saleG8 Cloud Hosting Terms and Conditions

BACKGROUND:

A. The Client and MYCO have entered into the Software Licence and Support Partnership Agreement, which provides the Client with the right to use the Licenced Software and associated services.

B. The Client has requested MYCO provide the Cloud Hosting, in accordance with the terms of this Agreement.

C. In consideration for the Client paying MYCO the Cloud Hosting Fee, MYCO agrees to provide the Cloud Hosting in accordance with the terms of the Agreement.

D. These saleG8 Cloud Hosting Terms and Conditions, along with the saleG8 Order Form and the Agreement Particulars set out terms of the Agreement.

E. The Client accepts these Terms by signing the saleG8 Order Form, through its use of the Cloud Platform or by continuing to use the Cloud Platform after being notified of a change of these Terms.

IT IS AGREED:

1. DEFINITIONS

1.1 In this Agreement the following words shall have the corresponding meaning:

(a) **Address For Service** means the Party's respective contact details specified in the Agreement Particulars, or as modified from time to time in accordance with clause 23.4;

(b) **Agreement** means the agreement between MYCO and the Client for the provision of the Cloud Hosting, which is constituted by these Hosting Terms, the Agreement Particulars, and the Order Form;

(c) **Agreement Particulars** means the Agreement Particulars specified in the table of the Order Form;

(d) **Business Day** means a day on which banks are open for business in New South Wales;

(e) **Claim** against any person means any claim, action, proceeding, demand, prosecution, judgment, damage, loss, cost, expense, fine, penalty or liability whatever incurred or suffered by or brought or made or recovered against a person and however arising (whether presently ascertained future or contingent);

(f) **Client** means the Client set out in the Agreement Particulars;

(g) **Cloud Hosting** means hosting the Licenced Software, including the Data, in the Cloud Platform, managing the Cloud Platform, and facilitating the Client's access to and use of the Cloud Platform;

(h) **Cloud Hosting Fee** means the fee specified in the Agreement Particulars, payable by the Client to MYCO, in accordance with clause 5 and as increased in accordance with clause 6;

(i) **Cloud Platform** means the online platform managed by MYCO and used by MYCO to provide the Licenced Software, including the application and database software for the Licenced Software, the system and server software used to provide the Licenced Software, and the computer hardware on which that application, database, system and server software is installed;

(j) **Commencement Date** means the date set out in the Agreement Particulars;

(k) **Confidential Information** includes any information, documents, manuals and materials of MYCO, provided in any medium whatsoever concerning:

(i) MYCO's related bodies corporate, affairs, finances, ideas, strategic information, Intellectual Property Rights, business plans, activities and operations;

(ii) any other information which MYCO designates as confidential or which the receiving Party should reasonably know is confidential;

(iii) the personnel, policies or business strategies of MYCO; and

(iv) any information, manual, document or material provided to the Client relating to the operation of the Cloud Hosting, Cloud Platform, and Licensed Software;

(v) the design, specification and content of the Cloud Platform and Licensed Software;

(vi) the terms on which the Cloud Hosting is being provided under this Agreement;

(l) **Data** means all data, works and materials:

    (i) uploaded to or stored on the Cloud Platform by the Client; transmitted by the Cloud Platform at the instigation of the Client;

    (ii) supplied by the Client to MYCO for uploading to, transmission by or storage on the Cloud Platform; or

    (iii) generated by the Client's use of the Cloud Platform (but excluding analytics data relating to the use of the Cloud Platform and server log files);

(m) **Force Majeure Event** means an outbreak of communicable disease or infectious epidemic or pandemic which is the subject of a Commonwealth or applicable State or Territory Health Emergency declaration, and includes but is not limited to Covid-19 (Disease Outbreak), war whether declared or not, insurrection, strikes, inability to obtain material, fire, storm or other severe action or the elements, accidents, government restrictions or for any other cause whether like or unlike the foregoing, which are unavoidable or beyond the control of the relevant party.

(n) **GST** means a tax imposed by or under the GST Law;

(o) **GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1998* (Cth);

(p) **Hosting Terms** means these saleG8 Cloud Hosting Terms;

(q) **Intellectual Property Rights** includes all present and future registered and unregistered rights conferred by statute, common law, equity or any corresponding law in or in relation to copyright, trademarks, designs, patents, source code, trade secrets, semiconductor, know-how, Confidential Information, Moral Rights or circuit layout rights in the Licensed Software and any other intellectual property rights as defined by Article 2 of the *Convention Establishing the World Intellectual Property Organisation 1967*;

(r) **Initial Term** means the period starting from the commencement date, running for the duration, or until the date, specified in the Initial Term in the Agreement Particulars;

(s) **Licensed Software** means the saleG8 software provided by MYCO to the Client in the Software Licence and Support Partnership Agreement which will be made available by MYCO to the Client as a service via the internet in accordance with this Agreement;

(t) **Moral Rights** means rights of integrity or authorship and performance, rights of attribution of authorship and performership, rights not to have authorship or performership falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world in relation to the Intellectual Property Rights;

(u) **MYCO** means MYCO SYSTEMS PTY LIMITED (ABN 13 008 652 686);

(v) **Order Form** means the saleG8 Cloud Hosting Order Form signed by Myco and the Client;

(w) **Party** and **Parties** means a party or parties to this Agreement, being MYCO and the Client;

(x) **Software Licence and Support Partnership Agreement** means the agreement between the Client and MYCO as specified in the Agreement Particulars, for the provision of the Licenced Software and services;

(y) **Source Software** means the source code in all of its parts which forms the Licensed Software including programs, paragraphs, field definitions, processes, scripts, screen design and documentation;

(z) **Tax Invoice** has the meaning attributed to the term in the GST Law as amended from time to time; and

(aa) **Term** means the term of this Agreement commencing on the Commencement Date and ending on the date this Agreement is validly terminated in accordance with its terms.

2. INTERPRETATION

2.1 In this Agreement unless the context requires otherwise:

(a) headings in this Agreement are reference only and do not form part of this Agreement;

(b) a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;

(c)   a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;

(d)   a reference to a time and date in connection with the performance of an obligation is a reference to the time and date in New South Wales, even if the obligation is to be performed elsewhere;

(e)   a reference to the rights, duties, obligations and liabilities of more than one party will in every case be a reference to rights, duties, obligations and liabilities that are several and not joint or joint and several;

(f)   the singular includes the plural and vice versa;

(g)   a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;

(h)   a reference to any gender includes all genders;

(i)   mentioning anything after include, includes or including does not limited what else might be included;

(j)   a reference to a schedule, recital, clause, annexure or exhibit is to a schedule, recital, clause, annexure, or exhibit of or to this Agreement;

(k)   a schedule, annexure or a description of the parties forms part of this Agreement;

(l)   a reference to any agreement, deed or document is to that agreement, deed or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

(m)   where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(n)   a reference to a bankruptcy or winding up includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in the *Corporations Act 2001* (Cth)), being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters;

(o)   where an expression is defined anywhere in this Agreement, it has the same meaning throughout this Agreement;

(p)   where an expression is set out in the first column of the Agreement Particulars, it has the corresponding meaning in the second column;

(q)   the rule of *contra proferentem* does not apply to this Agreement; and

(r)   a reference to "dollars" or "$" is to an amount in Australian currency.

2.2   In the event of any inconsistency between these Hosting Terms, the Order Form, the Agreement Particulars, or the Software Licence and Support Partnership Agreement, the following order of precedence will apply to the extent of the inconsistency:

(a)   the terms of these Hosting Terms;

(b)   the Software Licence and Support Partnership Agreement; and

(c)   the Agreement Particulars; and

(d)   the terms of the Order Form.

3.   TERM

3.1   The initial term of this Agreement is a minimum of 12 months from the Commencement Date, or as otherwise set out in the Initial Term in the Agreement Particulars (**First Term**), unless terminated earlier in accordance clause 18.

3.2   If the Client party wants this Agreement to end on the expiry of the First Term, they must provide MYCO with 60 days written notice prior to the expiry of the First Term.

3.3   Following expiry of the First Term, the Agreement will be automatically renewed annually for a successive term or terms, with the period of each renewed term being 12 months until either Party gives to the other Party at least 90 days' written notice of its intention for this Agreement to terminate.

3.4   The Parties acknowledge and agree that notwithstanding any other term of this Agreement, MYCO, at its sole discretion, may terminate this Agreement immediately if the Software Licence and Support Partnership Agreement terminates for any reason.

4. SUPERSESSION

The Parties acknowledge and agree that by entering into this Agreement, any previous agreements between the Parties in relation to Cloud Hosting are superseded by the operation of this Agreement.

5. FEES

5.1 The Client must pay MYCO the monthly Cloud Hosting Fee, based on screen activity and data usage and subject to increase annually in accordance with clause 6, in advance in consideration for MYCO providing the Cloud Hosting.

5.2 The Client must pay the Cloud Hosting Fee within 14 days of the date of a correctly issued Tax Invoice. The payment term of any fees or charges payable under this Agreement may be varied only with the prior written approval of MYCO, at its sole discretion.

5.3 In the event that the Client fails to pay any fees or charges payable under this Agreement on or before the payment due date specified on the Tax Invoice, the Client must pay to MYCO in addition to the outstanding fees or charges, interest at the rate of 15% per annum, calculated daily on the outstanding payment until the relevant payment has been made in full.

5.4 The Client is not entitled to use the Cloud Hosting, during any given period unless all fees and charges due and payable under this Agreement have been paid in full to MYCO.

5.5 The Client acknowledges that MYCO, at its sole discretion, may reduce response times and system performance in the provision of the Cloud Hosting, if any amounts due and payable under this Agreement are outstanding for more than 14 days.

6. FEE INCREASES

6.1 The Client acknowledges and agrees that the Cloud Hosting Fee may increase annually on or around 1 January or 30 June of each year, at MYCO's sole discretion, which will notionally be based on MYCO's reasonable assessment of the Client's screen activity and data usage but may include other factors such as MYCO's increased costs.

6.2 MYCO will provide the Client with 30 days prior written notice of an increase under clause 6.1.

6.3 On receipt of a notice of increase of the Cloud Hosting Fee under clause 6.1 the Client may terminate this Agreement by providing MYCO 30 days written notice.

7. VARIATION OF TERMS

7.1 The Client agrees that MYCO may unilaterally vary these Hosting Terms by providing the Client 60 days written notice, and publishing the terms as varied on the MYCO website.

7.2 On receipt of a notice served by MYCO in accordance with clause 7.1 (**Variation Notice**), the Client may, by providing MYCO 30 days written notice, terminate this Agreement.

7.3 If the Client has not exercised its right to terminate the Agreement in accordance with clause 7.2 within 60 days of receiving the Variation Notice, this Agreement will be deemed to be varied as proposed in the Variation Notice.

8. CLIENT'S OBLIGATIONS

8.1 During the Term, the Client must:

(a) not copy, reproduce, modify, distribute, revise, vary, translate, reverse-engineer, use, alter or disassemble the Cloud Platform in any way;

(b) not, directly or indirectly, cause or allow a third person to copy, reproduce, modify, distribute, revise, vary, translate, reverse-engineer, use, alter or disassemble the Cloud Platform in any way;

(c) not provide or allow access to the Cloud Platform, in any form, by any person other than the Client's employees, sub-contractors or agents, without MYCO's prior written consent;

(d) supervise and control the access and use of the Cloud Hosting so that it is in accordance with the terms of this Agreement;

(e) promptly comply with any reasonable request or direction of MYCO in relation to the use of and access to the Cloud Hosting;

(f) take reasonable measure to secure its information technology systems, such as considering adequate password complexity rules, regular password expiry policies, and use of commercially standard two factor authentication methods where available;

(g)   provide MYCO free and full access to the Client's equipment and software as reasonably required to enable MYCO to carry out its obligations under this Agreement; and

(h)   remain a licensee of the Licenced Software;

(i)   promptly notify MYCO once becoming aware of any event that may constitute a breach of this Agreement;

(j)   immediately notify MYCO once becoming aware of any actual or suspected security breach or other failure of the Cloud Hosting;

(k)   not do anything that is or may be harmful to MYCO's interests, welfare, business, profitability, growth and reputation, or that may adversely impact upon MYCO's ability to provide the Cloud Hosting;

(l)   comply with all applicable legislation, including the *Privacy Act 1988* (Cth) to the extent that it applies to the Client;

(m)   not, by its action or inaction, cause MYCO to breach any applicable legislation, including the *Privacy Act 1988* (Cth); and

(n)   ensure that its employees, sub-contractors and agents who have access to the Cloud Hosting are made aware of, and comply with, the terms of this Agreement and the Software Licence and Support Partnership Agreement.

8.2   The Client acknowledges that a breach of clauses 8.1(a) or 8.1(b) or 8.1(c) is a breach of MYCO's Intellectual Property Rights.

8.3   The Client is responsible for testing the Cloud Hosting.

8.4   The Client acknowledges that it must have internet access in order to access the Cloud Hosting, and that the performance of the Cloud Hosting is dependent on the quality and speed of such internet connection.

9.   MYCO'S OBLIGATIONS

9.1   In consideration for the Client paying the Cloud Hosting Fee to MYCO in accordance with clause 5, MYCO agrees to:

(a)   subject to clause 5.5:

(i)   provide the Cloud Hosting;

(ii)   provide the Client authorisation details to access the Cloud Platform;

(b)   use its best commercial endeavours to ensure the security of the Data;

(c)   use its best commercial endeavours to prevent third parties accessing the Data;

(d)   use its best commercial endeavours to store the Data in Australia;

(e)   use its best commercial endeavours to ensure the integrity of the Data in the event of a failure of the Cloud Platform, including by conducting regular backups of the Data.

9.2   The Parties acknowledge and agree that the following works do not fall within the scope of this Agreement Cloud Hosting:

(a)   repair of any damage or malfunction whatsoever arising from the act, error, fault, neglect, misuse or omission, intentional or otherwise, of the Client, its employees, agents, contractors, invitees or any other person whether or not that person was under the control, direction or authority of the Client;

(b)   repair of any damage or malfunction whatsoever caused by the operation of the Cloud Platform otherwise in accordance with the requirements of MYCO;

(c)   repair of any damage or malfunction whatsoever arising from changes, alterations, connections, additions or modifications to the Cloud Hosting;

(d)   maintenance, configuration, or repair of any of the Client's equipment;

(e)   repair of any damage or malfunction whatsoever arising from the customer's failure to comply with any provision of this Agreement;

(f)   works which MYCO, in its absolute discretion, considers not to be reasonable required for the commercial performance and operation of the Cloud Hosting; and

(g)   training of the Client's staff in the operation of the Cloud Hosting.

10. OUTAGES

10.1 The Client acknowledges and agrees that MYCO or a third-party provider may conduct upgrades and maintenance during the Term which may result in unavailability of the Cloud Hosting (**Outage**).

10.2 The Client acknowledges and agrees that Outages will not be deemed a breach of this Agreement.

10.3 MYCO will use its best commercial endeavours to inform the Client of any Outage planned by MYCO that may affect the Cloud Hosting, within a reasonable time prior to that Outage.

10.4 For the avoidance of doubt, the Client acknowledges that MYCO will use its best endeavours to ensure the Cloud Hosting are available 99% of the time, excluding a one hour maintenance period usually performed on Sundays between 4:00pm and 5:00pm AEST, but makes no warranties as to the availability, restrictions or timeframes of the Cloud Hosting or any Outages and no Claims may be brought against MYCO in respect to any Outages, interruptions, or delays for any reason.

11. WARRANTY

11.1 As at the Commencement Date, MYCO warrants that the Cloud Platform will not contain any virus or built-in expiry dates.

11.2 MYCO will use its best endeavours to ensure, but because the Cloud Hosting relies on the use of third party platforms it does not warrant, that:

(a) the Cloud Hosting is error free;

(b) the suitability and performance of the Cloud Hosting as it relates to the Client's internet connection;

(c) any enclosed or related documentation or manuals will allow a full understanding of the operational characteristics of the Cloud Hosting; or

(d) the Cloud Hosting will meet the Client's requirements.

11.3 The Client warrants that:

(a) it has exercised its independent judgement in entering this Agreement;

(b) it has not relied on any representation made by MYCO which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by MYCO; and

(c) no content kept on the Cloud Platform by the Client associated with this Agreement, including the Data, is of any material or content that:

(i) solicits, encourages or promotes the use of illegal substances or activities that are illegal, unlawful, malicious, discriminatory, threatening, abusing, harassing, defamatory, libellous, invasive of privacy, bigoted, profane, pornographic, indecent or otherwise objectionable;

(ii) gives rise to civil or criminal liability or otherwise violates any applicable law; or

(iii) contains any virus, disability or malicious code, worm, Trojan-horse virus, time bomb or other harmful or destructive code.

(d) it will regularly backup its data and use appropriate and up-to-date malicious code and virus detection software for preventing and detecting against any virus, disability or malicious code, worm, trojan-horse virus, time bomb or other harmful or destructive code.

12. INDEMNITY

12.1 In this clause 12 a reference to a Party includes its officers, employees, agents, contractors, suppliers or officers.

12.2 The Client indemnifies MYCO against and releases MYCO from all losses, damages and costs (including legal costs and disbursements on a solicitor-client or indemnity basis, whichever is higher), expenses, actions or Claims directly or indirectly incurred or suffered by MYCO as a result of:

(a) a breach or repudiation of this Agreement by the Client, including a breach of a warranty or any obligation;

(b) any wilful, unlawful, or negligent act or omission of the Client;

(c) the infringement of any third party's Intellectual Property Rights,

except to the extent that such loss, damage or cost is directly caused by MYCO.

13. LIMITATION OF LIABILITY

13.1 If any statute implies terms into this Agreement which cannot be lawfully excluded, such terms will apply to this Agreement but the liability of MYCO for breach of any such implied term will be limited, at the option of MYCO, to any one of the following:

    (a) in relation to the Cloud Hosting, the Cloud Hosting Fees paid under this Agreement in the 12 months prior to the date of the breach;

    (b) in the case of services:

        (i) supplying the services again; or

        (ii) paying the cost of having the services supplied again.

13.2 If MYCO is deemed to be liable for the breach of any express or non-statutorily implied term under this Agreement, MYCO's liability is limited to the amount of half the Cloud Hosting Fees paid under this Agreement in the 12 months prior to the date of the breach.

13.3 MYCO will not be liable for any indirect or consequential loss arising out of:

    (a) a breach of this Agreement;

    (b) the unavailability the Cloud Platform; or

    (c) the provision of the Cloud Hosting.

13.4 The Client acknowledges that problems caused by a third-party provider are the responsibility of that third party provider.

13.5 This clause 13 survives termination or expiry of this Agreement.

14. DISCLAIMER

14.1 The Client acknowledges that MYCO does not independently verify data or information provided by third parties or the Client.

14.2 MYCO is not liable:

    (a) for any errors or omissions in data or information provided by third parties or the Client;

    (b) to the extent that a defect in the Cloud Hosting is caused by the Client or a third party;

    (c) for the failure of the Client or a third party to maintain the designated operating environment;

    (d) for any server failures, conflicts, incompatibilities or other circumstances which may impair the performance of the Licensed Software or arise from a shared server environment; or

    (e) for the failure of the Client to use the Cloud Platform otherwise than in accordance with this Agreement and the specifications issued by MYCO from time to time.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 All Intellectual Property Rights created in the course of providing the Cloud Hosting, either solely or jointly with others, vest in MYCO.

15.2 The Intellectual Property Rights in the Cloud Platform (including the source and object code) and the documentation shall be and remain vested in MYCO apart from any elements which do not form part of the generic functionality of the Cloud Platform and which implement visual features or layouts created at the specific request of the Client.

15.3 The Client must promptly at its own cost (excluding registration fees) do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to the vesting of Intellectual Property Rights in MYCO under this Agreement.

15.4 The Client must not during, or any time after the expiry or termination of this Agreement, infringe MYCO's Intellectual Property Rights or permit any act which infringes those Intellectual Property Rights.

15.5 The Client must advise MYCO if it becomes aware of any breach or infringement of MYCO's Intellectual Property Rights.

15.6 The Client fully indemnifies MYCO against all liabilities, costs and expenses that MYCO may incur to a third party as a result of the Client's breach of clause 15.4. The Client must notify MYCO immediately in writing of any actual, suspected or anticipated infringement of MYCO's Intellectual Property Rights that comes to the attention of the Client.

15.7 The Parties acknowledge and agree that ownership of, and all Intellectual Property Rights in, the Data is retained by the Client, but possession of the Data is subject to clause 19.2 and payment of the reasonable costs MYCO may apply in the event that the Data is required to be:

(a) accessed by the Client directly in the Cloud Platform; or

(b) extracted from the Cloud Platform by MYCO and transferred to the Client.

15.8 This clause 15 survives termination or expiry of this Agreement.

16. CONFIDENTIALITY

16.1 The Client must treat the Confidential Information of the other Party as confidential where it comes into its possession pursuant to or as a result of or in the performance of this Agreement and may only disclose such details to those of its employees by whom it is reasonably required to enable them to carry out their obligations under this Agreement.

16.2 The Client must not, without the written permission of MYCO, disclose such Confidential Information to a third party.

16.3 The foregoing obligations and commitments not to disclose Confidential Information shall not apply to:

(a) information which is at the time of disclosure of thereafter becomes part of the public domain through no act or omission by a Party to this Agreement;

(b) information which was otherwise in the Client's possession prior to disclosure, as shown by written records;

(c) information that is disclosed to a professional adviser, banker or financial adviser of the Client or to a person whose consent is required under this Agreement or for a transaction contemplated by it and that person undertakes to the person who provides the information:

(i) not to disclose any of the Confidential Information in any form to anyone else; and

(ii) only to use the Confidential Information for the purposes of advising the Client or financing the Client or where a person is considering whether to give that consent (as the case may be);

(d) the law or any stock exchange requires the disclosure or use provided that such disclosure is first delivered to MYCO; or

(e) Confidential Information which is hereafter lawfully disclosed to the Client by a third party which did not acquire the Confidential Information under an obligation of confidentiality from or through MYCO.

16.4 In the event of termination, the Client must destroy any copies of Cloud Platform documentation or manuals or return or dispose of such material as directed by MYCO.

17. PRIVACY

17.1 Each Party acknowledges that the other Party may be bound from time to time by legislation (**Privacy Legislation**) relating to privacy, including in relation to the collection, storage, use, quality of disclosure of personal information or sensitive information, as defined in the *Privacy Act 1988* (Cth) (**Information**).

17.2 Each Party acknowledges and agrees to:

(a) abide by the terms of MYCO's Privacy Policy, available on MYCO's website;

(b) not do anything, or fail to do anything, that could cause the other Party to breach Privacy Legislation; and

(c) comply with all privacy obligations in relation to any Information.

17.3 MYCO utilises various electronic and physical security measure to protect the security of Information but does not guarantee the security of any Information.

17.4 The Client acknowledges and agrees that MYCO may provide its service providers information about the Client for the purpose of establishing and maintaining the Cloud Hosting.

17.5 The Client acknowledges that MYCO primarily stores Information in Australia and the United States of America, but that due to the nature of cloud storage Information may be stored in different countries from time to time, the location of which is not reasonable available.

18. TERMINATION

18.1 Either Party may immediately terminate this Agreement by notice in writing to the other Party if:

(a) the other Party ceases to operate as a business;

(b)   access to the Cloud Platform or provision of Cloud Hosting has been affected by a Force Majeure Event for at least 40 out of 60 consecutive Business Days;

(c)   a Party fails to remedy any breach of this Agreement within 30 Business Days after a notice, specifying the breach and requesting that it be remedied, has been given; or

(d)   a Party commits any act or omission involving fraud, deceit or dishonesty (whether in relation to this Agreement or otherwise).

18.2   In addition to its rights pursuant to clause 18.1, MYCO may terminate this Agreement at any time by giving written notice if:

(a)   the Software Licence and Support Partnership Agreement terminates for any reason;

(b)   the Client in any way, either directly or indirectly breaches clause 8.1;

(c)   the Client is in breach of a warranty under this Agreement, and in addition to terminating, MYCO may make a Claim against the Client accordingly;

(d)   the Client fails to pay an amount due or payable under this Agreement within 30 days of the due date;

(e)   the Client, being a corporation, becomes the subject of insolvency proceedings; or

(f)   the Client, being an individual or partnership, becomes the subject of bankruptcy proceedings.

18.3   In addition to its rights pursuant to clause 18.1, either Party may terminate this Agreement by providing 3 months written notice to the other Party.

18.4   This Agreement may be terminated at any time immediately by the mutual agreement of both Parties.

18.5   Termination of this Agreement will not affect:

(a)   any liability for the Cloud Hosting Fee incurred prior to termination; or

(b)   any Claim or action either Party may have against the other Party by reason of any prior breach of this Agreement;

(c)   any obligation under this Agreement which is expressed to continue after termination; or

(d)   any separate agreement, contract, or relationship between the Parties.

19.   EFFECT OF TERMINATION

19.1   On Termination of this Agreement the Client:

(a)   must immediately pay MYCO all amounts outstanding as at the date of termination;

(b)   subject to clause 19.2, will have 30 days from the date of termination to retrieve any Data that the Client wishes to retain;

(c)   subject to the above clause 19.1(b), must cease using the Cloud Platform from the date of termination.

19.2   The Parties agree that MYCO may, at its sole discretion, retain possession of the Data until all amounts owed to MYCO by the Client under this Agreement are paid in full.

20.   GST

20.1   Amounts payable under this Agreement are exclusive of GST.

20.2   When any consideration (whether expressed in money or otherwise) becomes due in respect of a Taxable Supply by MYCO, MYCO must provide the Client with a Tax Invoice and any other documentation required under the GST Law.

20.3   If GST is applicable to a Supply made under this Agreement, then, to the extent that the consideration for that Supply is not already stated to include an amount in respect of GST, MYCO may increase the consideration by the applicable amount of GST and the Client must pay that increased amount.

20.4   If the GST on a Taxable Supply is varied pursuant to any change in legislation, the consideration payable under this Agreement must be increased or decreased to reflect that variation of the GST.

20.5   For the purposes of this clause, GST, GST Law, Supply, Tax Invoice and Taxable Supply have the meanings attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

21. DISPUTE RESOLUTION

21.1 If a dispute arises in relation to this Agreement, one or more Parties may give written notice to another Party (together the **Disputing Parties**) requiring that an attempt be made to resolve the dispute and the Disputing Parties agree to use their best endeavours to first settle the dispute by discussions in good faith between the Disputing Parties (or a person a Disputing Party nominates as its representative).

21.2 If a dispute is not resolved within 25 Business Days (or such period as agreed in writing by the Disputing Parties) after written notice of the dispute has been given, any Disputing Party may give the other a written notice requiring that the dispute be resolved by a mediator appointed jointly by the Disputing Parties (**Mediation Notice**).

21.3 If the Disputing Parties do not agree on a mediator within 10 Business Days after the Mediation Notice is given, the mediator is to be appointed by the Resolution Institute (**Institute**).

21.4 The mediation is to be conducted in accordance with the Institute's Rules for the Conduct of Commercial Mediation and those rules are binding on the Disputing Parties.

21.5 The Disputing Parties must co-operate fully with the mediator.

21.6 Any written mediation agreement signed by the Disputing Parties which results from the mediation shall be binding on the Disputing Parties.

21.7 The Disputing Parties must pay an equal share of the fees and expenses the mediator is entitled to unless otherwise agreed.

21.8 Any Party must attempt to resolve a dispute in accordance with the procedures set down in this clause 21 before commencing legal proceedings against another Party, with the exception of MYCO recovering amounts due and payable to it by the Client.

21.9 Nothing in this clause 21 prevents a Party from seeking urgent injunctive, declaratory or other interlocutory or equitable relief before an appropriate Court.

22. DEFAULT

22.1 If either of the Parties (**Defaulting Party**) fails to carry out any provision of this Agreement that Party will be taken to be in default and the other Party may at any time (without prejudice to its other rights and remedies under this Agreement or at law) terminate this Agreement by written notice to the Defaulting Party. Termination pursuant to this clause 22 does not prejudice any claim which a Party may have against another at the time of termination.

22.2 The Defaulting Party must on demand pay to the other Party all of the costs and disbursements (including legal costs on a solicitor and client basis) incurred by the other in connection with the breach or default and otherwise in connection with the termination of this Agreement.

22.3 The Defaulting Party indemnifies the other Party against all loss and damage suffered by the other Party because of the Defaulting Party's default.

23. NOTICES

23.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.

23.2 In addition to any other method of service provided by law, the Notice may be:

   (a)   delivered personally to the relevant person;

   (b)   sent by prepaid ordinary mail to the address of the addressee specified in the Address For Service;

   (c)   sent by electronic mail to the electronic mail address of the addressee specified in the Address For Service; or

   (d)   delivered at the address for service of the addressee.

23.3 A notice will be deemed to be given:

   (a)   if hand delivered – on the date of delivery;

   (b)   if posted – 3 Business Days after the date of posting;

   (c)   if sent by electronic mail – on the date of the electronic mail,

   except that a facsimile or electronic mail given after 5:30pm on a particular Business Day, before 8.30am on a particular Business Day or at any time on a day other than a Business Day, will be deemed to be given at 8.30am on the next Business Day.

23.4 A Party may change its Address For Service by giving written Notice of that change to each other Party.

24. GENERAL

24.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

24.2 Each Party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

24.3 MYCO may vary this Agreement in accordance clause 7. The Client may not vary or amend this Agreement without MYCO's written agreement with such agreement to be signed by both the Parties.

24.4 Failure or neglect by a Party to enforce at any time any of the provisions of this Agreement will not be construed or deemed to be a waiver of that Party's rights under this Agreement.

24.5 This Agreement will be governed by and construed in accordance with the law of New South Wales and the Parties submit to the exclusive jurisdiction of Courts operating in New South Wales and any relevant appellate courts.

24.6 This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

24.7 The Parties acknowledge and agree that:

(a) all the provisions of this Agreement are reasonable in all the circumstances and that each provision is and shall be deemed to be severable and independent; and

(b) if all or any part of any provision is judged invalid or unenforceable in all the circumstances, it will be deemed to be deleted and will not affect the validity or enforceability of the remaining provisions.

24.8 The Client may assign or transfer any of its rights or obligations under this Agreement without the prior consent in writing of all the other Parties.

24.9 No provision of this Agreement:

(a) merges on or by virtue of termination of this Agreement; or

(b) is in any way modified, discharged or prejudiced by reason of any investigations made or information acquired by or on behalf of the Client.

24.10 Each Party warrants that it has entered into this Agreement without relying on any representation by any other Party or any person purporting to represent that Party.

24.11 This Agreement forms the entire agreement of the Parties in relation to Cloud Hosting. All representations, communications and prior agreements in relation to the subject matter are superseded by this Agreement.