

By using the SupportAbility Service, you (“the Client”) are agreeing to be bound by the following terms and conditions (“these Terms of Service”) of Envision Systems Pty Ltd ABN 72 113 901 830 (“Envision”) of Suite 2, Level 2, 50 York Street, South Melbourne, Victoria Australia. Envision reserves the right to update and change these Terms of Service without notice – refer to clause 2.2(iii) below. Violation of any of the terms in these Terms of Service may result in the termination of your SupportAbility subscription without notice.

TERMS OF SERVICE

1. DEFINITIONS The Client must use its reasonable endeavours to not

“**Annual Additional User Pack Fee**” means, subject to clause 5.5, the Annual Additional User Pack Fee (as amended from time to time) as set out in Envision’s Website.

“**Annual Subscription Fee**” means the Annual Subscription Fee (as amended from time to time) as set out in Envision’s Website.

“**Additional Module Fees**” means the fees (as amended from time to time) for any additional modules required by the Client that are not included as part of the Annual Subscription Fee. Examples of such modules include ‘Training Installations’ and ‘Data Replicas’.

“**Client’s Data**” means all of the Client’s data, materials and content which is from time to time posted on the Service in accordance with these Terms of Service.

“**Authorised Representatives**” means two persons nominated from time to time by the Client as being the Authorised Representatives of the Client as may be approved by Envision (such approval not to be unreasonably withheld).

“**Confidential Information**” includes, without limitation, all non-public information, financial, marketing, research and development, organisational, technical, merger or acquisition and other information relating to the other party, information relating to released or unreleased Service or hardware products, the marketing or promotion of either party’s product, a party’s business policies or practices, and information received from third parties that a party is obligated to treat as confidential. “Confidential Information” includes not only written information but also information transferred orally, visually, electronically or by other means and includes copies thereof. “Confidential Information” includes information disclosed to either party by any Affiliate and/or agent of the other party.

“**Derivative Work**” means a work that is based upon or incorporates the Service, in whole or in part, including without limitation: a revision, modification, translation, abridgement, condensation, expansion, compilation or any other form in which the Service may be recast, transformed, included or adapted, and if prepared without first obtaining prior written authorisation from Envision shall constitute an infringement of the intellectual property rights of Envision.

“**GST**” has the meaning used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended, or any replacement or other relevant legislation and regulations. Terms defined by that Act and used (without separate definition) in this Contract, shall have the meaning given to them by that Act.

“**Initial Setup Fee**” means a one-time subscription establishment fee, to be paid with the first years Annual Subscription Fees as set out in Envision’s Website.

“Knowledge Base” means <http://help.supportability.com.au/> and includes all pages within it. The Knowledge Base provides the Client with articles on how to use the Service, how the Service works, and suggested strategies for success.

“Learning Centre” means the Learning Centre feature built into the Service that provides the Client with video training content on how to use the Service

A “License Seat” represents a single individual’s requirement to access the Service directly with a user account and/or be represented as a staff member within the Service for the purposes of managing HR records and Rostering.

“SupportAbility Service” or **“Service”** or **“SupportAbility”** means the Service described in the following: http://www.envision-systems.com.au/supportability_features

“Support Contract” refers to paid support time for support, consultancy or development services that fall outside the scope of these Terms of Service. Support Contract pricing is available on the Knowledge Base and is subject to change from time to time without notice.

2. TERM

2.1 The Term (“the Term”) of these Terms of Service is one year from the date when Envision provided the Client with access to the Service. Clients are only permitted to use the Service in accordance with the Terms of Service.

2.2 At the end of the Term, if:-

- (a) Envision has not ended these Terms of Service pursuant to the provisions of these Terms of Service; and
- (b) if the Client has not given to Envision no less than 30 days notice of its intention to end these Terms of Service;

these Terms of Service will automatically be extended by one further term of one year. The further term shall be on the same terms and conditions as these Terms of Service (including this clause 2.2 with the intent that, subject to clauses 2.2(a) and (b), these Terms of Service shall continue for consecutive terms of one year each), subject to the following:-

- (i) there shall be no further Setup Fee
- (ii) the Annual Subscription Fees for the initial license seats purchased will be locked for a period of 3 years from the date of purchase to protect the Client from any increases in price. After 3 years from the initial subscription date, Envision may increase any or all annual fees by a maximum of 8% per year by giving prior notice by email of Envision’s intention to do so. Envision may also elect in its discretion to not increase its price after the third year, but this will not prevent the fees for any subsequent years increasing by 8% compounding from the commencement of the fourth year. For example, for the 4th year, Envision may choose not to increase prices by up to 8%, and if it makes this choice, Envision may for the 5th year utilise a combined increase of up to 16.64% ((original fees + 8% for 4th year) + 8% for 5th year).

Subject to the above, all annual fees and other fees as posted on the Envision website may be increased to an amount as advised by Envision to the Client on or about the date of each anniversary that the Client accepts these Terms of Service. The Client must either:

- (A) pay the new annual fees as advised by Envision within 30 days of Envision issuing a Tax Invoice for the new annual fees; or
- (B) notify Envision within 14 days of the date of Envision's invoice email that it does not wish to extend these Terms of Service by a further term of one year. If the Client does not so notify Envision, and does not pay the Invoice referred to in paragraph (A) above within 14 days of Envision Systems sending a reminder email to pay the Invoice, then these Terms of Service will automatically be at an end.

For clarity:-

- * All of the Client's staff who require access to the Service or who need to be rostered or who have HR details tracked against them require a licence seat.
 - * An SA50 license provides 50 license seats.
- (iii) Envision may change the terms of these Terms of Service from time to time by notifying at least one of the Client's Representatives by email of any such change(s). Any new features that augment or enhance the current Service, including the release of new tools and resources, shall be subject to these Terms of Service. Continued use of the Service after any such changes shall constitute the Client's consent to such changes. The Client may review the most current version of these Terms of Service at any time by going to the following pages on the Envision Website:
- http://www.envision-systems.com.au/supportability_TOS

Such current terms shall bind the Client from the time that they appear on Envision's Website.

3. GRANT

In consideration of the Client's performance of its obligations set out in these Terms of Service, Envision hereby grants to the Client a non-exclusive, non-transferable licence to use the Service for the Term unless ended sooner in accordance with the terms of these Terms of Service. The Client agrees to use the Service for its internal business purposes only, and the Client shall have no right to sub-license, resell, lease, rent, distribute, operate as an outsourcer or transfer such Service or any of its rights under these Terms of Service. To the extent permitted by law, the Client shall have no right to, and agrees not to, disassemble, reverse compile, reverse engineer, create Derivative Works, or attempt to discover or modify in any way the underlying source code of the Service or any software which forms part of or is utilised in providing the Service. The Client must use its best endeavours to ensure that its employees and contractors use the Service on behalf of the Client only in accordance with these Terms of Service. Envision may prohibit particular employees or contractors of the Client from using the Service if it has reasonable grounds for such prohibition. The Client must comply with any such prohibition.

4. TITLE

The licence granted under these Terms of Service only gives the Client the right for the Term to use the Service and associated documentation under the terms, conditions and restrictions specified in these Terms of Service. The Client does not, and shall not, acquire any right, title, or interest in any Service or documentation, or in any Derivative Works or any copyright or other intellectual property rights in the Service or any part of it or any software which forms part of or is utilised in providing the Service, which shall at all times remain the exclusive property of Envision. Envision permits the Client to copy Envision's documentation to create the Client's own documentation, however such permission is personal to the Client and shall automatically cease upon the termination of these Terms of Service for any reason.

5. PRICING AND PAYMENTS

5.1 Upon the execution of these Terms of Service and upon Envision issuing a tax invoice to the Client, the Client shall pay to Envision:-

- (a) the Initial Setup Fee;
- (b) the Annual Subscription Fee; and
- (c) the Additional User Pack Fees (if any);
- (d) the Additional Module Fees (if any)

The Client may from time to time request that Envision enters into a Support Contract for additional paid support services for the Service. If Envision agrees to any such request, a Support Contract will be deemed to have been entered into and the Client must pay in advance for the Support Contract pricing as set out in the Knowledge Base as amended from time to time.. If the Client elects not to pay for any support for the Service, then the Client will not be entitled to any support from Envision except as specifically stated in these Terms of Service or otherwise advised in writing by Envision. Envision reserves the right to not undertake any paid or unpaid work requested by the Client even if the Client has purchased a Support Contract or has a positive balance of paid support hours remaining.

5.2 Without prejudice to Envision's other rights for breach of these Terms of Service, late payments shall bear interest on the sum due, from the date due, at the rate of two percent (2%) per month.

5.3 Subject to clause 11.2, all payments to Envision are non-refundable. No refunds or credits shall be payable by Envision for partial years of service, or upon cancellation and/or termination of these Terms of Service for any reason. For clarity, if the Client cancels the Service before the end of the term of these Terms of Service, the cancellation will take effect immediately and the Client will not be entitled to any refund of any money paid to Envision.

5.4 All payments are to be made by direct deposit into Envision's bank account as advised from time to time by Envision to the Client.

- 5.5 Additional User Packs may be added to SupportAbility Subscriptions of 100 users or more (SA100 and above). Additional User Packs are provided in blocks of 50 users. Additional User Packs allow Clients to add 50 license seats to their base subscription, without having to purchase the subscription level. For example, a Client with 140 staff take out an SA100 base subscription (accommodating 100 users), then add a single 50 user pack to allow for up to 150 staff without having to take out an SA200 subscription.
- 5.6 Envision provides videos in the Learning Centre and articles in the Knowledge Base for the purposes of systems training the Clients staff. With the exception of providing such videos and articles, Envision does not provide training services, either face-to-face, or online, even under paid Support Contract. The Client is required to provide training for its users where training is required. Envisions initial set up team only overseas the initial installation of the Service and does not provide any training services. The Client acknowledges and agrees that its staff need to view Envision's online resources (which explain how the SupportAbility product works). The staff then need to be directed by their management team as to how they are expected to use SupportAbility within the context of the Client's processes and procedures.
- 5.7 The Initial Setup Fee covers the provisioning of the Clients new SupportAbility installation with their selected virtual domain name (eg myorganisation.supportability.com.au)
- 5.8 Despite anything in these Terms of Service (excluding Clause 2.2(ii)), the Price for the Service, including but not limited to the Annual Subscription Fee, the Additional User Pack Fees (if any) , the Additional Module Fees (if any) and the other fees set out in these Terms of Service are subject to change upon 30 days notice from Envision to the Client. Such notice may be provided at any time by posting the changes to Envision's website or the Service itself.
- 5.9 Pricing for any and all additional license seats, modules and other subscriptions will be based on the current pricing as displayed on the Envision Website and replaces any pricing previously communicated.
- 5.10 All annual fees, without exception are to be paid up-front prior to commencement of the Term of Service. For the initial Term, all fees are due from the time when Envision provide the Client with access to the Service (as per clause 2.1)

6. INFRINGEMENT

The Client acknowledges that the Service and all related documentation have been developed, acquired and maintained by Envision on a confidential basis as valuable trade secrets of Envision. The Client agrees to preserve the confidential nature of these trade secrets and the Client shall not permit the use or copying of the Service or documentation by, or disclose any information relating to the Service or documentation to any third party. The Client shall not remove, suppress or modify in any way any proprietary marking, including any trademarks or copyright notice, on or embodied within the Service, or which is visible during their operation or which is on any media or on any documentation supplied with the Service. The Client shall incorporate such proprietary markings in any back-up copies made of the Service. The Client acknowledges that Envision's rights in and to the Service are unique and that financial remedies will be insufficient to compensate Envision for any infringement of such rights.

Envision shall be entitled to seek injunctive and other equitable relief to protect, maintain, defend, enforce and preserve such rights, in addition to any other remedy that may be available to it.

7. CONFIDENTIALITY

7.1 If either party receives from the other party information that is either marked as being “confidential” or which due to the nature of such information and the circumstances under which it was disclosed, ought reasonably to be treated as confidential information of the party disclosing it, the receiving party agrees that it shall not use or disclose such information except in the performance of these Terms of Service, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care.

7.2 The foregoing obligations of non-use and nondisclosure shall not apply to any information that:

- (a) is or becomes available to members of the public other than by breach of these Terms of Service or other duty by the recipient;
- (b) is in rightful possession of the party receiving the information without an obligation of confidentiality;
- (c) is required to be disclosed by operation of law; or
- (d) is independently developed by the receiving party without reference to information disclosed by the other party.

8. RISK

8.1 The Client's use of the Service is at its sole risk.

8.2 The Service is provided on an “as is” and “as available” basis.

8.3 Envision does not warrant that:

- (a) the Service will meet the Client's specific requirements.
- (b) the Service will be bug free.
- (c) the Service will be error free.
- (d) the Service will be uninterrupted, timely, secure, or error-free.
- (e) the results that may be obtained from the use of the service will be accurate or reliable.
- (f) the quality of the Service, information, or other material purchased or obtained by the Client through the Service will meet the Client's expectations.
- (g) any errors in the Service or the Service will be corrected.

- 8.4 Subject to clause 8.3, Envision will undertake all reasonable efforts to provide technical assistance under these Terms of Service and to rectify or provide solutions to problems where the Service does not function as described in the Service documentation, but Envision does not guarantee that the problems will be solved or that any item will be error-free. These Terms of Service are only applicable to the Service.

9. LIMITATION OF LIABILITY

- 9.1 Nothing contained in these Terms of Service excludes, restricts or modifies any:

- (a) implied condition, implied warranty or other implied obligation in relation to these Terms of Service or the Service where pursuant to applicable law to do so is unlawful or void; or
- (b) liability for fraud or deceit.

- 9.2 Subject to clause 9.1 (and without limiting clause 8.3), in no event will Envision be liable to the Client or to any third party for:

- (a) malfunctions or failures caused directly or indirectly by:
 - (i) any third party;
 - (ii) actions of Envision that were expressly or impliedly authorised by Client, or by Client's employees or agents;
 - (iii) accident, misuse or abuse by anyone other than Envision;
 - (iv) alteration or modification of the Service by anyone other than Envision;
 - (v) products (including any hardware or Service) not licensed or supplied by Envision that are attached to or used with the Service;
 - (vi) the Client's failure to provide a proper operating and working environment for the Service or the Client's failure to provide the appropriate hardware and software for the operation of the Service;
 - (vii) damage during any movement or relocation of the Service;
 - (viii) power surge or failure;
 - (ix) acts of God or acts outside Envision's control; or
 - (x) any other condition not arising under normal operating conditions;
- (b) any loss or damage of any nature arising or caused directly or indirectly by any breach of the Client's obligations or responsibilities set out in these Terms of Service;
- (c) any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;
- (d) the Client's liability to any third party;

- (e) any incidental, consequential, special, exemplary or punitive damages of any nature;
- (f) the use or the inability to use the Service;
- (g) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Service;
- (h) the unauthorized access to or alteration of the Client's transmissions or data;
- (i) statements or conduct of any third party on the Service;
- (j) any other matter relating to the Service.

howsoever arising or caused, including any expiration or termination of these Terms of Service, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if Envision has been advised of the possibility of such loss or damage.

- 9.3 Except to the extent specifically provided in this clause 9.2, Envision's sole and exclusive liability to the Client for any and all breaches of any term or terms of these Terms of Service, whether express or implied, shall be limited to the aggregate amount of the fees and charges paid by the Client under these Terms of Service as at the date of the breach.

10. TERMINATION

- 10.1 Envision shall have the right to terminate these Terms of Service without further obligation or liability to the Client if:
- (a) the Client fails to pay any money due under these Terms of Service and fails to remedy any such breach within thirty (30) days after written notification of such breach; or
 - (b) the Client commits any material breach of these Terms of Service and fails to remedy any such breach within seven (7) days after written notice by Envision of such breach; or
 - (c) a petition alleging insolvency is filed by or against the Client, or a receiver is appointed for any part of the Client's business, or its assets are assigned for the benefit of the creditors.
 - (d) the Client or any employee, officer or agent of the Client engages in any physical, written or other abuse (including threats of abuse or retribution).
- 10.2 In addition to its rights under clause 10.1, Envision shall have the right to terminate these Terms of Service without further obligation or liability to the Client by giving to the Client no less than 60 days notice of its intention to do so.
- 10.3 In addition to its rights under clauses 10.1 and 10.2, Envision shall have the right to suspend these Terms of Service from time to time (or to modify the Service from time to time) with a minimum of 12 weeks (or such lesser period as is reasonable in all of the circumstances) prior notice to the Client.

11. CONSEQUENCES OF TERMINATION

Upon expiration or termination of these Terms of Service or upon the cancellation or termination of the Service for any reason:-

- 11.1 the licence(s) granted under these Terms of Service and all other rights granted to the Client under these Terms of Service shall immediately cease, and the Client shall immediately:
- (a) cease to use the Service and return to Envision all copies of documentation and other materials associated with the Service;
 - (b) purge all copies of the Service or any portion of it from any computer storage device or medium on which the Client has placed or permitted others to place the Service; and
 - (c) give Envision a written certification that the Client has complied with all of its obligations under this clause.
- 11.2 The Client shall not be entitled to any refund of any money paid by the Client to Envision for any reason except if Envision terminates these Terms of Service and ceases to provide the Service for any reason other than a breach of these Terms of Service by the Client or the insolvency of the Client, then Envision must pay to the Client a pro-rata refund of the annual fees (but not the Initial Setup Fee) previously paid by the Client for the year during which Envision terminates these Terms of Service.
- 11.3 The Client's access to the Service will be deactivated.
- 11.4 Envision shall provide to the Client, within 15 business days of the Termination date, all of the Client's MySQL Data in Comma Separated Values (CSV) or Structured Query Language (SQL) format. Uploaded documents will be provided separately with the file names renamed to map to the CSV/SQL data. Envision acknowledges that it does not own any of the copyright in the Client's Data.

Envision's termination of these Terms of Service and/or repossession of the Service shall be without prejudice to any other remedies available to it under these Terms of Service or at law.

The provisions of Clauses 4, 6, 7, 9, 12.3 and 12.7 shall survive expiration or termination of these Terms of Service.

12. FURTHER ACKNOWLEDGEMENTS AND AGREEMENTS BY THE CLIENT

- 12.1 The Client acknowledges that Envision may from time to time use third party vendors and hosting partners to provide the necessary hardware, networking, storage, software and related technology required to operate the Service.
- 12.2 The Client must not represent or imply to any person that it is in any way associated with the Service or Envision.
- 12.3 The Client must not reproduce, duplicate, copy, sell, resell or exploit any portion of the Service or any of the software used in the provision of the Service.
- 12.4 The Client must not access or use the Service except in accordance with these Terms of Service.

- 12.5 The Client acknowledges that the technical processing and transmission of the Service, including the Client's content, may be transferred unencrypted and involve:
- (a) transmissions over various networks; and
 - (b) changes to conform and adapt to technical requirements of connecting networks or devices.
- 12.6 The Client must use its reasonable endeavours to not upload, post, host, or transmit unsolicited email, SMSs, or "spam" messages.
- 12.7 The Client must use its reasonable endeavours to not transmit any worms or viruses or any code of a destructive or damaging nature.
- 12.8 The Client and its officers, employees and agents are responsible for maintaining the security of the Client's accounts and passwords. Envision cannot and will not be liable for any loss or damage from the Client's failure to comply with this security obligation.
- 12.9 The Client is responsible for all of the Client's Data that will be in the possession or control from time to time of Envision. The Client indemnified Envision for all loss and damage suffered by Envision as a result of the Client (and/or others who have accounts under the Client's Service) transferring its data to Envision.
- 12.10 The Client may not use the Service for any illegal or unauthorized purpose. The Client must not, in the use of the Service, violate any laws including but not limited to copyright laws.
- 12.11 Whilst Envision provides some documentation on via the Learning Centre videos contained within the Service and also the Knowledge Base, it is are under no obligation to create, or provide manuals for all parts of the Service. Envision agrees to update the content of the provided documentation resources but can make no guarantee that its online documentation is always up-to-date or accurate as the Service evolves constantly.
- 12.12 Envision is not responsible for the Client's Data posted on the Service.
- 12.13 Envision may notify the CEO or a director of the Client of any content that must be removed that is unlawful, offensive, threatening, libellous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property . The Client must then take appropriate expedient action to either remove the content or notify Envision as to why the content must remain in place. Envision will not delete any content from the Client's instance of the software unless specifically asked to do so by one of the Client Representatives or the CEO or a Director of the Client. The Clients remains legally responsible for all content entered into the system at all times.
- 12.14 Envision shall not be liable to the Client or to any third party for any modification, price change, suspension or discontinuance of the Service.
- 12.15. For Service development, Client support and Client consultancy purposes, Envision and its officers, employees and authorised agents have the right to access the Service, server and Client's Data at any time without authorisation from or notification to the Client.

- 12.16 The Client shall be solely responsible for all inputs into the Service, the manner of use of the Service by all those to whom it provides access and all outputs derived, and all other results of such processing.
- 12.17 The Client will comply, at its own expense, with any recommendations and guidelines with respect to the use of the Service, including any adjustments or replacements required in respect of equipment and Service that is incidental or collateral to the use of the Service.
- 12.18 The Client will ensure that its operators are adequately trained and informed so as to use the Service, and will comply with operator guidelines and user procedures supplied by Envision in writing from time to time.
- 12.19 The Clients Authorised Representatives shall promptly report errors in the operation of any aspect of the Service provided under these Terms of Service, by sending an email to support@supportability.com.au.
- 12.20 The Client shall perform general data “housekeeping” (deactivating old staff records, staff privilege audits, etc...), testing, adjustment and/or maintenance as recommended by Envision in respect of any equipment and Service used by Client in respect of access to the Service, in order to maximise the availability of and performance of the Service or permit performance by Envision of any of its obligations under these Terms of Service.
- 12.21 The Client agrees to exercise due care and carry out such precautions which may be recommended by Envision or otherwise required as a matter of prudence in response to the performance by Envision of any of its obligations under these Terms of Service, for example, but without limiting the generality of the foregoing, advising its staff of system restarts or scheduled downtime, recording of error information, and will cooperate with other system administration activities such as, but not limited to, running diagnostic tests and operational readiness tasks.
- 12.22 The Client agrees not to export or re-export, or permit exportation or re-exportation of the Service outside Australia without first (a) obtaining Envision’s prior written consent, and (b) in each instance obtaining any required written permission to do so from the appropriate governmental agencies of Australia, and (c) complying fully and strictly with all requirements of any general licence exempting the exportation or re-exportation from the requirement for that permission.
- 12.23 Envision is not responsible for any data accidentally deleted or edited by the Client’s staff.
- 12.24 The Client is responsible for deactivating user accounts for staff or contractors that no longer work for the Client or are no longer involved with the Client.
- 12.25 The Client hereby acknowledges that it understands that the Service is evolving and all upgrades are mandatory and can be applied without notice.
- 12.26 The Service supports a limited set of modern tablets devices that it reserves to choose and change at its discretion. The supported tablets for the Service can be viewed on the Knowledge Base. The use of smartphones to access the Service is not supported nor permitted.

The list of supported devices changes from time to time. Envision will publish notification of these changes on the Knowledge Base but is under no obligation to notify the Client directly of such changes.

- 12.27 The Service supports a limited set of modern web browsers and operating systems that it reserves to choose and change at its discretion.

The list of supported web browsers changes from time to time. Envision will publish notification of these changes on the Knowledge Base but is under no obligation to notify the Client directly of such changes.

SupportAbility uses responsive design technology to support use of the Service on tablet devices and does not use or develop mobile apps (applications).

- 12.28 Any new features that augment or enhance the current Service, including the release of new tools and resources, shall be subject to these Terms of Service. Continued use of the Service after any such changes shall constitute your consent to such changes.

- 12.29 Whilst Envision take snapshot backups of each SupportAbility installation each night. Backups are kept to provide an ability to restore the entire system to the night before backup in the case of an emergency. Any individual records, data or documents accidentally or intentionally deleted by the Client or its agents cannot be restored by Envision.

- 12.30 From time to time, the Client may request that Envision investigate the cause of specific data in the Client installation being modified or deleted. Where the cause is found to be the result of the actions of Client or one of its users, the Client is required to pay for the costs of the investigation (according to the paid support time rates in the Knowledge Base). Where the cause of the modification/deletion is found to be a bug or error in the Service, Envision will pay for the costs of the investigation.

13. **WAIVER**

The failure of Envision to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision.

14. **ENTIRE AGREEMENT**

These Terms of Service constitutes the entire agreement between the Client and Envision and govern the Client's use of the Service, superseding any prior agreements between the Client and Envision (including, but not limited to, any prior versions of these Terms of Service).

15. **NO REPRESENTATIONS**

- 15.1 The Client acknowledges that Envision (nor any person acting on Envision's behalf) has not made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.

- 15.2 Without limiting the generality of Clause 15.1, the Client acknowledges that by entry into these Terms of Service that no promise, representation, warranty or undertaking has been made or given by Envision or any person on its behalf in relation to the capacity, uses or benefits to be derived from, or any other consequences of or benefits to be obtained from the Service or any other goods or services provided under these Terms of Service, except as expressly set out in these Terms of Service, and that Client has relied on its own skill, due diligence and judgment in deciding to acquire and use the Service and to enter into these Terms of Service.

16. NOTICES

- 16.1 All notices, consents or approvals required under these Terms of Service shall be in writing and shall be delivered personally, sent by registered mail or transmitted by facsimile or transmitted by email as follows:-

- (a) in the case of Envision to its address stated on the first page of these Terms of Service;
- (b) in the case of the Client, the address and/or fax number as notified by the Client to Envision from time to time, or as displayed on the Client's website from time to time;
- (c) to the other party's email address (in the case of the Client, to the email address of the Client's Representative. In the case of Envision Systems to info@supportability.com.au), which email shall only be deemed as having been sent when acknowledged by the receiver as received

or to any such other address as either Party may specify to the other Party in writing.

- 16.2 Any notice given under the provisions of Clause 16.1 shall be deemed to have been duly delivered and received:

- (a) at the actual time of delivery if delivered personally;
- (b) at the time of receipt if transmitted by email or facsimile;
- (c) 3 working days subsequent to the date of posting if sent by first class mail from and to an address within Victoria;
- (d) 7 working days subsequent to the date of posting if sent by mail to or from an address outside Victoria to or from an address within Victoria; and
- (e) 14 working days subsequent to the date of posting if sent by mail between addresses outside Victoria.

17. AUTHORISED REPRESENTATIVES AND IMPLEMENTATION

- 17.1 The Client's Authorised Representatives shall have authority to act for and on behalf of Client in all matters in connection with these Terms of Service. All statements made, commitments given and/or reports submitted by the Client's Authorised Representatives or either of them shall be deemed to have been made, given or submitted by the Client. The Client must provide the names of two Authorised Representatives and all project communication and support requests must originate from these people to not incur paid support time charges.

- 17.2 It is the Client's responsibility to avoid situations of single person dependency and ensure that multiple staff can perform each of the various roles and responsibilities required to manage the Client's concerns using the product. The Client understands the risks associated with single person dependencies and its responsibilities in resourcing to avoid this issue.
- 17.3 The Client acknowledges that implementing a system like SupportAbility is a large project that requires significant resourcing and project management.

18. INTELLECTUAL PROPERTY

- 18.1 All of the Client's Data posted on the Service must comply with Australian copyright law.
- 18.2 Envision has no intellectual property rights over the Client's Data.
- 18.3 If the Client contracts Envision to extend the functionality of the Service, Envision retains all intellectual property rights to the code, concepts and functions. Without limiting the generality of the foregoing:-
- (a) Envision may utilise such code, concepts and functions for other clients of Envision without any obligation to the Client if it does so.
 - (b) if the Client contracts Envision to extend the functionality of the Service, Envision retains the right to include the new functionality in the core Service for some or all other subscribers to the Service.
- 18.4 The Client agrees to make no attempt to access the source code for the Service or the underlying data or systems.
- 18.5 The functionality, look and feel of the Service is the copyright of Envision. Envision reserves all of its rights in relation to such copyright. The Client may not duplicate, copy, or reuse any portion of the HTML, CSS, JavaScript, JSON or visual design elements of the Service or any software which is utilised for the Service.

19. GOVERNING LAW

These Terms of Service shall be governed by the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of that State.

20. DELAYS AND FORCE MAJEURE

Envision shall not be liable for any delay or failure in performing any of its obligations under these Terms of Service if such delay or failure is caused by circumstances outside its reasonable control.

21. ASSIGNMENT OF THESE TERMS OF SERVICE

- 21.1 The Client's rights in and to use the Service pursuant to these Terms of Service are personal to the Client and may not be assigned, sub-licensed, leased, sold, offered for sale, charged a fee for usage by a third party or otherwise transferred by the Client without the prior written approval of Envision.

21.2 Despite clause 21.1, the Client may assign its rights, duties and obligations pursuant to these Terms of Service to any entity:

- (a) into which the Client may be merged or reorganised; or
- (b) to which all or a portion of the Client's capital stock or assets may be sold or assigned.

21.3 Envision may assign its rights, duties and obligations pursuant to these Terms of Service to any person or entity upon giving to the Client no less than 14 days notice of its intention to do so.

22. SEVERANCE

If any clause, term or condition, or part of a clause, term or condition of these Terms of Service, is found by any court to be illegal, invalid, void or unenforceable, that Section, term or condition (or the applicable part thereof) shall be deemed to be deleted and these Terms of Service shall be deemed to be amended accordingly, while the legality, validity and enforceability of the remainder of these Terms of Service shall not be affected.

23. GST

23.1 Where under these Terms of Service a party is obliged to pay the other party an amount calculated by reference to an agreed rate or an agreed lump sum, unless the agreed rate or lump sum is expressed to include GST, the party shall pay the aggregate of:

- (a) the amount calculated by reference to the agreed rate or the agreed lump sum (as the case may be) ("Agreed Amount"); and
- (b) GST (if any) payable on the taxable supply in respect of which the Agreed Amount is payable.

23.2 Where under the Contract, a party is obliged to pay an amount calculated by reference to the cost, expense, loss or other liability suffered or incurred by that other party ("Reimbursable Liability"), the party shall pay the aggregate of:

- (a) the Reimbursable Liability net of input tax credits available to the other party in respect of the Reimbursable Liability; and
- (b) GST (if any) payable on the taxable supply in respect of which the Reimbursable Liability is payable.

24. INTERPRETATION

In the interpretation and application of these Terms of Service, unless inconsistent with or repugnant to the context, the following shall apply:

24.1 any index, clause or section headings are inserted for ease of reference and shall be disregarded in the interpretation and application of these Terms of Service;

24.2 words referring to persons shall include companies, corporations and bodies corporate and vice versa;

- 24.3 words importing the singular shall include the plural and vice versa;
- 24.4 words importing one gender shall mean and include all other genders and vice versa;
- 24.5 references to any Legislation, Statute, Act, Rule or Regulation of Parliament or to any Section, Clause, Rule or Regulation shall include any statutory modification amendment or re-enactment or any statutory provision enacted in substitution;
- 24.6 references to any deed, agreement, security or other instrument shall include a reference to any amendment variation replacement or substitution of such deed, agreement, security or other instrument;
- 24.7 save where indicated to the contrary, any reference to a covenant, obligation, promise, representation, warranty or liability of any nature whatsoever from more than one person shall be binding upon all such relevant persons on a joint and several basis;
- 24.8 these Terms of Service shall include and shall be binding upon the parties together with their heirs, estates, successors, legal personal representatives and their permitted transferees or assigns;
- 24.9 a reference to a clause, sub-clause, part, schedule or annexure shall be a reference to a clause, sub-clause, part, schedule or annexure in these Terms of Service.

25. **AUDITS**

At Envision's own expense, Envision (or its authorised representative) shall be entitled to carry out an annual audit of on-site Clients to ensure that the licensing terms are being observed. The Client agrees to provide all reasonable assistance while Envision or its authorised representative conducts such audits.

26. **SUPPORT**

The Client agrees to provide First Tier Support services to its users, making every effort to support its users and provide them with the answers to their requests.

In cases where the Client's First Tier Support services are unable to resolve a user request, Envision agree to provide Second Tier support for the Client via email support requests addressed to support@supportability.com.au as long as all requests originate from the two nominated Authorised Representatives of the Client as mentioned in clause 17. Any additional requirements for support, consultancy, integration or development, if approved by Envision, will need to be managed using paid Support Contracts at the Client's expense.

27. **DISPUTES**

- 27.1 If a dispute arises between the parties, Envision or the Client must give to the other Party to the dispute a notice specifying the dispute and requiring its resolution under this Clause ("Notice of Dispute").
- 27.2 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other Party ("First Period"), the dispute is by this Clause submitted to mediation. The mediation must be conducted in Melbourne. The Institute of Arbitrators & Mediators of Australia's Rules from time to time for the Mediation of Commercial Disputes as amended by this clause applies to the mediation, except where they conflict with this Clause.

- 27.3 If the Parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the First Period:
- (a) The mediator is the person appointed by; and
 - (b) The remuneration of the mediator is the amount or rate determined by; the President of the Law Institute of Victoria ("President") or the President's nominee, acting on the request of any Party to the dispute.
- 27.4 The Parties must pay the mediator's remuneration in equal shares. Each Party must pay its own costs of the mediation.
- 27.5 If the dispute is not resolved within 14 days after the appointment of the mediator ("Second Period"), the dispute is by this Clause referred to arbitration. The arbitration must be conducted in Melbourne by a single arbitrator.
- 27.6 If the Parties have not agreed upon the arbitrator within 7 days after the Second Period, the arbitrator is the person appointed by the President or the President's nominee, acting on the request of any Party to the dispute.
- 27.7 The arbitrator must not be a present or former member, officer, employee or agent of a Party to the dispute or a person who has acted as a mediator or advised any Party in connection with the dispute.
- 27.8 At the arbitration:-
- (a) The arbitrator must only accept evidence which would be accepted in a court of law.
 - (b) A Party may be represented by a qualified legal practitioner or other representative.
 - (c) The arbitrator must include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
 - (d) The Parties consent to an appeal to the Supreme Court of Victoria on any question of law arising in the course of the arbitration or out of an arbitration award.
- 27.9 After accepting the appointment and during the arbitration the arbitrator may:
- (a) Require the Parties to lodge security or further security towards the arbitrator's fees and expenses; and
 - (b) Apply any security towards those fees and expenses;
- but the arbitrator may not direct a Party to the dispute to provide security for the costs of the arbitration to be incurred by any other Party.

27.10 Subject only to:

(a) The requirement that the Parties first endeavour to resolve the dispute by mediation in accordance with this Clause and

(b) Clause 27.11;

this Clause is intended to be an agreement in writing to refer present or future disputes to arbitration.

27.11 This Clause does not prevent any Party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

27.12 Subject to Clause 27.11, a Party must not commence or maintain a court action or proceeding upon a dispute in connection with this Agreement until the dispute has been submitted to mediation, referred to arbitration and determined under this Clause.

THE CLIENT, BY USING THE SERVICE, HEREBY AGREES TO THE ABOVE TERMS OF SERVICE AND AGREES TO COMPLY WITH ALL OF ITS TERMS AND CONDITIONS