



## saleG8 Software and Support Terms and Conditions

### BACKGROUND:

- A. MYCO provides Licensed Software and a range of Services.
- B. The Client has requested for MYCO, and MYCO has agreed, to provide the Licenced Software and Services in accordance with the terms of this Agreement.
- C. These saleG8 Software and Support Terms and Conditions, along with the saleG8 Software and Support Order Form and the Agreement Particulars set out the terms of the Agreement.
- D. The Client accepts these Terms by signing the saleG8 Software and Support Order Form, through its use of the Licenced Software or by continuing to use the Licenced Software after being notified of a change of these Terms and Conditions.

### IT IS AGREED:

#### 1. DEFINITIONS

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

- (a) **Accompanying Software** includes Windows operating system, backup software, internet access and network administration software;
- (b) **Address For Service** means the Party's respective contact details specified Agreement Particulars, or as modified from time to time in accordance with clause 23.4;
- (c) **Agreement** means the Software Licence and Support Partnership Agreement for the provision of the Licenced Software and the Services, which is constituted by these Software and Support Terms, the Agreement Particulars, and the Order Form
- (d) **Agreement Particulars** means the Agreement Particulars specified in the table of the Order Form;
- (e) **Business Day** means a day on which banks are open for business in New South Wales;
- (f) **Business Hours** means between 08.30am and 5.30pm on a Business Day;
- (g) **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);
- (h) **Client** means the Client set out in the Agreement Particulars;
- (i) **Commencement Date** means the date set out in the Agreement Particulars;
- (j) **Confidential Information** includes any information, documents, manuals and materials , in any medium whatsoever, provided by MYCO to the Client either before, during or after the operation of this Agreement and including any information, manual, document or material concerning:
  - (i) MYCO or MYCO's related bodies corporate, affairs, finances, ideas, strategic information, Intellectual Property Rights, business plans, activities and operations;
  - (ii) any other information that MYCO designates as confidential or which the Client should reasonably know is confidential;
  - (iii) the personnel, policies or business strategies of MYCO;
  - (iv) any information, manual, document or material provided to the Client relating to the operation of the Services and the Licensed Software;
  - (v) the design, specification and content of the Licensed Software; and
  - (vi) the terms on which the Licensed Software is being supplied, installed and supported under this Agreement,

- (k) **Fees** means all fees and charges payable by the Client under this Agreement, including but not limited to the Licence and Support Fee and fees for any Additional Services;
- (l) **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;
- (m) **GST** means a tax imposed by or under the GST Law;
- (n) **GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1998* (Cth);
- (o) **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, trade marks, 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*;
- (p) **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;
- (q) **Licence and Support Fee** means the fee set out in the Agreement Particulars, payable by the Client to MYCO, for the use of the Licensed Software and in respect of the Services;
- (r) **Licensed Software** means the licenced software set out in the Agreement Particulars, and which is the subject of the Services;
- (s) **Media** means the physical media on which the Licensed Software is recorded or printed or installed;
- (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 Software and Support 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) **Services** means the Support Services provided by MYCO to the Client pursuant to this Agreement in respect of the Licensed Software and any additional services set out the "Services" section of the Agreement Particulars;
- (y) **Support Services** means the saleG8 Software support services set out in clause 6.2 of this Agreement;
- (z) **Software and Support Terms** means these saleG8 Software and Support Terms and Conditions;
- (aa) **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;
- (bb) **Tax Invoice** has the meaning attributed to the term in the GST Law as amended from time to time; and
- (cc) **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 Software and Support Terms, the Order Form, or the Agreement Particulars, the following order of precedence will apply to the extent of the inconsistency:

- (a) the terms of these Software and Support Terms;
- (b) the Agreement Particulars; and
- (c) the terms of the Order Form.

### 3. TERM

- 3.1 The initial term of this Agreement is a minimum of 24 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 17.
- 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.

### 4. SUPERSESION

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

### 5. LICENSED SOFTWARE

5.1 Subject to the Client paying MYCO the Licence and Support Fee, MYCO:

- (a) grants to the Client a non-exclusive, non-transferable license during the Term to use the Licensed Software in accordance with the terms and conditions of this Agreement;

- (b) will electronically provide the Client the Licenced Software, and any new releases of the Licensed Software, which, at MYCO's discretion, may include two releases annually; and
- (c) will perform the Services during the Term.

## **6. SERVICES AND SUPPORT**

- 6.1 MYCO will provide the Services from time to time as required and in accordance with this Agreement, provided the Client:
- (a) has internet access with adequate speed as determined at MYCO's discretion from time to time; and
  - (b) allows MYCO to access the Client's equipment via internet or remote access to investigate and resolve any difficulties which arise in the Client's use of the Licensed Software.
- 6.2 MYCO will:
- (a) provide the Client with up to two hours support during Business Hours per month (non-cumulative); and
  - (b) correct reported faults in the Licensed Software if, in MYCO's view, they are not a departure from the intended functionality of the Licensed Software and the fault has not been caused by the Client or the Client's use of the Licensed Software.
- 6.3 In the event the Client requires support and assistance in addition to the Support Services or outside of Business Hours, MYCO, if it agrees to provide such services, will charge on a time and materials basis, with the time charged at 1.5 times the standard hourly rates charged by MYCO from time to time, and the Client agrees to pay such fees and charges in accordance with this Agreement.
- 6.4 Requests for Support Services can be made to MYCO's support services team by:
- (a) phone on 1300 344 070; or
  - (b) e-mail at support@mycosystems.com.au
- 6.5 Subject to clause 6.6, MYCO will use its best endeavours to acknowledge Client requests for Support Services by phone/e-mail reply to the Client within the following timeframes:
- (a) high priority/urgent requests resulting in total loss of Licensed Software functioning or limited capabilities causing severe impediment to business activity where no workarounds are available – within eight hours for requests received during Business Hours, or within eight hours of the next commencement of Business Hours, if received outside of Business Hours;
  - (b) medium priority faults resulting in part of the Licensed Software not functioning and causing some interruption to business activity where workarounds are suitable for a short time – within 24 hours for requests received during Business Hours, or within 24 hours of the next commencement of Business Hours, if received outside of Business Hours; and
  - (c) low priority faults impacting non-critical functionality and causing minor inconvenience to the user – within 48 hours for requests received during Business Hours, or within 48 hours of the next commencement of Business Hours, if received outside of Business Hours.
- 6.6 MYCO may at its sole reasonable discretion determine:
- (a) the priority of a fault reported by the Client and apply the timeframe for the designated priority under clause 6.5; or
  - (b) that a fault does not fall under clause 6.2(b) and therefore will not be resolved unless the Client engages MYCO, and MYCO accepts such an engagement, to conduct the work as an Additional Service.
- 6.7 MYCO will use its best endeavours to notify the Client of an expected resolution time (if any).
- 6.8 Where MYCO is to perform Services during the Term which require dedicated access to the Client's equipment, MYCO will, where practical to do so, provide at least 48 hours' notice to the Client.
- 6.9 Where the Services may interfere with the Client's normal use of the Licensed Software, MYCO will perform such Services at a time convenient which may incur additional fees to the Client by prior mutual arrangement in writing.
- 6.10 Where MYCO is required to travel to the Client's business in order to provide the Services or any requested assistance, the Client must pay the reasonably travel, food and accommodation costs, of no less than 4-star accommodation incurred by MYCO's staff. The Client must also pay the Travel Charge set out in the Agreement Particulars.

## **7. FEES**

- 7.1 The Client must pay MYCO the Licence and Support Fee in accordance with the Agreement Particulars.
- 7.2 The Client may elect for MYCO to perform Additional Services at the corresponding rates set out in the Agreement Particulars, or as otherwise prior agreed by the Parties in writing.
- 7.3 The Client must pay the Fees contemplated by clause 7.1 and clause 7.2 within 14 days of the date of a correctly issued Tax Invoice. The payment term of any Fees payable under this Agreement may be varied by MYCO at any time with notice to the Client.
- 7.4 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.
- 7.5 The Client is not entitled to use the Licenced Software during any given period unless all fees and charges due and payable under this Agreement have been paid in full to MYCO.
- 7.6 The Client acknowledges that MYCO, at its sole discretion, may reduce response times, including not responding, for the Services if any amounts due and payable under this Agreement are outstanding for more than 14 days.

## **8. FEE INCREASES**

- 8.1 The Client acknowledges and agrees that the Software and Support Fee may increase annually on or around 1 January or 30 June of each year, at MYCO's sole discretion.
- 8.2 MYCO will provide the Client with 30 days prior written notice of an increase under clause 8.1.
- 8.3 On receipt of a notice of increase of the Software and Support Fee under clause 8.1 the Client may terminate this Agreement by providing MYCO 30 days written notice.
- 8.4 MYCO, at its sole discretion, is entitled to vary the rates of the Additional Services or any other Fee (excluding the Licence and Support Fee), by providing 30 days prior written notice to the Client.
- 8.5 On receipt of a notice of increase of the rates for Additional Services or other Fees under clause 8.4, the Client may terminate the Additional Services or other licences or services which are the subject of the fee increase, by providing MYCO with 30 days written notice.

## **9. VARIATION OF TERMS**

- 9.1 The Client agrees that MYCO may unilaterally vary these Software and Support Terms by providing the Client 60 days written notice, and publishing the terms as varied on the MYCO website.
- 9.2 On receipt of a notice served by MYCO in accordance with clause 9.1 (**Variation Notice**), the Client may, by providing MYCO 30 days written notice, terminate this Agreement.
- 9.3 If the Client has not exercised its right to terminate the Agreement in accordance with clause 9.2 within 60 days of receiving the Variation Notice, this Agreement will be deemed to be varied as proposed in the Variation Notice.

## **10. CLIENT'S OBLIGATIONS**

- 10.1 During the Term, the Client must:
  - (a) not copy, reproduce, modify, distribute, revise, vary, translate, reverse-engineer, use, alter or disassemble the Licensed Software in any way unless the Client obtains MYCO's prior written consent and on such conditions which MYCO may impose or as expressly authorised by this Agreement;
  - (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 Licensed Software;
  - (c) not provide or make the Licensed Software available in any form to any person other the Client's employees, sub-contractors or agents without MYCO's prior written consent;
  - (d) supervise and control the access and use of the Licensed Software 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 Licensed Software;
  - (f) 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

- (g) promptly notify MYCO once becoming aware of any event that may constitute a breach of this Agreement;
- (h) immediately notify MYCO once becoming aware of any actual or suspected security breach or other failure of the Licensed Software;
- (i) 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 perform its obligations under this Agreement;
- (j) obtain, install and test Accompanying Software required to operate the Licensed Software;
- (k) comply with all applicable legislation, including the *Privacy Act 1988* (Cth) to the extent that it applies to the Client;
- (l) not by its action or inaction, cause MYCO to breach any applicable legislation, including the *Privacy Act 1988* (Cth); and
- (m) ensure that its employees, sub-contractors and agents who have access to the Licenced Software are made aware of, and comply with, the terms of this Agreement.

10.2 The Client acknowledges that a breach of clauses 10.1(a) or 10.1(b) is a breach of MYCO's Intellectual Property rights.

10.3 The Client is responsible for testing the Licenced Software.

## 11. WARRANTY

11.1 As at the Commencement Date, MYCO warrants that:

- (a) the Licensed Software will not contain any virus or built-in expiry dates; and
- (b) the Media on which the Licensed Software is stored (if any) is free from defects in manufacture and that the Licensed Software will in all material respects perform in accordance with any manuals and documentation.

11.2 MYCO will use its best endeavours to ensure, but does not warrant that:

- (a) the Licensed Software is error free;
- (b) any enclosed or related documentation or manuals will allow a full understanding of the operational characteristics of the Licensed Software;
- (c) the use of the Licensed Software will be uninterrupted; or
- (d) the Licensed Software will meet the Client's requirements.

11.3 MYCO will replace any defective Media at no charge, subject to notification of the defect to MYCO within 90 days of the Commencement Date.

11.4 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 the case of goods:
  - (i) the replacement of the goods to which the breach relates or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services:
  - (i) supplying the services again; or
  - (ii) paying the cost of having the services supplied again.

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

- (a) a breach of this Agreement;
- (b) the supply of the Licensed Software; or
- (c) the provision of the Services.

- 11.6 The Client acknowledges that it has exercised its independent judgement in acquiring the Licensed Software and 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.
- 11.7 The Client acknowledges that hardware problems are the responsibility of the hardware supplier and the Client's warranty provider and that it is the Client's responsibility to ensure hardware is adequate for the proper performance of the Licensed Software.
- 11.8 It is the Client's responsibility to advise MYCO of hardware and software changes before they occur to enable MYCO to advise on compatibility with the Licensed Software.

## **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 To the extent permitted by law, MYCO's liability under this Agreement is limited to half the Software and Hosting Fees paid under this Agreement in the 12 months prior to the date of the breach.
- 13.2 To the extent that the exclusion in clause 13.1 is not permitted by law, MYCO's liability will be limited, at the option of MYCO, to any one of the following:
- (a) supplying the services again; or
  - (b) paying the cost of having the services supplied again.
- 13.3 MYCO will not be liable for any indirect or consequential loss arising out of a breach of this Agreement, the provision of the Services or Additional Services.
- 13.4 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 Licensed Software 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 Licensed Software 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 in the Licensed Software and its related documentation and any Intellectual Property Rights created in the course of providing the Services, either solely or jointly with others, vest in MYCO.

- 15.2 The Intellectual Property Rights in the Source Software (including the source and object code) together with any related materials or documentation are and shall remain the property of MYCO. MYCO shall notify the Client immediately if MYCO becomes aware of any unauthorised use of the whole or any part of the Source Software by any person.
- 15.3 The Intellectual Property Rights in the Licensed Software (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 Licensed Software and which implement visual features or layouts created at the specific request of the Client.
- 15.4 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.
- 15.5 The Client must not during, or any time after the expiry or termination of this Agreement, infringe MYCO's Intellectual Property Rights in the Licensed Software or permit any act which infringes those Intellectual Property Rights.
- 15.6 The Client must advise MYCO if it becomes aware of any breach or infringement of MYCO's Intellectual Property Rights.
- 15.7 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 15.5. 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.
- 15.8 This clause 15 survives termination or expiry of this Agreement.

## **16. CONFIDENTIALITY**

- 16.1 The Client shall treat as confidential all Confidential Information which 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 shall not, without the written permission of the other, 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 Clients possession prior to disclosure, as shown by written records;
  - (c) the information 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 remaining copies of the Licensed Software and documentation or manuals or return or dispose of such material as directed by MYCO.
- 16.5 Termination pursuant to this clause will not affect any rights or remedies which MYCO may have under this Agreement, at law or in equity.



16.6 MYCO is the sole and exclusive Client of the copyright in the Licensed Software and is entitled to the absolute rights and benefits thereof, including the exclusive right to issue further licences of sub-licences worldwide. The Client shall not display, disclose, disseminate or otherwise make available any Source Software of the Licensed Software which may from time to time reside on the Client's server. The Client shall not make any copies at any time of the Licensed Software. The Client shall not alter or modify the Licensed Software or use or incorporate Licensed Software in the development of any new work and in the event of the Client altering, modifying or using any part of the Licensed Software in the development of any new work, the Client agrees that the copyright in such new work shall remain in MYCO.

16.7 This clause 16 survives termination or expiry of this Agreement.

## 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 providing the Licenced Software, Services, and Additional Services.

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) provision of the Licenced Software or Services under this Agreement are 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 the Client:

- (a) in any way, either directly or indirectly breaches clause 10.1;
- (b) destroys the Licensed Software or documentation for any reason;
- (c) reverse engineers the Licensed Software;
- (d) accesses, shares or modifies the Source Software;
- (e) is in breach of a warranty under this Agreement, and in addition to terminating, MYCO may make a Claim against the Client accordingly;
- (f) fails to pay any amount due or payable to MYCO whether arising under this Agreement or otherwise, within 30 days of the due date;
- (g) being a corporation, becomes the subject of insolvency proceedings; or
- (h) 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 Fees 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; and
- (b) cease using the Licenced Software; and
- (c) destroy or delete all copies of the Licenced Software in the Client's possession including any documentation and manuals for the Licenced Software.

## 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 15 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 ("**the Mediation Notice**").

21.3 If the Disputing Parties do not agree on a mediator within 5 Business Days after the Mediation Notice is given, the mediator is to be appointed by the Resolution Institute ("**the 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:

- (a) must cooperate fully with the mediator;
- (b) agree that any agreement entered into by the Disputing Parties resulting from mediation will be binding; and
- (c) must pay an equal share of the fees and expenses the mediator is entitled to unless otherwise agreed.

21.6 Any Parties must attempt to resolve a dispute in accordance with the procedures set down in this clause 21 before commencing legal proceedings against another Party.

21.7 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 An amendment or variation to this Agreement is not effective unless it is in writing and 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 provision of the Licenced Software the Services, and the Additional Services. All representations, communications and prior agreements in relation to the subject matter are superseded by this Agreement.