and IP Rights in and to the Software, the Documentation, and all Enhancements, and the Customer is only licensing the right to use the Software. No sale or other transfer of title, ownership, or any other proprietary interest of any kind to the Software or Documentation is contemplated by the Agreement.

(b) Unless indicated otherwise in the Order Form, the Customer agrees that SupportAbility may use its trademark, logo, and trade name within SupportAbility's promotional and marketing materials.

5.3. Customer Input

(a) The Customer and its Representatives and Permitted Users may, at any time, provide ideas, suggestions, enhancement requests, recommendations, usage data, statistical feedback, or other feedback, relating to the Software (*Customer Input*). The Customer is not required to provide the Customer Input, however the Customer acknowledges that usage of the Software may result in data capturing processes which obtain Customer Input without further action by the Customer.

(b) If SupportAbility uses Customer Input to create New Software Features, Updates, or Documentation, the Customer grants SupportAbility a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual licence to use the Customer Input in any way. SupportAbility is not required to make the Customer Input an Update.

6. SupportAbility's Responsibilities

6.1. Interfaces

(a) Software interfaces to third-party vendor systems may be available, as indicated in the Documentation (*Interfaces*). To the extent that Interfaces are available, SupportAbility will install them as agreed between the Parties on the Order Form.

(b) The Customer must:

(i) act as liaison between SupportAbility and any third-party vendors with which the Software will interface; and

(ii) have its third-party vendor available at the time SupportAbility is scheduled to install the Interface in order to assist with the installation, as required by SupportAbility.

(c) Interfaces may be subject to separate licensing requirements and the Customer has the sole obligation to obtain, any and all such licenses.

6.2. New Software Feature Requests

The Agreement does not include any programming services for New Software Features or improvements to the Software that extends beyond the original scope or specifications as set out in the Documentation. At Supportability's discretion, the Parties will enter into a custom development agreement for any New Software Features.

6.3. Technical Support

(a) SupportAbility will provide Technical Support subject to the following conditions:

(i) the Customer uses the Software only in accordance with the Agreement;

(ii) provision of adequate (in SupportAbility's sole opinion) Implementation Activities;

(iii) the Software, and the equipment on which it operates, is operated in accordance with the Documentation;

(iv) the equipment on which the Software operates meets Minimum System Requirements and is in good operating condition;

(v) the Customer:

A has paid all undisputed invoices for Fees that are due and payable;

B has not modified or altered the Software;

C has not authorised independent interfacing of third-party components to the Software, or relevant database, particularly components that write to the database, without the express prior written consent of SupportAbility;

D implements all Updates on a timely basis and no later than 90 days subsequent to the availability of the Updates;

E obtains, maintains, and updates, as required, third-party programs and such other software as necessary for the proper operation of the Software; and

F provides reasonable access to its systems, in accordance with the Documentation, to enable SupportAbility to provide the Software Support by way of telecommunications, internet, or other remote access to the server environment in which the Software resides or

such other method reasonably acceptable to SupportAbility.

(b) All time and materials expended by SupportAbility resulting from the Customer's breach of such conditions will be billed to the Customer at SupportAbility's Standard Rates.

(c) Technical Support provided pursuant to this clause 6.3 relates to the Software and the Updates only. Should the problems that arise be the result of the malfunction of Customer-owned hardware, SupportAbility will advise the Customer to have the hardware and/or network repaired. Support resulting from hardware and/or network problems will be billed to the Customer at the Standard Rates.

6.4. Software Suspension

(a) Notwithstanding anything else in the Agreement, SupportAbility may suspend the Customer's access to the Software without any liability whatsoever if:

(i) SupportAbility reasonably believes, at their sole discretion, that the Software is being used in violation of the Agreement or at Law;

(ii) the Customer fails to cooperate with any reasonable investigation by SupportAbility of any suspected violation of the Fair Use Policy;

(iii) a denial-of-service attack on SupportAbility's servers or other event requires SupportAbility to suspend the Software for network protection purposes or to protect its other customers; or

(iv) SupportAbility are requested to do so by a law enforcement or government agency.

(*Suspension Event*)

(b) In the event of a Suspension Event, SupportAbility will give the Customer written notice at least 48 hours before the suspension, unless:

(i) law enforcement or a government agency directs otherwise; or

(ii) suspension on shorter or contemporaneous notice is required to protect the Customer or other customers from an imminent and significant risk.

(c) SupportAbility will, within a reasonable timeframe, restore access to the Software once the Suspension Event has been cured.

7. Customer's Responsibilities

7.1. Fees & Payment Terms

(a) The Customer agrees to pay SupportAbility all Fees in accordance with the Order Form. SupportAbility's quoted Fees will be binding on the Customer provided the Customer accepts SupportAbility's quotation either by performance or in writing within 30 days.

(b) Unless otherwise indicated on the Order Form:

(i) all invoices are due within 30 days of receipt;

(ii) all amounts are Australian Dollars; and

(iii) all amounts are exclusive of Taxes.

(c) The Customer may be required to pay SupportAbility a deposit of the total price of the Fees (the Deposit) upon execution of the Agreement. The total amount of the Deposit is specified in the Order Form and will be

refundable where the Agreement is validly terminated prior to the supply of Implementation Activities minus any reasonable costs incurred by SupportAbility.

(d) Except where the context suggests otherwise, terms used in this clause 7 but not defined in the Agreement have the meaning given to those terms by the A New Tax System (Goods and Services Tax) Act 2000 (Cth).

(e) SupportAbility may vary the Fees at any time upon giving Customer 45 days' notice.

(f) If applicable, Implementation Activities Fees must be paid prior to commencement. Software Fees are payable monthly in advance starting on the 1st of the month following the date of installation of the Software at each site continuing for the remainder of the Agreement. All invoices are payable within 30 days of the invoice date.

(g) Software Services:

(i) will be calculated on the basis of time spent, and materials incurred, and charged then-current hourly rate; and

(ii) there is a minimum 2-hour charge for all Software Services.

(h) The Customer is responsible for reasonable travel costs incurred where required or requested by the Customer for Software Services where pre-approved by the Customer. This includes costs for transport, meals, accommodation, visas, vaccinations, and telecommunications (for international travel).

7.2. Changes to Licence Allocation

If the Customer wishes to increase its Licence Allocation, the Customer must give written notice to SupportAbility of such, and the new Licence Allocation will be invoiced from the date of the effective change.

7.3. Invoice Disputes

(a) Any invoice disputes must be initiated by the Customer in good faith and in writing. The Customer has 30 days from the date of the applicable invoice (**Invoice Period**) to initiate an invoice dispute (**Invoice Dispute**) by providing written notice to SupportAbility setting out the details of the disputed amount and reasonable evidence supporting the dispute (**Invoice Dispute Notice**). If the Customer does not lodge an Invoice Dispute Notice within the Invoice Period, the invoice will be deemed to be accepted by the Customer and will be due and payable in full.

(b) Despite an Invoice Dispute Notice by the Customer, the undisputed amounts on the disputed invoice will remain due and payable. SupportAbility and the Customer agree to use reasonable efforts to resolve any Invoice Dispute within 10 Business Days after SupportAbility's receipt of the Invoice Dispute Notice. If the Invoice Dispute remains, the Parties will follow the dispute resolution mechanism in clause 19.

(c) If it is determined that SupportAbility properly charged any amount disputed and withheld by the Customer, SupportAbility may charge a Late Payment Fee on the disputed, withheld amount.

7.4. Payment Default

(a) If the Customer fails to pay any undisputed invoiced amount when due (**Default**), the Customer will be liable to pay, the Late Payment Fee. SupportAbility may suspend, interrupt, or cancel the Customer's use, in part or wholly, of the Software, cease providing Updates and/or suspend delivery of Software Services to the Customer for any period during which any Fees remain unpaid for 14 days after SupportAbility provides advanced written notice of such unpaid Fees to the Customer. In such event, SupportAbility will not be held liable for any loss or damage caused by the suspension and will not be precluded from exercising any additional remedies that might be available to it under the Agreement or at Law.

(b) In the event of Default, the Customer will indemnify SupportAbility from and against all reasonable costs and disbursements incurred by SupportAbility in pursuing the debt including legal costs of a solicitor and SupportAbility's collection agency costs.

7.5. Implementation Contact

(a) The Customer will appoint a Permitted User to be the main contact for SupportAbility's Representatives in connection with any Implementation Activities (**Implementation Contact**). If the Implementation Activities affect multiple areas of the Customer's operations, then the Customer will also appoint a team comprised of management level staff from those operational areas involved in the installation to act as its Implementation Contact.

(b) The Implementation Contact will be responsible for the coordination and execution of the installation. The Implementation Contact must:

(i) be familiar with and involved in the Customer's daily operations;

(ii) have authority to make decisions in relation to any policies and procedures which may be involved in the implementation of the Software;

(iii) ensure that the Minimum System Requirements set forth in the Order Form, Documentation and SupportAbility's additional requirements (if any) have been met or exceeded;

(iv) serve as liaison with other third-party vendors who are involved in the installation process; and

(v) be present during all phases of the installation process.

(c) If the Customer does not meet the Minimum System Requirements, SupportAbility reserves the right to terminate the Agreement pursuant to clause 16.1(a)(ii).

7.6. Data Integrity

(a) The Customer will be responsible for all Customer Data entry and will remain responsible for the integrity of such data. SupportAbility will not have any liability for any Customer Data, including data SupportAbility's Representatives may enter in an effort to assist the Customer or any errors made in such efforts to assist the Customer. SupportAbility reserves the right to refuse to do data entry and the Customer agrees that the Customer is solely responsible for providing sufficient staff to perform any data entry required for the installation of the Software. If SupportAbility is responsible for migration of Customer Data (as set out in the Order Form), this clause will apply once the migration is complete.

(b) The Customer bears full responsibility for:

(i) the content of any Customer Data that is maintained in the Software;

(ii) the selection and implementation of controls in its access and use of the Software;

(iii) the security of Customer Data; and

(iv) configuration data associated with the implementation of the Software.

8. Audits

8.1. During the Licence Term and for a period of 1 year thereafter, the Customer will permit SupportAbility (or an independent representative engaged by SupportAbility), upon 30 days prior written notice, to audit (each an **Audit**) the deployment of the Software to the extent reasonably necessary to verify the Customer's compliance with the Licence Allocation, at such times during the Customer's regular business hours as SupportAbility may reasonably request. SupportAbility may exercise its right to Audit no more frequently than once each Licence Term, unless the SupportAbility becomes aware of an issue, in which case the SupportAbility may conduct an ad hoc Audit.

8.2. If an Audit indicates that there are more users of the Software than Permitted Users, the Customer will be invoiced the discrepancy and the Fees going forward will be updated.

8.3. The Customer acknowledges that the Licence Allocation reflects their unique usage requirements and SupportAbility is not capable of, nor responsible for, informing the Customer of an alternate Licence Allocation which may or may not better suit their needs.

8.4. If there is an underpayment of more than 3% of amounts otherwise payable, then the Customer must also reimburse SupportAbility for SupportAbility's reasonable and customary Audit expenses.

9. AI-Generated and Third-Party Materials

9.1. AI-Generated Materials

(a) For the purpose of this clause 9.1:

(i) **AI** means generative artificial intelligence processes, including machine learning, processes involving neural networks and/or deep-learning, and other statistical processes designed to generate new content.

(ii) **AI Training** means processes designed to improve upon the effectiveness or quality of AI outputs using AI-Generated Materials, Customer Data, user input, human-based feedback, and other systems of governance, and includes reinforcement learning, training, finetuning, and other approaches to optimising AI learning rates.

(b) The Software may utilise materials generated either directly or indirectly through the use of AI (**AI-Generated Materials**). The parties acknowledge the ever-changing nature of regulation around AI and agree that the SupportAbility cannot guarantee ownership or adequately licenced rights over the IP Rights pertaining to AI-Generated Materials.

(c) The Customer hereby indemnifies and holds harmless SupportAbility and its Representatives against all claims, losses, damages, liabilities, judgments, fees, and expenses arising out of or in connection with any claim relating to the use or ownership of AI-Generated Materials.

(d) The Customer acknowledges that SupportAbility may perform AI Training on Customer Data, AI-Generated Materials, and other feedback materials. The Customer may opt-out of AI Training on the applicable Order Form, in which case SupportAbility will not involve any Customer Data in its AI Training processes.

(e) In the event of any liability arising from SupportAbility's direct or indirect use of AI, AI Training, or AI-Generated Materials, SupportAbility's sole and exclusive

remedy, where reasonably possible and commercially practicable:

(i) in the case of goods: will be the cost of providing the Customer with a comparable replacement of the goods without the AI functionality; and

(ii) in the case of services: will be to render the services again without the use of AI.

(f) This clause 9.1 will take precedence over anything else contained in the Agreement.

10. Third-Party Materials

10.1. SupportAbility represents and warrants that it has the authority to sell Third-Party Materials (which are, where applicable, sold subject to the Agreement).

10.2. The Customer acknowledges that SupportAbility is not the manufacturer and therefore acknowledges that SupportAbility makes no warranties, conditions, representations or guarantees, express or implied, concerning the Third-Party Materials, as applicable.

10.3. SupportAbility assigns to the Customer the manufacturer's warranties, if any, applicable to the Third-Party Materials. SupportAbility makes no representations regarding the validity or enforceability of any such manufacturer's warranty.

11. General Warranties

11.1. Each Party represents, warrants, and undertakes that:

(a) it has full power, capacity, and authority to execute, deliver, and perform its obligations under the Agreement;

(b) the Agreement is a bespoke agreement between the Parties, and the Party has been afforded every opportunity to seek external legal advice in relation to the Agreement, and has either requested and subsequently resolved every change to the Agreement necessary to reflect their best interests, or has decided to proceed on the basis that the Agreement is suitable as-is for their own purposes;

(c) it has, and will continue to have, all the necessary consents, permissions, licences, and rights to enter into and perform its obligations under the Agreement; and

(d) once executed, the Agreement constitutes legal, valid, and binding obligations, and is enforceable in accordance with its terms.

12. SupportAbility Warranties

12.1. The Parties agree it is the Customer's responsibility to determine whether the Software is suitable for their requirements.

12.2. For a period of 90 days after the Launch Date, provided the Software is used in accordance with the Agreement and the Documentation, SupportAbility warrants that the Software will operate substantially in accordance with the Documentation.

12.3. If the Software materially fails to conform to the specifications as set forth in the Documentation, the Customer must notify the SupportAbility in writing of the details of the nonconformities. SupportAbility has 30 Business Days to correct, modify, or improve the Software to cure such nonconformities, after which the Customer has 15 Business Days to re-test the Software. During this period, if the Customer determines that the Software remains nonconforming with respect to the earlier identified nonconformities, the Customer must notify SupportAbility in writing, and may, at its option, either:

(a) permit SupportAbility to perform additional modifications or corrections to the Software; or

(b) terminate the Agreement pursuant to clause 16.1.

12.4. Pursuant to clause 12.3(b), the Customer will be entitled to a refund of the Software Fees (**Refundable Fees**). Fees paid to SupportAbility for Software Services are non-refundable. Refundable Fees are calculated as the Software Fees less any Software Services Fees as provided in the Order Form(s). The Customer must exercise its termination option under clause 12.3(b) within 90 days from the Launch Date or the Software will be deemed accepted as-is and clause 12.2 will no longer apply.

12.5. The Customer acknowledges and agrees that SupportAbility does not warrant or guarantee that:

(a) the Software will be continuous or fault-free, and while SupportAbility will make reasonable commercial efforts to restore any disrupted Software Services, SupportAbility will not be liable to compensate the Customer for any disruption to the Customer's business;

(b) the Software will be free of viruses, errors, bugs, malware, adware, spyware, or other adverse material (**Adverse Material**), or that any such Adverse Material will be able to be corrected. The Customer is solely responsible for all costs and expenses associated with any rectification, repair, or damages caused by such Adverse Material;

(c) the Software Services will safeguard the Customer's privacy, security, authenticity, or non-corruption of data;

(d) the Customer's use of the Software provided by SupportAbility will lead to savings or increased revenue for the Customer; and

(e) the accuracy or usefulness of any comparative or benchmarking information made available to the Customer and the Customer acknowledges that such information reflects:

(i) the inputs from other Customers which SupportAbility cannot control; and

(ii) the sample size which depends on the number of Customers providing the information.

12.6. Except for the warranties provided in the Agreement and to the maximum extent permitted at Law, SupportAbility does not make any representation or warranty, express or implied, statutory or otherwise, regarding the Software, products, or services, including merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement, or results to be derived from the use of or integration with any other products or services provided under the Agreement, or that the operation of any software, products, or services will be secure, uninterrupted, or error-free.

12.7. Nothing in the Agreement excludes, restricts, or modifies any right or remedy, any guarantee, representation, warranty, condition, or other term, implied or expressed by any applicable law which cannot lawfully be excluded or limited (**Non-Excludable Provision**).

12.8. If the Customer's remedy for a breach of the Non-Excludable Provision can be limited at Law, the liability of SupportAbility for a breach of the Non-Excludable Provision is limited to one or more of the following, at SupportAbility's sole discretion:

(a) regarding goods: the replacement of the goods; the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or

(b) regarding services: the supplying of the services again; or the payment of the cost of having the services supplied again.

12.9. Subject to clause 12.8, the Customer's exclusive remedy and SupportAbility's sole liability for breach of the warranty provided under clause 12.2 will be for:

(a) SupportAbility to use commercially reasonable efforts to modify the Software so that it conforms to the warranty; and

(b) if SupportAbility fails to modify the Software so that it conforms to the warranty, the Customer may terminate the Agreement within 3 months of SupportAbility's failure.

12.10. Without limitation, SupportAbility will have no liability to the Customer or any third-party arising out of the Customer's failure to back-up the Software and Customer Data.

13. Indemnity

13.1. SupportAbility will indemnify the Customer from any direct loss suffered by the Customer as a direct result of a claim by a third-party based on the Customer's use of the Software, within the scope of the Agreement, that infringes the third-party's IP Rights (**Third-Party Claim**). In order for the Customer to claim on the indemnity, the Customer must notify SupportAbility within 10 Business Days of becoming aware of a Third-Party Claim.

13.2. In the event of a Third-Party Claim, or if SupportAbility believes that a Third-Party Claim is likely to be made, then SupportAbility will at its expense:

(a) procure the right for Customer to continue using the Software;

(b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or

(c) if neither of the above are commercially practical, either Party may terminate the Agreement upon 5 Business Days written notice to the other.

13.3. If the Agreement is terminated under clause 13.2, SupportAbility's sole and exclusive liability and the sole and exclusive remedy of the Customer will be for SupportAbility to refund the Fees paid by Customer for the current Licence Term, less an appropriately prorated amount for use, reflecting the number of months during which Customer enjoyed uninterrupted use of the Software.

13.4. SupportAbility has no obligation to defend the Customer or to pay any costs or legal fees for any action, Claim, or settlement that arises from:

(a) the Customer's use of a version of the Software that was not, at the time the Claim arose, the current, unaltered version of the Software as provided by SupportAbility, including if Customer had failed to install Updates containing modifications which would make the Software non-infringing;

(b) Customer's combination, operation, integration, or interfacing of the Software with Third-Party Materials not expressly approved by SupportAbility, other than Third-Party Materials with which the Software was intended to operate as specified in the Documentation, if such Claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not SupportAbility has advised the Customer that such use would likely result in a Third-Party Claim);

(c) the Customer's use of the Software in a manner other than as authorised by the Agreement, the Order Form, or the Documentation;

(d) SupportAbility's compliance with the designs, plans, or specifications furnished by or on behalf of the Customer;

(e) modifications to the Software by any person other than SupportAbility's Representatives; or

(f) the Customer's failure to accept any procured right to continue using the Software.

14. Limitation of liability

14.1. Subject to clause 12.8, 13.3 and clause 14.2, and except for liability which cannot be limited at Law, SupportAbility's entire liability under the Agreement or in any way related to the Agreement (including under an indemnity) will be limited to direct damages in an amount equal to the Fees paid by the Customer to SupportAbility during the 12-month period immediately preceding the first event giving rise to the Claim;

14.2. Neither Party will be liable for:

(a) any special, punitive, indirect, incidental, or consequential damages arising from or related to the Agreement or in any way related to the Software and/or Software Services; or

(b) any loss of revenue, profits, goodwill or data, or data use (including as a result of Adverse Material), business interruption, failure to realise an expected saving, corruption of data, or Claims against them by any third-party;

even if the Parties are advised, or may reasonably supposed to have been aware, of the possibility of such damages in advance.

14.3. Such limitations will apply regardless of whether the Claim arises based on contract, tort, negligence, or otherwise, and will apply to all relevant Order Forms and Documentation.

14.4. The Customer acknowledges that SupportAbility has relied on the Customer's representation that there is a valid and enforceable limit of liability.

15. Term

15.1. The Agreement will commence on execution of the Agreement (**Commencement Date**) and will continue until:

(a) all Licence Terms in the Order Forms have not been renewed; or

(b) the Agreement is terminated in accordance with clause 16

(the **Licence Term**).

15.2. The Term will automatically renew for the period of time titled "Renewal Term" as outlined in the latest valid Order Form (**Renewal Term**), unless either Party provides the other Party with a number of days' written notice equal to the Opt-Out Period, prior to the conclusion of the Licence Term. If the Renewal Term is not specified in the Order Form, the period of time is 1 year.

15.3. The Agreement will remain in effect during any Renewal Term, except as the Parties otherwise expressly agree to in writing.

16. Termination

16.1. Termination for Cause

(a) Subject to clause 12.9 or 13.2, the Agreement may be terminated:

(i) immediately by notice if Party breaches a Material Term;

(ii) within 15 Business Days after written notice by a Party of a breach of any other term, provided the other Party fails to cure it;

(iii) immediately by notice if a Party becomes insolvent, a receiver, administrator, controller, or a liquidator is appointed, a Party assigns any of its property for the benefit of creditors or any class of them, or any proceedings have been commenced by or against a Party under any bankruptcy, insolvency, or similar laws; or

(iv) immediately by notice if a Party ostensibly ceases to carry on business.

(b) If the Agreement is terminated under clause 16.1:

(i) by the Customer, SupportAbility will be entitled to all Fees up to the date of the termination; or

(ii) by SupportAbility, SupportAbility will be entitled to all Fees up to the date of the termination as well as the Cancellation Fee, in recognition of SupportAbility's lost investments.

(c) **Material Term** means clause 5, 7.1, 7.3, 7.4, 7.6, 10, 11.1, 11.2, 16, or 17.

16.2. Termination for Convenience

(a) SupportAbility may terminate the Agreement for convenience by giving to the Customer a number of days' written notice equal to the Opt-Out Period.

(b) Supplier will refund to Customer any pre-paid Fees that are for the remaining portion of the Licence Term from the date of termination.

16.3. Effect of Termination

(a) Upon Termination:

(i) any and all amounts owed to SupportAbility pursuant to the Agreement will be immediately due and payable;

(ii) all Licence Allocation license rights granted to the Customer will be immediately revoked and terminated as at the date the termination takes effect (taking into account any termination notice periods);

(iii) Clauses 3, 5.2, 5.3, 12, 13, 14, 17, 19, and 20 will survive termination and continue in full force and effect in accordance with their terms; and

(iv) within 10 days following termination, the Customer will:

A cease using and will securely return to SupportAbility all copies of the Software and Documentation and confirm as such to SupportAbility in writing by the Implementation Contact or another duly authorised officer as agreed to in writing by SupportAbility; and

B remove any logos or trademarks of SupportAbility from the Customer's promotional or marketing material.

17. Confidentiality

17.1. Confidential Information:

(a) means information that is disclosed:

(i) by a Party to the Agreement (the **Discloser**) or on the Discloser's behalf by its Representatives;

(ii) to the other Party to the Agreement (the **Receiver**) or its Representatives; and

(iii) in connection with the Purpose,

(b) includes (but is not limited to) the Software and Software Services,.

(c) is not information that:

(i) is or becomes generally available to the public other than through the fault of the Receiver;

(ii) was within the Receiver's possession prior to its being furnished to the Receiver by or on behalf of the Discloser;

(iii) is independently developed by the Receiver or its Representatives without the use of any Confidential Information; or

(iv) is disclosed with the prior written consent of the Discloser.

17.2. The Parties will hold each other's Confidential Information in confidence and will not make each other's Confidential Information available in any form to any third-party for any purpose other than to the extent necessary to comply with its obligations under the Agreement. Each Party must treat the Confidential Information of the other Party with the same degree of care as it would treat its own confidential information of a like nature, and in no case less than a commercially reasonable degree of care.

17.3. The Customer may only disclose the Confidential Information to its Permitted Users, and SupportAbility may only disclose the Confidential Information to its Representatives.

17.4. It is not a breach if Confidential Information is disclosed as a result of a judicial or administrative process, provided that the Party served with such process promptly notifies, to the extent legally permissible, the other Party and provides reasonable assistance so that the other Party may seek, at its own cost and expense, a protective order against public disclosure.

17.5. The Parties must each implement and enforce policies and contractual obligations with its Representatives to ensure its Representatives protect the Confidential Information.

17.6. The Parties recognise and agree that monetary damages are an inadequate remedy for breach of the obligations in this clause 17, and that any breach would result in irreparable harm to the non-breaching Party. In the event of such a breach, the non-breaching Party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

18. Privacy

18.1. To the extent that the provisions of any privacy laws, regulations, or other applicable regulatory instruments enacted at the time, in the Jurisdiction, which relate to the collection, disclosure, use or processing of Personal Information, personally identifiable data, or privacy, including those relevant to the Jurisdiction (**Privacy Laws**) apply to Personal Information handled in accordance with the Agreement, then the provisions of the Agreement are subject to the provisions of the Supportability Privacy Policy and the Privacy Laws.

18.2. Personal Information means information which can reasonably identify an individual, or any other definition as given at Law.

18.3. Each Party represents and warrants that:

(a) it will do all that is necessary in order to fully comply with all applicable Privacy Laws in relation to the Agreement including providing relevant notices to its customers and obtaining necessary rights and consents for use of Personal Information from its customers;

(b) it has taken reasonable steps to ensure that the Personal Information it uses or discloses to the other Party under the Agreement is up-to-date, complete and relevant having regard to the nature of the services; and

(c) any and all data communicated to the other Party in relation to performance of the Agreement has been collected or obtained in full compliance with the Agreement and the Privacy Laws in relation to the collection, storage, and use of Personal Information.

18.4. The Customer will assist SupportAbility as reasonably required to resolve any allegation or claim brought by a third-party involving a breach of the Privacy Laws or otherwise an interference with the privacy of an individual.

18.5. The Customer authorises SupportAbility and its Representatives:

(a) to collect, retain, and use any information about the Customer, whether collected by SupportAbility from the Customer directly (including through the Customer's use of Software) or obtained by SupportAbility from any other source for the purposes of:

(i) assessing the Customer's creditworthiness;

(ii) maintaining a database containing Customer's Inputs to the Software, which may be accessed by Customer in using the Software;

(iii) making improvements to the Software;

(iv) marketing products and services to Customer; and

(v) collating it with other information to enable SupportAbility to provide, at its discretion, industry comparative and benchmarking information to any of its customers (including the Customer);

(b) to disclose information about the Customer, whether collected by SupportAbility from the Customer directly (including through the Customer's use of Software) or obtained by SupportAbility from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a Default by the Customer.

19. Dispute Resolution

19.1. A Party claiming that a dispute or disagreement has arisen out of, or in connection with, the Agreement (a **Dispute**) will give written notice to the other Party providing particulars of the Dispute and designating which of its authorised officers has authority to settle the Dispute (the **Dispute Notice**).

19.2. The Parties will meet at a location or arrange a telephone conference as agreed between the Parties in writing within 10 Business Days of receipt of the Dispute Notice in good faith to seek to resolve the dispute amicably.

19.3. If the Dispute has not been resolved within 20 Business Days of receipt of the Dispute Notice, either Party may refer the dispute to mediation by way of notice to the other Party. A mediation will be administered by a mediator agreed between the Parties or if not agreed, recommended and accredited by Resolution Institute in accordance with Resolution Institute's professional mediation rules or an equivalent professional mediator in any jurisdiction outside of Australia (**Mediator**). The Parties must jointly pay the costs of the Mediator.

19.4. If the Dispute has not been resolved within 30 days of the exhaustion of the dispute resolution process set out in Clause 19.3 and one or more Parties have made best reasonable efforts to resolve the Dispute, either Party may commence litigation.

19.5. Notwithstanding clause 17.6, if the process in this clause 19 is not followed, a Party may use this clause as evidence of a bar to litigation.

20. General

20.1. **Assignment**. Neither Party may novate or assign the Agreement (or any of its rights or obligations), whether by operation of Law or otherwise, without the other Party's prior written consent (which is not to be unreasonably withheld). The Customer agrees to sign any transfer documentation required by SupportAbility as a condition of any change in ownership of the business where the Software is utilised. Any purported assignment in violation of this clause 20.1 will be void and of no effect.

20.2. **Export Compliance**. The Software, and related Software Services may be subject to export laws and regulations. Each Party represents that it is not named on any United States (US), European Union (EU), United Nations (UN), or Australian (AU) government-issued denied-party list. The Customer must not permit access or use of the Software in a US-embargoed country, EU-embargoed country, or UN-embargoed country, AU-embargoed country, or in violation of any other applicable embargo, export law, or regulation.

20.3. **Anti-Corruption**. The Customer warrants it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of SupportAbility's employees or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If the Customer learns of any violation of the above restriction, the Customer will use reasonable efforts to promptly notify SupportAbility.

20.4. **Modern Slavery**. Both Parties will comply with all applicable laws, statutes, regulations legally binding codes and sanctions relating to any modern slavery in the Jurisdiction (**Modern Slavery Laws**) and comply with any reasonable written request received from the other Party for the purposes of any annual reporting requirements under the Modern Slavery Laws.

20.5. **Bullying & Harassment**. SupportAbility supports the rights of all people to work in an environment free from bullying. The Parties are expected to adhere to acceptable conduct at all times by respecting the rights and feelings of others and by refraining from any behaviour that might be harmful to others.

20.6. **Severability**. If any provision of the Agreement is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, all remaining provisions of the Agreement will be and remain in full force and effect.

20.7. **Waiver.** No delay by either Party in enforcing any of the terms or conditions of the Agreement will affect or restrict such Party's rights and powers arising under the Agreement. No waiver of any term or condition of the Agreement will be effective unless made in writing.

20.8. **Entire Agreement.** The Agreement constitutes the entire Agreement between the Parties with respect to the subject matter of the Agreement and supersedes all proposals, oral and written, and all previous negotiations and communications between the Parties and their representatives with respect to the subject matter of the Agreement. The Agreement will prevail over terms of any Customer-issued purchase order, request for tender, technical specification, or other design requirements, which will have no force or effect, even if SupportAbility accepts or does not otherwise reject them. Each Party acknowledges that, in entering into the Agreement, it

does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a Party to the Agreement or not) other than as expressly set out in the Agreement.

20.9. **Counterparts.** The Agreement may be executed in counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument.

20.10. **Digital Signatures.** If any signature is delivered by email delivery of a Portable Document Format (PDF), or by using a web-based e-signature platform such as DocuSign (**E-Signature**), such signature will create a valid and binding obligation on the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such PDF signature page or E-Signature was an original signed document in hard-copy.

20.11. **Non-Solicitation**. During the Subscription Term and for a period of 1 year following the termination of the Agreement, each Party agrees not to solicit, recruit, or employ any employee of the other Party without the prior written consent of the Chief Executive Officer, President or Director of the other Party. For the purposes of this clause the term "employee," includes any person with such status at any time during the 6 months preceding any solicitation in question. This clause does not apply to the following forms of solicitation:

(a) a Party using general bona fide solicitations directed at the public or industry participation in publications or internet resources not specifically targeted at employees of the other Party, or employing any person who responds to such solicitations;

(b) using search firms, or hiring any persons solicited by such search firms, so long as such firms are not advised by a Party to solicit employees of the other Party; or

(c) soliciting any person who has left the employment of the other Party prior to the date of the Agreement.

20.12. **Subcontractors.** SupportAbility may license or subcontract all or any part of its rights and obligations without the Customer's consent. SupportAbility will continue to remain liable for the performance of its rights and obligations by any licensee or subcontractor.

20.13. **Independent Contractor**. The relationship of the Parties established by the Agreement is that of independent contractors. The Agreement does not establish an employment, agency, joint venture or partnership relationship between the Parties. Nothing in the Agreement will be construed to permit either Party to bind the other or to enter into obligations on behalf of the other Party.

20.14. **Notices**. All notices under the Agreement must be in writing and will be deemed to have been given upon:

(a) personal delivery;

(b) the third Business Day after being sent by pre-paid recorded post; or

(c) the next Business Day after being sent by email (as recorded on the device from which the email was sent) unless the sender receives an automated message that the email has not been delivered, in which case delivery will not have been effected.

Notices must be sent to the address of each Party as specified in the Order Form. Each Party may modify its elected recipient of notices by providing notice pursuant to the Agreement.

20.15. **Force Majeure.** Neither Party will be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from events, circumstances, or causes

beyond its reasonable control provided that the Party affected by such failure or delay gives the other Party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time.

20.16. **Modification.** SupportAbility reserves the right to review the Agreement at any time. If, after such review, there is to be any change to the Agreement, then that change will take effect from the date on which SupportAbility notifies the Customer of such change by giving 90 days' prior written notice. If the Customer does not agree to any amendment or update of the new Agreement, Customer may terminate the Agreement without further charge by giving Opt-Out Notice to SupportAbility.

20.17. **Governing Law.** The Agreement and any claims (including any non-contractual claims) arising out of or in connection with the Agreement and its subject matter will be governed in the Jurisdiction. The parties submit to the exclusive jurisdiction of the Jurisdiction and any appellate Courts.

Schedule A. Fair Use Policy

This policy applies to the use of SupportAbility's Software. Any material or conduct that in SupportAbility's reasonable judgment violates this policy in any manner may result in suspension or termination of the Licence or removal of a Permitted User's account.

1. Permitted Users may not use the services to publish content or engage in activity that is illegal under applicable law, that is harmful to others, or that would subject SupportAbility to liability, including, without limitation, in connection with any of the following, each of which is prohibited under this policy:

   a) phishing or engaging in identity theft;

   b) distributing computer viruses, worms, Trojan horses, or other malicious code;

   c) distributing pornography or adult related content or offering any escort services;

   d) promoting or facilitating violence or terrorist activities; and

   e) infringing the intellectual property or other proprietary rights of others.

2. Customer will not and will ensure that Permitted Users do not directly or indirectly:

   a) reproduce, modify, change the data structures, adapt or create derivative works of any part of the Software;

   b) rent, lease, distribute, sell, sublicense, transfer, or provide access to the Software to a third-party;

   c) provide the Software for the benefit of any third-party, except Permitted Users;

   d) use any non-SupportAbility sanctioned applications which utilise artificially intelligent learning language models (such as ChatGPT or Bard) in connect with the Software or SupportAbility's Confidential Information (including for the purposes of improving the performance of the Software Services or supply of the Goods);

   e) incorporate the Software into a product or service it provides to a third-party;

   f) interfere with any license key mechanism in the Software or otherwise circumvent mechanisms in the Software intended to limit its use;

   g) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Software, except to the extent expressly permitted by applicable law (and then only upon advance notice to SupportAbility);

   h) remove or obscure any proprietary or other notices contained in the Software;

   i) use the Software for competitive analysis or to build competitive products;

   j) publicly disseminate information regarding the performance of the Software;

   k) encourage or assist any third-party to do any of the foregoing;

   l) make the Software available in any form to any person other than Customer's employees, agents and contractors whose job performance requires such access; and

   m) allow access to the Software by any service bureau (subject to clause 17.4 of the Agreement), third-party outsourcer, a competitor of SupportAbility, or other similar third-party service provider unless SupportAbility consents to such access in writing.

3. Customer must use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software.

4. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of all testing, archival, back-up or other copies of the Software made by Customer.

5. The Customer may make a reasonable number of copies of the Software for testing, archival and/or back-up purposes, to be used only when the primary copies of the Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of all testing, archival, back-up or other copies of the Software made by the Customer.

6. If applicable, if the Customer's use of text messages or emails exceeds SupportAbility's estimated averages in any month (with SupportAbility acting reasonably), then SupportAbility may ask the Customer to moderate its usage. SupportAbility reserves the right, on 5 days further notice, to charge for the excessive use according to the current price list or to remove the service from the Customer's account.