

MORRIS HARGREAVES MCINTYRE LIMITED
MHM RELATIONSHIPS: AUSTALIA TERMS AND CONDITIONS
(these "Terms and Conditions")

1. Definitions and interpretation

In this Agreement:

1.1 unless the context requires otherwise, the following terms shall have the following meanings:

"Agreement"	these Terms and Conditions together with the relevant PID and any document referred to in these Terms and Conditions or the PID (including the Maintenance SLA);
"Authorised Users"	those of your employees, independent contractors and customers who are entitled to use the Software through the Hosting Services under this Agreement;
"Bankruptcy Act"	means the <i>Bankruptcy Act 1966</i> (Cth);
"Breach of Duty"	the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);
"Business Day"	a day (other than a Saturday, Sunday or public holiday in New South Wales) when banks in New South Wales are open for business;
"Business Hours"	[9am to 5.30pm] on Business Days;
"Client Team"	the individuals appointed by you from time to time who shall serve as our primary contacts for our activities under this Agreement; the initial members of such team are listed in the PID;
"Confidential Information"	any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;
"Configuration Services"	the configuration and related work referred to in the PID, to be performed by us to configure the Software so that the Software conforms with the Specification;
"Costs"	the amounts payable by you to us for the licence of access to the Software and receipt of the Services, as set out in the PID;
"Culture Segments"	our methods and materials that are used by the Software to perform in accordance with the Specification;
"Customer Data"	the data inputted into the information fields of the Software by you or by Authorised Users (which may include Personal Information, or which is otherwise provided to us by or on behalf of you);
"Data Protection Legislation"	the <i>Privacy Act 1998</i> (Cth) and all applicable laws and regulations relating to the processing of personal information and privacy from time to time, together with any guidance and/or codes of practice issued by the Office of the Australian Information Commissioner or relevant government department in relation to such legislation;
"Data Subject"	means an individual who is the subject of Personal Information;
"Deliverables"	a defined level of functionality or other pre-set milestone within a particular phase of the Configuration Services, to be more particularly described in the Implementation Plan;
"Event of Force Majeure"	has the meaning given to it in Clause 16.1;
"GST"	means the goods and service tax under the GST Act;
"GST Act"	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
"Hosting Services"	the services that we provide to allow Authorised Users to access and use the Software, including hosting set-up and ongoing services, as described in the PID;
"Implementation Plan"	the plan setting out the Configuration Services, as set out in the PID;
"Insolvency Event"	means any of the following events: <ol style="list-style-type: none">a controller (as defined in the <i>Corporations Act 2001</i> (Cth)) is appointed to the party, or over any of the property of the party;the party becomes bankrupt;a controlling trustee is appointed to the party, or over any of the property of the party;the party or the party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;the party is unable to pay its debts when they become due and payable;the party ceases to carry on business; or

- g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition.

“Intellectual Property Rights”	copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Liability”	liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to “this Agreement” shall be deemed to include any collateral contract);
“Licence Term”	the term of the license of access to the Software granted by us to you under this Agreement, as set out in the PID;
“Maintenance”	any error corrections, updates and upgrades that we may provide or perform with respect to the Software and Hosting Services, as well as any other support or training services provided to you under this Agreement, all as described in the PID;
“Maintenance SLA”	the form of maintenance agreement for the Software as set out in the PID;
“MHM Team”	the individuals appointed by us from time to time who shall serve as your primary contacts for your activities under this Agreement; the initial members of such team are set out in the PID;
“Parties”	us and you, and “Party” shall mean either of us or you;
“Personal Information”	means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not;
“PID”	the project initiation document we provide to you containing specific information relating to the particular software licensed and maintained, or to be arranged to be licensed and maintained, and services to be provided, by us;
“Services”	the Configuration Services, the Hosting Services and/or the Maintenance, as applicable;
“Software”	our proprietary software in machine-readable object code form only as described in the PID, including any error corrections, updates, upgrades, modifications and enhancements to it provided to you under this Agreement;
“Specification”	the functionality and specification of the Software as set out in the PID;
“Supply”	has the meaning given to that term in the GST Act;
“Taxable Supply”	has the meaning given to that term in the GST Act;
“Tax Invoice”	has the meaning given to that term in the GST Act;
“Term”	the term for which this Agreement continues in force; and
“Virus”	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

- 1.2 references to **“Clauses”** are to clauses of this Agreement;
- 1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.4 a **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;
- 1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
- 1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.8 the words **“including”**, **“include”**, **“in particular”** or any similar words or expressions shall not be interpreted as limiting the generality of any foregoing words and shall mean without limitation; and
- 1.9 a reference to **“writing”** or **“written”** includes in electronic form and similar means of communication (except under Clause 19).

2. Agreement

- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. These Terms and Conditions apply to the Software and the Services.
- 2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4 Any PID must be in the form we require from time to time. This Agreement shall be legally formed and the Parties shall be legally bound when we have received a PID that has been completed by you and submitted by you to us. Submission by you to us of a PID shall be deemed to be an offer by you to licence access to the Software and receive the Services (as specified in the PID) from us, subject to the provisions of this Agreement, and our written acceptance of the relevant PID shall be considered acceptance of such offer, but the requirements for us to perform any of our obligations under this Agreement shall be conditional upon our receipt from you of any advance payment of Costs as required under the relevant PID.
- 2.5 If you provide to us a purchase order for your licence of access to the Software and/or receipt of the Services other than as set out in Clause 2.4, that purchase order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.6 In the event of a conflict between these Terms and Conditions and the PID, then the PID shall prevail over these Terms and Conditions.

3. Configuration Services

- 3.1 We shall use our reasonable endeavours to ensure continuity of our personnel assigned to this Agreement.
- 3.2 We shall perform the Configuration Services in accordance with the Implementation Plan. We shall use our reasonable endeavours to meet the performance dates set out in the Implementation Plan, but any such dates shall be estimates only, and time shall not be of the essence in this Agreement.
- 3.3 On delivery of each Deliverable, you shall be able to access the Deliverable online. We shall test the Deliverable to confirm that it functions in material conformance with the applicable portion of the Specification. If the Deliverable fails in any material respect to conform with the applicable portion of the Specification, we shall use our reasonable endeavours to correct any such error within a reasonable time and, on completion, submit the corrected Deliverable to you. The provisions of this Clause 3.3 shall then apply again until we consider that the Software performs in accordance with the Specification. This Clause 3.3 is subject to the performance of your obligations, and the rights granted to us, under Clause 7.1.4.

4. Hosting Services and Maintenance

- 4.1 The Maintenance SLA shall apply with effect from the start of the month after the Configuration Services have been completed to our reasonable satisfaction.
- 4.2 The set-up phase of the Hosting Services includes those services provided by us or our contracted third parties to design, configure and test the Hosting Services.
- 4.3 You shall, and shall ensure that Authorised Users shall, make their own arrangements for Internet access in order to access the Software.
- 4.4 In relation to the Software:
 - 4.4.1 we hereby grant to you on and subject to this Agreement a non-exclusive, non-transferable licence to allow Authorised Users to access the Software through the Hosting Services and to use the Software solely for your business purposes;
 - 4.4.2 you shall not store, distribute or transmit through the Hosting Services any Virus, or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
 - 4.4.3 the rights provided under this Clause 4.4 are granted to you only, and shall not be considered granted to any of your subsidiaries or holding companies, unless otherwise agreed between the parties;
 - 4.4.4 you shall not:
 - (a) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties; or
 - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties; or
 - (c) access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Services;
 - (d) use the Software or Hosting Services to provide services to third parties;
 - (e) transfer, temporarily or permanently, any of its rights under this Agreement, or
 - (f) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this Clause 4.4.4; and

4.4.5 you shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify us promptly of any such unauthorised access or use.

5. Customer Data

- 5.1 You shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. You grant us a non-exclusive licence to use, store, process and transmit the data for the purposes of this agreement.
- 5.2 We shall process the Customer Data only on your behalf, only for the purposes of performing this Agreement, and only in accordance with instructions received from you from time to time.
- 5.3 The Parties shall comply at all times with the Data Protection Legislation and shall not perform their obligations under this Agreement in such a way as to cause either Party to breach any of its obligations under the Data Protection Legislation.
- 5.4 You acknowledge that we rely on you to, and you must, provide all necessary notifications to and/or obtain all consents from Data Subjects before disclosing their Personal Information to us. Consequently, we have no Liability (subject to Clauses 12.2 and 12.3) in circumstances where a Data Subject (in respect of the Personal Information) or any third party makes a claim or complaint with regards to our actions to the extent that such actions result from your failure to comply with Data Protection Legislation [optional: and you indemnify us and hold us harmless against any such claim].
- 5.5 We may authorise a third-party sub-contractor to process the Customer Data provided that the sub-contractor's contract:
- 5.5.1 is on terms which are substantially the same as those set out in this Agreement; and
- 5.5.2 terminates automatically on termination or expiry of this Agreement for any reason.
- 5.6 You acknowledge that we may use Customer Data for anonymised data analysis and benchmarking, including:
- 5.6.1 monitoring volumes of respondents;
- 5.6.2 monitoring booking trends; and
- 5.6.3 cross-analysis of data between Culture Segments, brand equity and levels of engagement, including comparing anonymised data between our clients;

and as we may otherwise inform you from time to time. You shall ensure that you have obtained appropriate consent from relevant third parties to allow us to use the Customer Data in such way.

6. Our obligations

- 6.1 We undertake that the Services will be performed substantially in accordance with the Specification and the Implementation Plan, and with reasonable skill and care.
- 6.2 The undertaking at Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to our instructions or modification or alteration of the Software by any party other than us or our duly authorised contractors or agents. If the Software does not conform with the foregoing undertaking, we will, at our expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in Clause 6.1. Notwithstanding the foregoing, we do not warrant that your use of the Software and the Services will be uninterrupted or error-free.
- 6.3 This Agreement shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.
- 6.4 You accept responsibility for the selection of the Software to achieve your intended results and acknowledge that the Software has not been developed to meet your individual requirements.
- 6.5 Except where expressly stated in this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of this Agreement and the Software.
- 6.6 You acknowledge that we may use subcontractors to perform any or all of our obligations under this Agreement.

7. Your obligations

You shall:

- 7.1.1 provide us with:
- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as we may require;
- in order to render the Services, including to Customer Data, security access information and software interfaces to your other business applications;
- 7.1.2 provide such personnel assistance, including the Client Team and other of your personnel, as may be reasonably requested by us from time to time;
- 7.1.3 comply with all applicable laws and regulations with respect to your activities under this Agreement; and
- 7.1.4 carry out all other of your responsibilities set out in this Agreement in a timely and efficient manner; in the event of any delays in your provision of such assistance as agreed by the Parties, we may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

8. Costs

- 8.1 In consideration of us granting you the licence to the Software pursuant to this Agreement, you shall pay to us the relevant Costs together with any applicable GST (as provided for in Section 9 below) and any other applicable customs duties, levies or taxes.
- 8.2 We reserve the right to require that you reimburse us for all actual, reasonable travel expenses, including airfare, hotel and meals, incurred by us in performance of the Services.

- 8.3 You shall pay us at such times and in such instalments as outlined in the PID. Unless set out otherwise in this Agreement, we may issue invoices to you at such intervals as we may, at our absolute discretion, consider appropriate.
- 8.4 Unless otherwise set out in the PID, all sums due under this Agreement are exclusive of GST or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.
- 8.5 You shall pay us by any payment method that we may stipulate in the PID. No payment shall be considered paid until we have received it in cleared funds in full.
- 8.6 Payment by you shall be in the currency in force in Australia from time to time, unless agreed otherwise.
- 8.7 You shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 8.8 We may review and increase the Costs at any time on the provision of not less than [60] days' written notice to you. In the event that you do not agree with such increase, you may terminate this Agreement on the provision to us of not less than [30] days' written notice.
- 8.9 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following our providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or any applicable laws, regulations or mandatory standards) do any or all of the following:
 - 8.9.1 charge interest on the overdue amount due at the annual rate of 2% above the then-current overnight bank bill swap rate published by the Reserve Bank of Australia, such interest to accrue daily and both before and after judgment until the date of actual payment;
 - 8.9.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and
 - 8.9.3 suspend performance of this Agreement until payment in full has been made.

9. GST

- 9.1 If a Supply made under or in connection with this agreement is a Taxable Supply for GST purposes, then at or before the time any part of the consideration for the Supply is payable:
 - 9.1.1 you must pay us an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this agreement for that Supply; and
 - 9.1.2 we will give you a Tax Invoice for the supply.

10. Change control

- 10.1 The MHM Team and the Client Team shall meet (whether physically or by remote conference facilities) at least once every year to discuss matters relating to this Agreement, and at such other times as either Party may request from time to time. If either Party wishes to change the scope of the Services, it shall submit details of the requested change to the other Party in writing.
- 10.2 If either Party requests a change to the scope or execution of the Services, we shall, within a reasonable time, provide a written estimate to you of:
 - 10.2.1 the likely time required to implement the change;
 - 10.2.2 any variations to the Costs arising from the change;
 - 10.2.3 the likely effect of the change on the Implementation Plan; and
 - 10.2.4 any other impact of the change on the terms of this Agreement.
- 10.3 If either Party requests a change to the scope of the Services, the other Party shall not unreasonably withhold or delay consent to it.
- 10.4 If you wish us to proceed with the change, we have no obligation to do so unless and until the Parties have agreed in writing the necessary variations to its charges, the Implementation Plan and any other relevant terms of this Agreement to take account of the change.

11. Confidentiality

- 11.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:
 - 11.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
 - 11.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 11.

Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.
- 11.2 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:
 - 11.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
 - 11.2.2 it does so subject to obligations equivalent to those set out in this Clause 11.
- 11.3 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 11.4 The obligations of confidentiality in this Clause 11 shall not extend to any matter which either Party can show:

- 11.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
 - 11.4.2 was independently developed by it; or
 - 11.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
 - 11.4.4 was in its written records prior to receipt.
- 11.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.
- 11.6 We may identify you as our client and the type of Software and Services provided by us to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).
- 11.7 On termination or expiry of this Agreement, each Party shall:
- 11.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
 - 11.7.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
 - 11.7.3 certify in writing to the other Party that it has complied with the requirements of this Clause 11.7, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause 11 shall continue to apply to any such documents and materials retained by a recipient Party following termination of this Agreement for any reason.
- 11.8 Notwithstanding Clause 11.1 and Clause 11.7, you acknowledge that we:
- 11.8.1 may use anonymised Customer Data (which may constitute Confidential Information) in accordance with Clause 5.6;
 - 11.8.2 will not delete or destroy data collected during the provision of the Software and/or the Services, whether or not that data is Confidential Information or not, on termination or expiry of this Agreement, to the extent necessary for us to continue anonymised data analysis and benchmarking in accordance with Clause 5.6; and
 - 11.8.3 may continue to use such data for analysis and benchmarking purposes in accordance with Clause 5.6, provided that we continue to otherwise comply with this Clause 11 in respect of such data.
- 11.9 The provisions of this Clause 11 shall continue to apply after termination or expiry of this Agreement.
- 12. Limitation of Liability**
- 12.1 This Clause 12 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:
- 12.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services in connection with this Agreement; or
 - 12.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 12.2 Subject to clause 12.3, neither Party excludes or limits its Liability for:
- 12.2.1 its fraud; or
 - 12.2.2 death or personal injury caused by its Breach of Duty; or
 - 12.2.3 any other Liability which cannot be excluded or limited by applicable law.
- 12.3 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by us in connection with this agreement, and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 12.4, 12.5 and 12.6 do not apply to that liability and instead our liability for such failure is limited (at the our election) to, in the case of a supply of goods, us replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, us supplying the services again or paying the cost of having the services supplied again.
- 12.4 Subject to Clauses 12.2 and 12.3, and other than any Liability arising pursuant to this Agreement, including our non-excludable obligations under the *Competition and Consumer Act 2010* (Cth), we do not accept, and hereby exclude, any Liability for Breach of Duty.
- 12.5 Subject to Clauses 12.2 and 12.3, we shall not have any Liability in respect of any:
- 12.5.1 indirect or consequential losses, damages, costs or expenses;
 - 12.5.2 loss of actual or anticipated profits;
 - 12.5.3 loss of contracts;
 - 12.5.4 loss of use of money;
 - 12.5.5 loss of anticipated savings;
 - 12.5.6 loss of revenue;
 - 12.5.7 loss of goodwill;
 - 12.5.8 loss of reputation;
 - 12.5.9 loss of business;
 - 12.5.10 ex gratia payments;
 - 12.5.11 loss of operation time;
 - 12.5.12 loss of opportunity;
 - 12.5.13 loss caused by the diminution in value of any asset; or

- 12.5.14 loss of, damage to, or corruption of, data;
whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 12.5.2 to 12.5.14 (inclusive) of this Clause 12.5 apply whether such losses are direct, indirect, consequential or otherwise.
- 12.6 Subject to Clause 12.2 and 12.3, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to the greater of:
- 12.6.1 110% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose; or
- 12.6.2 \$[#INSERT].
- 12.7 The limitation of Liability under Clause 12.6 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 12.8 You acknowledge and accept that we only license access to the Software and provide the Services, and otherwise perform our obligations and exercise our rights, under this Agreement, on the express condition that we will not be responsible, nor, subject to Clause 12.2 and 12.3, shall we have any Liability, directly or indirectly, for any act or omission of you, your affiliates or your or their employees, agents, contractors or customers or any third party.
- 13. Intellectual Property Rights**
- 13.1 You acknowledge and agree that we and/or our licensors own all Intellectual Property Rights in the Software, the Services and the Culture Segments. Except as expressly stated herein, this Agreement does not grant you any rights to, or in, any Intellectual Property Rights in respect of the Software, Services, Culture Segments, brand equity and levels of engagement analysis, processes and data, or any related documentation.
- 13.2 We confirm that we have all the rights in relation to the Software that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of this Agreement.
- 14. Duration and termination**
- 14.1 This Agreement shall commence in accordance with Clause 2.4 and, unless terminated earlier in accordance with this Agreement, shall continue in full force and effect for the Licence Term.
- 14.2 Without prejudice to any of our rights or remedies, whether under this Agreement or at law, we may terminate this Agreement with immediate effect (or such other notice period as we see fit at our absolute direction) by giving notice to you if you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than seven days after being notified to make such payment.
- 14.3 Without affecting any other rights that it may be entitled to, either Party may give notice in writing to the other terminating this Agreement immediately if:
- 14.3.1 without prejudice to Clause 14.1, the other Party is in material breach of any of its obligations under this Agreement, and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 10 Business Days of being notified of such breach by the Party;
- 14.3.2 an Insolvency Event occurs in relation to the other party; and/or
- 14.3.3 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 14.4 [Either party may terminate this Agreement at any time on the provision to you of not less than [30] days' written notice.] [Note: this risks being an unfair term. Consider deleting it or making it mutual].
- 14.5 On termination or expiry of this Agreement, Clauses 1, 8, 9, 11, 12, 13, 14.5, 14.6, 14.7, 15, 16.1, 16.6, 19, 20, 21, 22, 23 and 24 shall continue in full force and effect.
- 14.6 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 14.7 On termination or expiry of this Agreement for any reason:
- 14.7.1 all rights granted to you under this Agreement shall cease;
- 14.7.2 you shall cease all activities authorised by this Agreement; and
- 14.7.3 you shall immediately pay to us any sums due to us under this Agreement.
- 15. Waiver and remedies**
- 15.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.2 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 16. Force Majeure**
- 16.1 Subject to Clause 12.2, and save in respect of the payment of Costs, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "Event of Force Majeure" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion,

storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.

- 16.2 Each of the Parties agrees to inform the other Party upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 16.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 16.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 16.5 If the performance of any obligations is delayed under this Clause 16, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 16.6 If the breach, hindrance or delay referred to in Clause 16.1 caused by the Event of Force Majeure continues without a break for more than one month, either Party may terminate this Agreement immediately by notice to the other Party, in which event neither Party shall have any Liability (subject to Clause 12.2) to the other Party by reason of such termination.
- 16.7 If we have contracted to provide identical or similar licences and/or services to more than one client and we are prevented from fully meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.

17. Variation

No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

18. Freedom to contract

The Parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this Agreement.

19. Notices

- 19.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 19.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 19.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 19.3 The provisions of this Clause 19 shall not apply to the service of any proceedings or other documents in any legal action.

20. Assignment

You shall not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

21. Severance

- 21.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 21.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

22. Third party rights

A person who is not a Party shall not have any rights under or in connection with this Agreement.

23. No partnership

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

24. Governing law and jurisdiction

- 24.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of New South Wales.
- 24.2 The Parties irrevocably agree that the courts of New South Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

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