

Intellisoftware/Hotel RevBoost Terms and Conditions of Service

1 Our Agreement with you

1.1 Our Agreement with you comprises of:

- (a) these Terms of Service;
- (b) the Order (including the Software Services Specification) to which these Terms of Service are attached; and
- (c) the attached Service Level Agreement (**SLA**).

1.2 To the extent of any inconsistency between any of the documents listed in subclause 1.1 the document listed first shall prevail, except where a document expressly specifies otherwise.

1.3 We have no obligation to supply any services under the Agreement other than the Ordered Services specified in the Order.

2 Term

2.1 The Agreement will commence on the Commencement Date specified in the Order.

2.2 If a contract term, initial term or minimum period is specified in the Order (each, an **Initial Term**), upon expiry of the Initial Term, the Agreement will automatically continue for subsequent consecutive one month periods (each such period, a **Renewal Term**), until and unless either party notifies the other party in writing that it wishes to terminate the Agreement at least thirty (30) days prior to the expiry of the Initial Term or the then current Renewal Term (as applicable) (time being of the essence), in which case if such notice is provided, the Agreement will terminate at the end of the Initial Term or the then current Renewal Term (as applicable).

3 Ordered Services

3.1 Subject to your payment of the Fees in accordance with the Payment Terms, you have a non-exclusive, non-sublicensable, non-transferable right for your End Users to access one instance of the Software hosted by us or on our behalf on a software-as-a-service basis, for the Term but only for the Permitted Purpose in accordance with the Documentation.

3.2 You must not use or permit End Users to use the Software except pursuant to the Permitted Purpose and in accordance with the Documentation.

3.3 We will supply, and/or procure the supply of, each service specified in the Order (respectively, each an **Ordered Service**) to you, including the Software specified in the Software Services Specification, materially in accordance with the Software Services Specification.

3.4 You must provide us with all necessary:

- (a) cooperation, permissions, authorisations, assistance and consents (including all relevant End User and other consents and authorisations); and
- (b) access to such information (including account logins for Your PMS and API access to Your PMS),

reasonably required by us to supply and/or procure the supply of the Ordered Services to you.

3.5 We will develop an implementation workplan or project plan (**Implementation Workplan**) for the setup, configuration and implementation of an account on the Software for you pursuant to the Agreement (**Implementation Services**). The Implementation Workplan shall establish the time frames for performing the Implementation Services that each party will use its best endeavours to comply with. The Implementation Workplan shall include the following information, as applicable:

- (a) identification of all milestone events and interdependent milestone events;
- (b) identification of critical path milestones and the commencement and completion dates for such critical path milestones;
- (c) a detailed description of all activities to be performed by you, and a detailed description of all activities to be performed by us, with respect to the implementation, and the party responsible for, and the location for performance of, such activities;
- (d) identification of all interdependent activities; and
- (e) commencement and completion dates for the setup, configuration and implementation of an account on the Software for you.

3.6 We will be entitled to a reasonable extension of time for completion of any one or more of the stages of the Implementation Workplan if one or more of the following events occur:

- (a) a Force Majeure Event occurs; or
- (b) a delay is caused in whole or in part by your acts or omissions or any acts or omissions of your agents or third-party contractors.

3.7 Each party must provide all cooperation, access to personnel and information reasonably required by the other party to perform its obligations under the Implementation Workplan.

4 Performance and availability of Ordered Services

4.1 We warrant that Ordered Services will perform materially in accordance with the Specifications.

4.2 We do not warrant that Ordered Services will be:

- (a) uninterrupted or error-free, free from fault or external intrusion; or
- (b) suitable for or will meet your requirements,

unless such warranties are expressly set out in the Agreement or cannot be excluded from the Agreement under non-excludable Applicable Law.

4.3 We undertake to use reasonable endeavours to host or procure the hosting of the Software that is supplied on a software-as-a-service basis, during the Term, subject to clause 4.4.

4.4 You agree that if Your PMS is unavailable or the APIs through which the Software communicates with Your PMS are unavailable, for any reason, we will not be responsible for any associated consequences thereof.

4.5 If there are Service Levels specified in the Order or a Service Schedule, we will use our best endeavours to ensure that the Ordered Services comply with those Service Levels.

4.6 You must obtain and maintain all applicable software, hardware, systems, telecommunications and internet access reasonably required for your End Users to use the Software. You acknowledge that End Users may not be able to use the Software in the event of your non-compliance with this clause 4.5.

4.7 We may vary the underlying technology used to supply Ordered Services at any time or from time to time, provided that the variation does not have any adverse effect on the Ordered Services.

5 Your Data

5.1 Data in any form entered into, uploaded into or generated from the Software (**Your Data**) is, as between you and us, owned by you and the Agreement does not transfer any IPR in Your Data to us.

5.2 We will comply with all applicable Data Protection Laws in respect of Your Data. We will not use Your Data other than to:

- (a) perform our obligations under the Agreement; and
- (b) comply with our legal obligations.

5.3 You must ensure that:

- (a) you are fully entitled (and where applicable, licensed) to disclose to us all of Your Data that is entered into the Software or otherwise disclosed to us by or on your behalf. (including any of Your Data held in Your PMS);
- (b) you only provide us with Your Data or access to Your Data that we require to perform the Ordered Services;
- (c) all Personal Information in Your Data is accurate, up-to-date and complete;
- (d) you have obtained all necessary consents required for us, our Personnel and Third Party Providers to collect, use, disclose and process Your Data for the purposes of the Agreement; and
- (e) you handle all notifiable data breach obligations under and in accordance with Applicable Law in respect of Your Data, including in respect of any End User's Personal Information that is jointly held by you and us.

6 Privacy

6.1 In this clause 6, the following definitions apply:

Privacy Act: the *Privacy Act 1988* (Cth) as amended from time to time.

APP: an Australian Privacy Principle as defined in the Privacy Act.

APP Entity: an APP Entity as that term is defined in the Privacy Act.

Eligible Data Breach: has the meaning given to that term in the Privacy Act, occurring on or after 22 February 2018.

Data Incident: an Eligible Data Breach that has, or is reasonably suspected to have, occurred in respect of any Personal Information we have collected, held, used or disclosed in the course of or relating to this agreement.

Personal Information: means any personal information (as defined in the Privacy Act) that we collect, hold, use or disclose in the course of performing its obligations under this Agreement.

Sensitive Information: has the meaning given to that term in the Privacy Act.

6.2 We warrant that we comply with and will continue to comply with the Privacy Act and all other applicable

Data Protection Laws.

6.3 You warrant that you comply with and will continue to comply with the Privacy Act and all other applicable Data Protection Laws.

6.4 We will:

- (a) handle all Personal Information in accordance with our privacy policy to the extent that policy is not inconsistent with the requirements of this clause 6 or this Agreement;
- (b) only use Personal Information for the purpose of performing our obligations under this Agreement;
- (c) comply with any reasonable directions given by you relating to:
 - (i) Personal Information to the extent that they are not inconsistent with the requirements of this clause 6; and
 - (ii) a Data Incident or Eligible Data Breach;
- (d) ensure that any Personnel of us who are required to access or handle Personal Information are made aware of the obligations set out in this clause 6;
- (e) protect Personal Information in our possession or control from:
 - (i) misuse, interference and loss; and
 - (ii) unauthorised access, modification or disclosure;
- (f) ensure that Personal Information is only made available to our Personnel on a need-to-know basis as necessary for our performance of its obligations under the Agreement;
- (g) promptly notify you in writing if we become aware of our or any third party's any actual or possible:
 - (i) breach of any of the obligations in this clause 6; or
 - (ii) misuse or loss of Personal Information, whether by us or any third party;
- (h) notify you immediately in writing if we become aware of any:
 - (i) request regarding access to, or correction of, any Personal Information;
 - (ii) any complaint about the handling of Personal Information;
 - (iii) any complaint made to us about our handling of Personal Information generally or beyond the scope of this Agreement; and
 - (iv) disclosure of Personal Information required by law; and
- (i) not disclose Personal Information to a person who is not in Australia without your express written consent.

6.5 If it is necessary for the performance of this Agreement, we may disclose Personal Information to a person who is not in Australia provided that person provides a written statement in a form satisfactory to you and us, before any such disclosure, which states that the person:

- (a) agrees to comply with the APPs in relation to the collection, use, disclosure, storage and destruction or de-identification of Personal Information disclosed to it in the course of this Agreement;
- (b) has a data breach response plan which includes a mechanism for notifying us where there are reasonable grounds to suspect a Data Incident and outlines appropriate remedial action (based on the type of Personal Information to be handled under the agreement); and
- (c) will enter into a contractual arrangement protecting the Personal Information with any third parties to whom it discloses the Personal Information (for example, that person's subcontractor).

6.6 You:

- (a) acknowledge that we are reliant on you for direction as to the extent to which we are entitled to use Personal Information disclosed or made available to us in the course of and for the purpose of this Agreement; and
- (b) will indemnify us for any claim brought by any third party in connection with any act or omission by us in relation to a third party's Personal Information to the extent that such act or omission resulted from your instructions or a breach by you of your obligations or warranties in this clause 6 (and/or where any such warranty was not true when given) and all associated losses, liabilities, costs, charges or expenses and all other reasonable professional costs and expenses suffered or incurred by us.

6.7 Except to the extent caused or contributed to by the negligent act or omission, wilful misconduct or breach of this Agreement by you, we will indemnify you against any losses, liabilities, costs, charges or expenses and all other reasonable professional costs and expenses suffered or incurred by you arising out of or in connection with any breach by us of our obligations in this clause 6.

7 Intellectual Property Rights

7.1 As between you and us, we own all IPR in:

- (a) the Software and all other Ordered Services (including any software, Source Code, Object Code, databases and database structures that are incorporated into or supplied in connection with the Software and any other Ordered Services); and
- (b) all Output (including any data except to the extent that it comprises Your Data) made available in or via the Ordered Services,

(collectively, **Our IPR**).

7.2 You must not represent that you own any of Our IPR.

7.3 You must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute Our IPR and you must not do or authorise the commission of any act that would or might invalidate or be inconsistent with our (or our licensors') ownership of Our IPR.

7.4 You hereby assign to us all and any IPR in all and any comments in connection with Ordered Services and any requests for new features, that you and/or your employees may make or suggest regarding them (each, **an Improvement Suggestion**). Each such comment and Improvement Suggestion becomes our sole and exclusive property. This assignment is effective when you or your employees make the comment or disclose the Improvement Suggestion to us including under section 197 of the *Copyright Act 1968* (Cth) and in equity. You must procure from your employees an irrevocable and freely given written consent from each of them to the infringement of any Moral Rights that they may have in any such Improvement Suggestions by us and by any third parties who we authorise.

7.5 Subject to clause 7.8, we will indemnify you against all and any loss and/or damage, arising out of or in connection with any valid claim brought by any third party against you that your use of any Ordered Services in accordance with the Agreement infringes that third party's Intellectual Property Rights (**IP Claim**), provided that:

- (a) you notify us immediately upon the earlier of your receipt of any notice of any IP Claim or upon you suspecting or having reasonable cause to suspect that such an IP Claim may be made;
- (b) you do not make any admission or settlement of the IP Claim without our prior written consent;
- (c) you give us sole control of the defence and any negotiations for compromise or settlement; and
- (d) you provide such assistance in connection with the IP Claim at our expense, as we reasonably require.

7.6 If any Ordered Services becomes the subject of any IP Claim referred to in clause 7.5, you must permit us if, and as we consider appropriate:

- (a) to replace all or part of the relevant Ordered Services with functionally equivalent software;
- (b) to modify the relevant Ordered Services as necessary to avoid such claim; and/or
- (c) to procure a licence from the relevant complainant to allow End Users to continue using the relevant Ordered Services during the Term.

7.7 If in the above circumstances we are unable to procure for you the right to continue using the relevant Ordered Services or to provide you with functionally equivalent non-infringing software, or to modify the relevant Ordered Services, as necessary to avoid the IP Claim, we may terminate the Agreement.

7.8 We shall have no liability for any IP Claim that is caused by or arises out of:

- (a) the use of any End User Data; or
- (b) your breach of the Agreement.

8 New Versions, New Functionality and New Modules of the Software

8.1 You agree and acknowledge that you are not entitled to receive, and that we are not obligated to supply, under this Agreement any new modules, functionality versions of the Software which from time to time is marketed by us as a new module, new functionality or new version of the Software.

8.2 During the Term, we may release to you updates of the Software that correct faults, add functionality or otherwise amends or upgrade the Software (each a **Maintenance Release**), but which does not constitute a New Version.

8.3 In respect of Software supplied on a software-as-a-service basis, we may at any time make Maintenance

Releases available to you by automatically updating the instance of the Software that we make available to your End Users pursuant to the Agreement.

- 8.4 The provisions of this Agreement that apply to the Software will apply equally to any new modules, functionality, versions and Maintenance Releases that we make available to you.

9 Confidentiality

- 9.1 Each party may receive information from the other party (**disclosing party**) during the Term that is marked as confidential or has the quality of confidential information under Applicable Law (**Confidential Information**).
- 9.2 The party who receives Confidential Information from the disclosing party (**receiving party**) may not, at any time without the disclosing party's prior written consent, use and/or disclose any Confidential Information, other than to exercise its rights and perform its obligations under the Agreement or to comply with Applicable Law.
- 9.3 Where we are required to do so under any contract with any Third Party Provider, we may disclose your Confidential Information to the Third Party Provider, where the Third Party Provider provides us with services that we use to provide any Ordered Services.
- 9.4 Confidential Information excludes information:
- (a) that is independently developed, obtained or known by the receiving party, without breaching any obligation of confidence to the disclosing party;
 - (b) that the receiving party can prove was already known to it at the time it received the information from the disclosing party;
 - (c) that is in the public domain, except where due to a breach of an Agreement or any breach of any obligation of confidence or Applicable Law; or
 - (d) that the receiving party must disclose under the rules of any stock exchange on which it or its holding company is listed.

10 Acceptable Use

- 10.1 You must ensure that if the Order specifies that only certain persons may access and/or use Ordered Services (each, an **End User**), that each such End User:
- (a) complies with the Agreement, as if the End User was you;
 - (b) complies with all applicable Documentation, Applicable Law, our directions and policies (including any security policy) in the course of such access and/or use;
 - (c) does not infringe or permit any person to infringe any of our, or our licensors', IPR;
 - (d) provides us with access to Your Data, Personnel and/or any cooperation or assistance as necessary for us to carry out our duties under the Agreement;
 - (e) does not provide their passwords or other access credentials to any other person;
 - (f) only used the Ordered Services for the Permitted Purpose;
 - (g) immediately notifies us of any unauthorised or suspected unauthorised use or disclosure of any access credentials for Ordered Services; and
 - (h) uses reasonable and appropriate security measures and precautions when using any Ordered Services.
- 10.2 You must:
- (a) ensure that you maintain a reliable internet connection for us to connect to Your Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, where required by us to provide any Ordered Services;
 - (b) ensure that Your Premises are suitable and maintained in a manner suitable for the use of any Ordered Services;
 - (c) maintain all building cabling (existing and new) at Your Premises in accordance with all Australian industry standards and guidelines necessary for any Ordered Services to operate; and
 - (d) not do anything that interferes with or prevents the proper functioning of any Ordered Services.
- 10.3 The availability of any Ordered Services will be subject to any bandwidth limitations, internet and network downtime and congestion, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions as set out in the Specifications and/or Documentation.
- 10.4 Unless otherwise expressly specified in the Agreement, you must not, and must not permit any person to, use any Ordered Services:
- (a) to copy, alter, modify, tamper with, create derivative works from, reproduce, resell, transfer

to a third party, reverse assemble, reverse engineer, reverse compile or enhance any Ordered Services or any trade marks, any patent or copyright notices, or any confidentiality legend, notice or other means of identification, used on or in relation to any Ordered Services;

- (b) in any manner that breaches Applicable Law or violates all or any legal rights of any person in any jurisdiction (including any person's privacy, such as by way of identity theft or "phishing");
- (c) to license, sublicense, resell, assign, novate, transfer, distribute, or provide others with access to, any Ordered Services;
- (d) to store, transmit, distribute or introduce malicious programs into our systems, network or servers (e.g., viruses, worms, trojan horses, e-mail bombs);
- (e) to make fraudulent or misleading offers of goods or services;
- (f) to carry out security breaches or disruptions of network communication (security breaches include accessing data of which you are not an intended recipient, logging into a server or account that you are not expressly authorised to access, corrupting any data, network sniffing, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (g) to execute any form of network monitoring which will intercept data not intended for you; or
- (h) to circumvent user authentication or security of any of our hosts, networks or accounts or those of our customers or Third Party Providers,

(collectively, **our Acceptable Use Policy**).

11 Fees

- 11.1 You must pay the Fees to us in accordance with the Payment Terms.
- 11.2 Except as expressly specified otherwise in the Payment Terms, all invoices issued by us must be paid in advance within thirty (30) days from the date that you receive the invoice.
- 11.3 The Fees are exclusive of all taxes such as GST and you agree to pay all such taxes to us, in respect of any supply (as that term is defined in the GST Law) made for the purposes of the Agreement. You must pay all such taxes at the same time as the Fees in accordance with the Payment Terms.
- 11.4 Without limiting any other rights or remedies available to us or you, we may suspend our obligations under the Agreement and your access to Ordered Services if you fail to pay the Fees in accordance with the Payment Terms.
- 11.5 If you fail to make any payment due to us under the Agreement in accordance with the Payment Terms then, we may notify any credit reporting body or agency of the default and without limiting our rights and remedies, you shall pay interest on the overdue amount, up to the highest rate of interest available under Applicable Law specified by us. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and you shall pay the interest together with the overdue amount upon demand by us.
- 11.6 We may increase the Fees payable under the Agreement by CPI once in each 12 month period after the anniversary of the Commencement Date during the Term.

12 Liability

- 12.1 Ordered Services and any Output does not constitute financial, legal or other advice. You must obtain all appropriate professional, financial, legal and other advice as applicable before relying on any Output. You must not represent (either expressly or impliedly) that any Output is our advice.
- 12.2 A party is not liable for any failure to perform its obligations under the Agreement to the extent such failure was caused by the other party or the other party's Personnel.
- 12.3 Except to the extent such loss cannot be excluded from the Agreement under non-excludable Applicable Law, neither party is liable to the other party for any loss of profits, loss of business opportunity, loss of revenue (other than caused by your failure to pay the Fees) or loss of savings, or for any other consequential or indirect loss or damage, whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not.
- 12.4 Except to the extent such loss cannot be excluded from the Agreement under non-excludable Applicable Law or specified otherwise in the Order, a party (in this clause 12.4, the **first party**)'s aggregate liability for all loss and damage that the other party may incur due to one or more breaches of the Agreement by the first party, that is not otherwise excluded by the terms and conditions of the Agreement, is, except as otherwise specified in the Order, capped at an amount equivalent to the amount of the Fees paid and payable under the Agreement.
- 12.5 Where liability for breach of any guarantees under the ACL or similar state or territory law can be limited, our liability arising from any breach of those guarantees (if any) is limited, at our option: (i) with respect

to the supply of goods, to the replacement or repair of the goods or the cost of resupply or replacement of the goods; and/or (ii) with respect to services, to the supply of the services again or the cost of re-supplying the services again.

- 12.6 Other than any non-excludable guarantees (if any) implied into the Agreement under the ACL or similar state or territory law, all conditions, warranties and guarantees that would be implied in the Agreement are hereby excluded from the Agreement.

13 Force Majeure Event

- 13.1 A party is not liable for any failure to perform its obligations under the Agreement if such failure was caused by a Force Majeure Event. If a Force Majeure Event that prevents a party from performing any of its material obligations under the Agreement continues for forty-five (45) consecutive days, either party may terminate the Agreement by prior written notice to the other party while the Force Majeure Event continues.

14 Insurance

- 14.1 We will, at our own cost and expense, obtain and maintain during the Term, the following insurances for all and any claims arising in connection with the performance of the Agreement:

- (a) workers compensation insurance covering liability for our employees;
- (b) public liability insurance in the sum of twenty million dollars (\$20,000,000) in respect of each claim;
- (c) products liability insurance in the sum of twenty million dollars (\$20,000,000) in respect of each claim and in the aggregate; and
- (d) cyber liability insurance in the amount of at least two million dollars (\$2,000,000).

15 Termination

- 15.1 A party may terminate the Agreement by written notice to the other party if the other party (the **defaulting party**) commits a breach of the Agreement:

- (a) that is not remediable; or
- (b) that is remediable and the defaulting party fails to remedy the breach within fourteen (14) days of receiving written notice from the other party requiring the defaulting party to remedy the breach.

- 15.2 We may terminate the Agreement by notice to you if a Third Party Provider ceases to provide hardware, software, products or services that we require to comply with our obligations to supply the Ordered Services to you under the Agreement, except where the Third Party Provider ceases to do so due to our breach of an agreement between us and the Third Party Provider. If we wish to terminate the Agreement under this clause 15.2, we will provide you with at least sixty (60) days prior written notice of termination, or if that is not possible, as much notice as is possible in the circumstances.

- 15.3 Either party may terminate the Agreement by written notice to the other party if the other party suffers an Insolvency Event, except where such termination would contravene the *Corporations Act 2001* (Cth).

- 15.4 If the Agreement is terminated for any reason, each party shall, at the other party's option, promptly return or destroy all copies of the other party's Confidential Information in its possession or control to the other party.

- 15.5 Upon termination of the Agreement we will have no further obligation to supply Ordered Services under the Agreement and any rights or obligations that, by their nature, survive termination shall so survive, including any provision dealing with confidentiality, IPR, liability, dispute resolution and jurisdiction.

- 15.6 Termination of the Agreement does not affect any accrued rights of either party.

16 Notices

- 16.1 All notices required or permitted to be made under the Agreement shall be in writing and shall be deemed delivered if:

- (a) delivered in person;
- (b) sent by post to the recipient's postal addresses identified in the Order; or
- (c) sent by email to the recipient's email addresses identified in the Order.

- 16.2 Notice delivered in person shall be deemed to have been received by the recipient upon delivery.

- 16.3 Notice sent by post shall be deemed to have been received by the recipient six (6) Business Days after posting if posted domestically in Australia, or twenty (20) Business Days after posting to or from any other country.

- 16.4 Notice sent by email shall be deemed to have been received by the recipient on the day on which it is transmitted if the sender receives a read or delivery receipt confirming delivery or receipt of the email, unless a delivery failure email is received, or otherwise when a reply to the email is received.

- 16.5 Any party may change its address for notice hereunder by giving written notice to the other party in

accordance with this clause 16.

17 Dispute Resolution

- 17.1 Before court or arbitration proceedings other than for urgent interlocutory or equitable relief may be commenced by either party to the Agreement against the other party, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with the Agreement (including any dispute as to the validity, breach or termination of the Agreement, or as to any claim in tort, in equity or pursuant to any statute).
- 17.2 Notice (the **notice of dispute**) must be given in writing by the party claiming that a dispute has arisen to the other party specifying the nature of the dispute.
- 17.3 Upon receipt of the notice of dispute, senior representatives of the parties must meet in person, by telephone, via video conference or by other agreed means and attempt to resolve the dispute.
- 17.4 If within ten (10) Business Days of receipt of the notice of dispute, the dispute is not resolved, then the parties shall refer the dispute to the Resolution Institute, (ACN 008 651 232); email: infoaus@resolution.institute; telephone: (02) 9251 3366 for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.
- 17.5 The parties must co-operate with Resolution Institute as facilitator.
- 17.6 If within ten (10) Business Days after referral of the dispute to Resolution Institute the parties have not agreed upon the mediator or other relevant particular, the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Mediation Rules.
- 17.7 Nothing in this clause 17 shall prevent any party from seeking urgent interlocutory or equitable relief in connection with the Agreement.
- 17.8 Each party will bear its own costs in respect of complying with clauses 17.1 - 17.6.

18 Non-Solicitation

- 18.1 Neither party (in this clause 18.1, the **first party**) may, without the prior written consent of the other party, engage, employ, induce or cause a third party to induce any of the other party's employees engaged in the performance of the Agreement to enter into a contract for service or a contract of employment with the first party.
- 18.2 Clause 18.1 will only apply during the Term and for the period of six months from: (a) the expiry of the Term; or (b) the effective date of termination (if the Agreement is terminated prior to the expiry of the Term).
- 18.3 Employment or engagement of any employee of the other party by the first party following the employee's submission of a job application in response to a general advertisement placed on a jobs website or in a newspaper advertisement will not constitute a breach by the first party of clause 18.1.
- 18.4 The parties agree that the restrictions in this clause 18 are necessary to protect the legitimate interests of each party.

19 General

- 19.1 A party may not assign its rights or novate its obligations under the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).
- 19.2 If any part of the Agreement is deemed invalid by a court of competent jurisdiction, the remainder of the Agreement is still enforceable.
- 19.3 The relationship between you and us is non-exclusive and nothing in the Agreement will:
- (a) prevent us from supplying any goods or services to any third party in our absolute discretion; or
 - (b) prevent you from engaging any third party to provide you with any goods or services in your absolute discretion.
- 19.4 We are an independent contractor and nothing contained in the Agreement creates any relationship of partnership, employment, joint venture or agency between you and us.
- 19.5 The Agreement is the entire agreement between you and us about its subject matter and supersedes all other proposals, arrangements, representations or agreements between you and us about its subject matter. Without limiting the foregoing provisions of this clause 19.5, any terms of trade, purchase order terms or other terms and conditions that you issue to us (whether before or after the Agreement is entered into) are not binding and do not form part of the Agreement.
- 19.6 The Agreement may be amended only by a written document signed by you and us and a provision of or a right under the Agreement may not be waived or varied except in writing signed by you and us.
- 19.7 The Agreement is governed by the laws in force in New South Wales. You and we submit to the non-exclusive jurisdiction of the courts located in New South Wales and the courts of appeal from them in relation to any proceedings and disputes concerning the Agreement.

20 Definitions and Interpretation

20.1 In these Terms of Service, words in bold font in parentheses have the meanings given to them therein. In addition, words defined in the Order have the meanings given therein and the following words have the following meanings:

Australian Consumer Law and **ACL** mean schedule 2 to the Competition and Consumer Act 2010 (Cth).

Applicable Law means any legislation, rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental agency, including Data Protection Laws, in any applicable jurisdiction.

Business Day means any day from Monday to Friday excluding public holidays in New South Wales.

Business Hours means 9:00am – 5:00pm on Business Days.

Commencement Date means the date from which the Agreement will commence in accordance with clause 2.1.

CPI means the most recently published Consumer Price Increase (CPI) movement (All Groups CPI, Australia, annual movement (%)) published by the Australian Bureau of Statistics (**ABS**) or any replacement thereof published by the ABS.

Data Protection Laws means all applicable data protection and privacy laws in any applicable jurisdiction, including the *Privacy Act 1988* (Cth).

Documentation means any user manuals, notes, technical instructions, compatibility requirements and other documentation provided by us in respect of the Ordered Services.

End User has the meaning given to it in clause 10.1.

Fees or Charges means any fees and charges specified in the Order or any attachment thereto.

Force Majeure Event means war, industrial action, government action, natural disaster, flood, labour disturbance, pandemic or other circumstances beyond a party's reasonable control.

GST and **GST Law** have the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).

Insolvency Event means, in respect of a party: (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt; (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (d) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or (e) anything analogous or having a substantially similar effect to any of the events described in (a) through (d) above occurs under the law of any applicable jurisdiction.

IPR means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under Article 2 of the Convention Establishing the World Intellectual Property Organisation, and all rights to enforce any of the foregoing rights.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Object Code means Source Code in compiled or binary form.

Order means the document entitled "Order", to which these Terms of Service is attached.

Ordered Service has the meaning given in clause 3.3.

Output means any reports and other output generated by any Ordered Services.

Payment Terms means payment terms set out in the Order.

Permitted Purpose means any permitted purpose set out in the Order in respect of any Ordered Service.

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth).

Personnel means a party's employees, agents, officers and subcontractors. We are not your Personnel and you are not our Personnel for the purposes of this definition.

PPSA means *Personal Property Securities Act 2009* (Cth) as amended from time to time and any regulations thereunder.

Provisioning means setup, installing and/or making a relevant Ordered Service available for use by End Users and "Provision" has a corresponding meaning.

Service Level means a level of service expressly described as a "service level" in the Agreement.

Software means the software that we licence to you or agree to provide your End Users with access to, as specified in the Software Services Specifications and includes each Software Module.

Software Module means a module of the Software that we provide you with access to, as further specified in the relevant Software Services Specifications.

Source Code means human readable computer code.

Specifications means the technical, functional and non-functional specifications for Ordered Services as set out in, referred to from, or attached by us to, the Order (including the Software Services Specifications).

Term means the term of an Agreement determined pursuant to clause 2.

Third Party Provider means any of our third party suppliers, vendors, subcontractors or providers who provide any goods or services that we rely on, supply or resupply as part of Ordered Products and Services.

We, our and us, means Intellisoftware Pty Ltd (ACN 663 930 756) of Unit 414, 5 Celebration Drive, BELLA VISTA NSW 2153.

20.2 Unless the context requires otherwise:

- (a) a reference to “a party” means you or us (as the context dictates) and a reference to “the parties” means you and us;
- (b) headings and underlinings are for convenience only and do not affect the construction of the Agreement;
- (c) a provision of the Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party’s legal representative prepared the provision;
- (d) currency or “\$” refers to Australian dollars;
- (e) a reference to a statute or regulation includes amendments thereto;
- (f) a reference to time is to time in New South Wales;
- (g) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (h) the words “such as”, “including”, “particularly” and similar expressions are not words of limitation and shall be interpreted as if the words “but not limited to” immediately followed them in each case; and
- (i) a reference to the singular includes the plural and vice versa.