Master Terms and Conditions

ISSUED BY	Monocera Pty Ltd
PLACE OF BUSINESS	22 Petrie Terrace, Brisbane QLD 4000
GOVERNING LAW	Queensland, Australia

These terms and conditions ("Master Terms and Conditions") are issued by Monocera Pty Ltd having its principal place of business at 22 Petrie Terrace, Brisbane QLD 4000 ("Supplier").

1 Interpretation

1.1 The Supplier provides a range of services including managed services and professional services, and resells various cloud services including Microsoft cloud services, in accordance with these Master Terms and Conditions and the applicable 'Associated Agreement'.

1.2 These Master Terms and Conditions govern any Contracts you or your authorised representative ("Customer") enter with the Supplier for the provision of Products, Deliverables and Services (as relevant), from time to time.

1.3 The most current version of these Master Terms and Conditions is available on the Supplier's website at https://monocera.co/Master-Terms.pdf. The Supplier may amend or replace these terms and conditions at any time for future Contracts (in respect of which the Customer will have an opportunity to review and negotiate the amended or replacement terms and conditions prior to entering into those Contracts).

1.4 For existing Contracts, the terms and conditions in place at the time that the Contract was made continue to apply for that Contract, unless the Customer agrees otherwise in writing. Any additional or different terms that the Customer includes in any communication with the Supplier will not be binding on the Supplier or included in any Contract unless expressly agreed upon in writing by the Supplier.

2 Definitions and interpretation

2.1 Definitions: In these terms and conditions:

"AI Agent" means an AI application that is capable of autonomously or semi-autonomously performing one or more tasks, or a sequence of tasks, making decisions, or initiating actions to achieve a goal, with or without continuous human input;

"AI Product" means an AI Tool, AI Agent or other type of AI application whether owned by the Supplier or licensed from a third party by the Supplier, or procured by the Customer from a third party;

"AI Solution" means a solution or service which incorporates or relates to one or more AI Product;

"AI Tool" (if any) means any artificial intelligence, machine learning or generative AI system, model, assistant or functionality;

"Associated Agreement" means:

(a) any agreement or statement of work or statement of supply that is entered into between the parties which is made pursuant to these terms and conditions (for example by referencing that it is made under these Master Terms and Conditions) and may include by way of example only a 'Managed Services Agreement' or 'Statement of Work - Managed Services', and/or 'Cloud Supply Agreement' or 'Statement of Supply - Cloud Supply'; and

(b) any additional terms and conditions (including by way of example only the 'Professional Services Terms and Conditions') together with:

i. the relevant order, proposal, statement of work or other document that is accepted and agreed by the Customer in the manner required under those additional terms and conditions; or

ii. a request by the Customer of a type which is anticipated and not out of scope in any way under those terms and conditions and which is accepted by the Supplier in the manner required under those additional terms and conditions (including a request that

is not required to be in writing where applicable under those additional terms and conditions, such as a request that is a "Small Task" under the Professional Services Terms and Conditions),

which are expressed as being subject to these Master Terms and Conditions;

(c) any written proposal (in final form) for supply of Products, Services or Deliverables issued by the Supplier to the Customer (including a proposal in an email or in a quote) which is expressed as being subject to these Master Terms and Conditions and which is intended as a proposal for acceptance by the Customer if the Customer wishes to proceed, for which neither an agreement nor statement of work nor statement of supply under (a) of this definition or additional terms and conditions under (b) of this definition apply, that is accepted and agreed by the Customer in writing in the manner required by the Supplier and within the timing (if any) specified in the relevant proposal.

"Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any amendments or replacements of Schedule 2 of the Competition and Consumer Act 2010 (Cth);

"Confidential Information" means any information disclosed in confidence to one party by the other party including without limitation the Customer Data, whether of a business, financial, technical or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:

(a) on receipt by the recipient party, in the public domain or which subsequently enters the public domain without any breach of the Contract;

(b) on receipt by the recipient party, already known by that party (otherwise than as a result of disclosure by the other party);

(c) at any time after the date of receipt by the recipient party, received in good faith (and without any obligations of confidence) by the recipient party from a third party;

(d) required by law to be disclosed by the recipient party;

"Consequential Loss" means any loss which does not arise naturally or in the ordinary course of things from a breach and any of the following, however arising and in any case, even if the loss is reasonably contemplated by the parties at the commencement of the applicable Associated Agreement as a likely result of breach of that Associated Agreement:

(a) incidental, special, remote or unforeseeable loss or damage;

(b) loss of revenue, profit, income, opportunity, use, business, contract, goodwill, or anticipated savings, or loss caused by business interruption, but excluding loss of any amounts that would, but for the act or omission of a party, have otherwise been payable under the applicable Associated Agreement;

(c) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or

(d) loss or damage of the nature set out above in paragraphs (a) to (c) (inclusive) that is incurred or suffered by a third party;

"Contract" means these Master Terms and Conditions and the relevant Associated Agreement and any variations or additions made in accordance with the terms of the Contract;

"Customer Data" means the Customer's data including all text, sound, video or image files and the Customer's software and includes Personal Information;

"Customer Materials" means all materials and Intellectual Property owned, licensed to or held by the Customer which were:

(a) in existence prior to the Commencement Date of the Associated Agreement; or

(a) collected, developed or created by or on behalf of the Customer (or its licensors) independently of the Associated Agreement, and

licensed or otherwise made available to the Supplier by the Customer in connection with the Associated Agreement.

"Data Protection Laws" means the Privacy Act and includes all applicable laws relating to Personal Information (including data security, protection, privacy or the processing of Personal Information);

"Force Majeure Event" means any war, riot, third party strike, pandemic, civil emergency, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party, excluding any obligation for payment under the Contracts;

"GST" has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"Intellectual Property" means copyright, patents, designs, trade marks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property;

"Personal Information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not,

and includes any other information that is 'personal information', 'personal data', or similar terms under applicable Data Protection Laws;

"**PPSA**" means the Personal Property Securities Act 2009 (Cth) and any statutory modification or re-enactment of that Act for the time being in force;

"Personal Information Breach" has the meaning given to that term in clause 13.3;

"Privacy Act" means the Privacy Act 1988 (Cth);

"Products, Deliverables and Services" means the products (including Tangible Products), deliverables and/or services provided under an Associated Agreement, as described in the relevant Associated Agreement;

"**Tangible Products**" has the meaning given to the term under clause 10.1;

"Working Day" means a day other than a Saturday, Sunday or public holiday in Queensland.

2.2 **Interpretation**

(a) In these terms and conditions, reference to the plural includes reference to the singular, and vice versa.

(b) Headings inserted in these terms and conditions are for convenience of reference only and do not affect the interpretation of these terms and conditions.

(c) Reference to any legislation includes any statutory modification or re-enactment of that Act for the time being in force.

3 Term

3.1 Each Contract will commence on the date specified in the relevant Associated Agreement or if not specified will commence on the date that the last party signs the Associated Agreement, or in the case of Associated Agreements that require the signature of the Customer only on the date of signing by the Customer, or in the case of terms and conditions which are accepted and not signed by the Customer on the date of that acceptance.

3.2 Each Contract will, subject to the parties' rights of earlier termination, continue:

(a) for the term specified in the relevant Associated Agreement;

(b) or if no term is specified, until terminated in accordance with the relevant Associated Agreement or under the termination provisions in these Master Terms and Conditions.

4 Order of precedence

4.1 If there is any conflict or inconsistency between these terms and conditions and an Associated Agreement, the relevant Associated Agreement will prevail to the extent of such inconsistency.

5 Products, Deliverables and Services

5.1 The Supplier will provide Products, Deliverables and Services (as applicable) to the Customer:

(a) in accordance with each Associated Agreement;

(b) using reasonable care and skill;

(c) using people who have the necessary skills and experience; and

(d) in accordance with all applicable laws.

5.2 Where the Supplier provides any AI Product or AI Solution to the Customer under an Associated Agreement:

(a) to the maximum extent permitted by law, the Supplier:

i. does not warrant or guarantee the accuracy, completeness, reliability, or suitability of any outputs generated by the AI Product or AI Solution;

ii. is not responsible for any actions of or taken by the AI Product or AI Solution, including without limitation any unintended, automated or erroneous processing, modification or deletion of data; and

iii. is not liable for any loss arising from the Customer's use of the AI Products or AI Solution or the Customer's reliance on AI-generated outputs, except to the extent that such loss arises from the Supplier's negligence, wilful default or breach of this Agreement; and

(b) any advice, recommendations or guidance provided by the Supplier in relation to an AI Product or AI Solution:

i. is provided on a reasonable endeavours basis; and

ii. does not constitute a guarantee that the AI Product or AI Solution will operate safely, securely or as intended.

5.3 If the Customer requests services which are not covered by an existing Associated Agreement, the Supplier will issue a draft of the relevant Associated Agreement to the Customer for review and acceptance or signing (as applicable). Nothing in these terms and conditions commits the Supplier to providing products or services unless an applicable Associated Agreement is agreed and signed by both parties, or accepted by the Customer in writing or signed by the Customer (as applicable).

5.4 The Customer will:

(a) only use the Products, Deliverables and Services, for lawful purposes and not for fraudulent, illegal or destructive purposes;

(b) adhere to any specific requirements or restrictions in respect of the Products, Deliverables and Services included or referenced in an Associated Agreement;

(c) not sell, re-sell, or otherwise provide the Products, Deliverables and Services to any third party unless such selling, re-selling, or provision is expressly permitted or anticipated in the relevant Associated Agreement;

(d) not allow the Products, Deliverables or Services to be affected by any virus or destructive media, or use the Products, Deliverables or Services in any way which is intended to be, or is, detrimental to:

i. the use of those Products, Deliverables or Services by other customers of the Supplier or other users; or

ii. the systems utilised to provide the Products, Deliverables and Services.

6 Use of AI Tools, AI Agents and AI Solutions by Supplier

6.1 The Customer acknowledges and agrees that:

(a) the Supplier will maintain a written register of all AI Tools, AI Agents and/or AI Solutions used by the Supplier to provide the Products, Deliverables and Services (the "AI Tools Register"), which will identify, for each AI Tool, AI Agent or AI Solution: (i) its name and provider; (ii) the categories of Customer Data or Customer Materials it accesses, processes or is used to create outputs from; and (iii) a summary of the purpose for which it is used. The Supplier will not use any AI Tool, AI Agent or AI Solution to provide the Products, Deliverables and Services unless it is included in the AI Tools Register and the Customer has given its prior written consent (which may be given generally in an Associated Agreement or otherwise in writing) to its use. The Supplier will provide the Customer with a copy of the then-current AI Tools Register on request, and will notify the Customer in writing before adding any new AI Tool, AI Agent or AI Solution to the AI Tools Register or materially changing the categories of Customer Data or Customer Materials it accesses;

(b) to the extent needed to provide the Products, Deliverables and Services, the AI Tools, AI Agents and/or AI Solutions (as applicable) used by the Supplier may access, process, modify or create outputs based on Customer Data and Customer Materials.

7 Customer's obligations

7.1 Without limiting the Customer's obligations under any Associated Agreement, the Customer will:

(a) where required to provide data to the Supplier, provide that data in a format suitable for import and otherwise as reasonably requested by the Supplier;

(b) where the Supplier's personnel will attend on site at the Customer's premises:

i. provide a suitable and safe work environment for the Supplier's personnel while on site in accordance with all applicable health and safety legislation; and

ii. maintain suitable public liability insurance policies that include coverage for the Supplier's personnel while they are at the Customer's site;

(c) meet all of the Customer's obligations as specified in these terms and conditions and in each Associated Agreement;

(d) except and to the extent that the Supplier is providing relevant backup services under an Associated Agreement or under another written agreement between the parties:

i. undertake frequent and adequate backups of the Customer's data; and

ii. ensure that backups are always completed, as well as ensuring the backups are secure and checking that they can be successfully restored;

(e) make available to the Supplier in a timely manner (and in accordance with any timeframes which the Customer has agreed to) all assistance (including availability of relevant personnel), permissions (including permissions from any relevant third parties), information, facilities and access to systems reasonably required by the Supplier;

(f) determine whether any of the Customer-supplied AI Product is appropriate for the Customer's use case;

(g) be responsible for the Customer's own use of any AI Product, including without limitation, reviewing, validating and monitoring outputs and ensuring compliance with applicable laws, regulations and internal policies; and

(h) follow the Supplier's reasonable directions.

8 Pricing and payment

8.1 Each Associated Agreement will specify the basis of the Supplier's charges for the relevant supply of Products, Deliverables and Services and the Supplier will invoice the Customer accordingly. All amounts specified in an Associated Agreement are exclusive of any taxes unless expressly specified otherwise.

8.2 If GST is payable in respect of a supply made under or in relation to an Associated Agreement, the Customer must pay to the Supplier, an amount equal to the GST payable on the supply ('GST Amount'). The GST Amount is payable by the Customer in addition to and at the same time as any consideration for the supply.

8.3 Unless otherwise specified in an Associated Agreement, all invoices issued by the Supplier are due for payment by the Customer on the 7th day following the date of the invoice.

8.4 All reasonable accommodation, travel and other expenses incurred in providing Products, Deliverables and Services to the Customer will be charged to the Customer provided that such expenses are identified and agreed in advance. Expenses will be invoiced on a Monthly basis by the Supplier.

8.5 Subject to clause 8.6, the Customer must pay all invoices in full without set-off or deduction of any kind.

8.6 If the Customer wishes to dispute an invoice, it must notify the Supplier in writing within 30 Days of the date of the invoice and provide details of the dispute. The Customer may withhold payment of

the disputed part of an invoice only and must pay that part (or any amount subsequently agreed or determined to be the correct amount owing) promptly on resolution of the dispute.

8.7 Without limiting any other remedies available to the Supplier for late payment or failure to pay any amount due, if any amount due is not paid by the Customer by the due date, the Supplier may:

(a) charge the Customer interest calculated at 1.5% on the balance of the amount due by the Customer from the due date until payment is received in full by the Supplier; and/or

(b) charge the Customer all collection costs reasonably incurred by the Supplier in collection of the amount outstanding (including solicitor and/or collection agency fees); and/or

(c) on 5 Working Days notice in writing, suspend delivery of further Products, Deliverables and Services under the relevant Contract, provided that the Supplier may not suspend delivery in respect of any amount that is the subject of a bona fide dispute notified in accordance with clause 8.6 and paid or withheld in accordance with that clause. This clause 8.7(c) applies only to the Contract under which the relevant amount is due and payable.

8.8 Unless otherwise specified in the relevant Associated Agreement:

(a) the Supplier may increase its pricing from time to time but not more often than once every 12 Months and such increase shall not exceed the rate of inflation as measured by the Consumer Price Index; and

(b) the Supplier will give the Customer Four Weeks notice in writing of any price increase.

9 Taxes

9.1 In addition to the amounts due under clause 8, the Customer will pay the Supplier amounts equal to any applicable government taxes or duties however designated, based on the relevant Contract (or the Products, Deliverables and/or Services provided under it), paid or payable by the Supplier in respect of the foregoing, exclusive however of taxes based on the Supplier's income.

10 Ownership and risk

10.1 Except as otherwise provided in the relevant Contract (and without limiting that Contract) and subject to the Intellectual Property provisions in that Contract, ownership of physical products (such as but not limited to computers and related equipment) (referred to in these terms and conditions as 'Tangible Products') supplied to the Customer under a Contract for sale and purchase of those Tangible Products will not pass to the Customer until the Customer has paid for the Tangible Products in full and has paid in full any other amounts owing to the Supplier whether under that Contract or any other Contract.

10.2 Unless and until ownership of Tangible Products passes to the Customer under clause 10.1, the Customer is obligated to hold the Tangible Products on trust for the Supplier as bailee, not part with possession of the Tangible Products and only use the Tangible Products in accordance with law and in the ordinary course of business.

10.3 The risk of loss of or deterioration or damage to the Tangible Products will pass to the Customer on delivery of the Tangible Products to the Customer. If the Customer discovers upon delivery that the Tangible Products are damaged, they will promptly notify the Supplier. It is the Customer's

responsibility to insure the Tangible Products commencing as from the date of delivery of the Tangible Products to the Customer.

10.4 If the Customer fails to pay for the Tangible Products by the due date(s) for payment, the Supplier may (without limiting any other rights or remedies it may have under the PPSA or any other relevant laws), subject to the Supplier having registered a security interest pursuant to clause 11.2 below, enter the Customer's premises with reasonable notice and during normal business hours to take possession of the Tangible Products without incurring any liability to the Customer or any other person. The Customer is not permitted to revoke the permission granted to the Supplier in this clause. In the event that the Supplier takes possession of the Tangible Products under this clause, the Supplier will:

(a) copy the Customer Data (if any) that is on the Tangible Product (in the format reasonably determined by the Supplier at its discretion) ('Copy of Customer Data'); and

(b) make the Copy of Customer Data available to the Customer and notify the Customer accordingly, provided that the Supplier has no obligation to retain the Copy of Customer Data for more than 14 days after making it available to the Customer; and

(c) after creating the Copy of Customer Data, delete the Customer Data from the Tangible Product.

10.5 Nothing in this clause operates to transfer ownership of Customer Data to the Supplier.

10.6 Without limiting clause 16.4 and except as otherwise provided under an Associated Agreement,

(a) the Supplier will use reasonable endeavours to assist the Customer to deal with the relevant vendor on any warranty claims in respect of the Tangible Products;

(b) the Supplier has no obligations in respect of defects, support requirements or otherwise for the Tangible Products including without limitation that in the event of any defect or failure of the Tangible Products the Supplier has no obligation to provide any interim hardware, software, other equipment or remedial service in place of or in respect of the Tangible Products.

11 Personal Property Securities Act

11.1 The Customer agrees that the retention of title in clause 10.1 creates a purchase money security interest (as defined by section 14 of PPSA) in the Tangible Products (and their proceeds) as security for the payment of the purchase price of the Tangible Goods under the relevant Contract, until the amount payable for those products is paid in full. The Customer grants to the Supplier a security interest in the Tangible Products ('Secured Property') as security for payment of all amounts payable for those products.

11.2 The Customer will promptly do all things, and execute all documents reasonably required by the Supplier to enable the Supplier to perfect and maintain the perfection of its security interest in respect of the Secured Property (as defined in clause 11.1). This includes but is not limited to the Supplier registering the security interest on the Personal Property Securities Register (PPSR).

11.3 The Customer waives its rights under section 157 of the PPSA to receive a copy of any verification statement, financing statement or financing change statement in relation to registration event (as those terms are defined in section 10 and section 155 of PPSA).

12 Customer Data

12.1 The Customer will:

(a) provide and make Customer Data available to the Supplier only to the extent required for the purposes of the relevant Contract;

(b) where practical, and particularly in the case of Personal Information, obfuscate Customer Data prior to providing or making the Customer Data available to the Supplier.

12.2 Subject to clause 12.3, the Supplier will access the Customer Data only as required in the performance of the relevant Contract.

12.3 Without limiting clause 13.2, the Supplier will only access the Customer Data and disclose the Customer Data to law enforcement or government authorities to the extent required by law. If a request for Customer Data is made by a law enforcement agency or government authority (whether directly to the Supplier or through Microsoft or a third party vendor), the Supplier will redirect the request to the Customer or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, the Supplier will notify the Customer of the request as soon as practically possible.

12.4 The Customer warrants that the Customer has the right and authority to deal with the Customer Data in the manner contemplated by the relevant Contract.

12.5 Nothing in a Contract transfers ownership of the Customer Data to the Supplier.

13 Personal Information

13.1 Before providing Personal Information to the Supplier, the Customer will obtain all required consents from third parties (including the Customer's contacts, partners, distributors, administrators, and employees) to that Personal Information being made available to the Supplier and used as anticipated by the relevant Contract.

13.2 Each party will comply with the applicable Data Protection Laws in respect of any breach of privacy.

13.3 If the Supplier becomes aware of an actual or suspected unauthorised access to, or loss, disclosure or destruction of, Personal Information held or processed in connection with a Contract that gives rise to an obligation on either party under the Privacy Act (a "Personal Information Breach"), the Supplier will notify the Customer without undue delay and in any event within 48 hours of becoming aware of the Personal Information Breach, and will provide reasonable assistance to the Customer to enable the Customer to meet its notification and other obligations under the Privacy Act.

14 Confidential Information

14.1 Each party agrees to:

(a) hold in confidence all Confidential Information disclosed to it by the other party and disclose that information to its directors, employees and contractors only to the extent required in the performance of the Contract;

(b) ensure that all Confidential Information is protected at all times from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.

14.2 A party may disclose the other party's Confidential Information if and to the extent required by law if it first notifies the other party of the obligation to disclose the Confidential Information, provided that a party is not required to notify the other party under this clause if it is not legally permitted to do so or if the timing within which the party is required by law to disclose the Confidential Information does not permit notification to the other party.

15 Intellectual property

15.1 The Supplier or its licensors own the Intellectual Property in the means, methods, processes and know-how used by the Supplier (except for any Customer Materials) to provide the Products, Deliverables and Services and to otherwise perform the Supplier's obligations under the Associated Agreements.

15.2 Notwithstanding (and without limiting) clause 15.1, as between the parties the Supplier owns all rights, title and interest in and to any configuration records, environment documentation, credentials and other materials created by the Supplier specifically for the Customer's Managed IT Environment under an Associated Agreement ("Customer-Specific Records") but will provide the Customer on request with copies of, or access to, such of the Customer-Specific Records as purport to document the Customer's Managed IT Environment. The Supplier will also provide such copies and access as part of the disengagement or transition process on expiry or termination of the relevant Associated Agreement.

15.3 The provisions relating to Intellectual Property ownership in relation to particular Products, Deliverables and Services are included in the relevant Associated Agreement.

15.4 Each party (the "Indemnifying Party") will defend the other party (the "Indemnified Party") against any claim brought by a third party alleging that the Indemnified Party's use, in accordance with the relevant Contract, of any materials, products or services provided by the Indemnifying Party under that Contract infringes the Intellectual Property rights of that third party (an "IP Claim"), and will pay any resulting damages (or settlement amount agreed to in writing by the Indemnifying Party with the consent of the Indemnified Party).

15.5 The obligation in clause 15.4 does not apply to the extent an IP Claim arises from: (a) modification of the relevant materials, products or services by any person other than the Indemnifying Party; (b) combination or use of the relevant materials, products or services with other materials, products or services not provided by the Indemnifying Party, where the IP Claim would not have arisen but for that combination or use; (c) use of the relevant materials, products or services for a purpose other than that for which they were provided under the relevant Contract; or (d) compliance with specifications or directions provided by the Indemnified Party.

15.6 If an IP Claim is made or is reasonably likely to be made, the Indemnifying Party may, at its own expense and option, either procure for the Indemnified Party the right to continue using the relevant materials, products or services, or modify or replace them so that they become non-infringing without materially reducing their functionality. If neither option is reasonably available to the Indemnifying Party on commercially reasonable terms, either party may terminate the relevant Contract (to the extent it relates to the affected materials, products or services) on written notice.

15.7 Clause 15.4 sets out the Indemnifying Party's sole obligations, and the Indemnified Party's sole remedies, in respect of any actual or alleged infringement of a third party's Intellectual Property rights arising from the relevant Contract.

16 Warranties

16.1 Each party warrants that it has all requisite right, power and authority to enter into each Contract.

16.2 Except as provided under clause 16.1 and in any express warranties contained in an Associated Agreement, to the extent permitted by law, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability) implied by legislation or otherwise, are excluded by the Supplier.

16.3 The Supplier provides no warranty or guarantee:

(a) that any result or objective not specified in an Associated Agreement can or will be achieved or attained through the provision of the Products, Deliverables and Services; or

(b) as to the suitability of the Products, Deliverables and Services for any purpose other than that specified in an Associated Agreement, which the Supplier may interpret, and apply using its experience, skill and judgment, to provide the Services.

16.4 Nothing in these terms and conditions is intended to exclude, restrict or modify an applicable consumer guarantee under the Australian Consumer Law.

17 Termination of Contracts

17.1 Except where a Contract has a fixed term (being a term with a specified time period) or where otherwise provided under a Contract, either party may terminate a Contract at any time without cause on giving thirty days' notice in writing to the other party.

17.2 Either party may terminate a Contract immediately (or with effect from any later date that it may nominate) by written notice to the other party if:

(a) one or more Insolvency Events occurs in relation to that other party but only if permitted by and/or in accordance with the Corporations Act 2001 (Cth). For the purposes of this clause, 'Insolvency Event' means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):

i. a receiver, manager or liquidator is appointed over the party's undertaking or assets or the party enters into any assignment, composition or arrangement with its creditors; or

ii. the party is unable to pay its debts when due or is deemed unable to pay its debts under any law or suspends payment to its creditors.

(b) the other party commits a material breach of any of its obligations under the Contract and fails to remedy that breach within 30 days; of prior written notice of such breach. For the purposes of this clause 17.2(b), non-payment by the Customer for a period of 30 days or more after due date of any undisputed invoice constitutes a material breach by the Customer;

(c) the other party commits a material breach of any of its obligations under the Contract and the breach is not remediable; or

(d) the other party regularly or habitually commits a breach of its obligations under the Contract, or commits a number of breaches which collectively constitute a material breach, whether or not each individual breach is remedied.

17.3 Additional rights of termination that apply to individual Associated Agreements may be included in each of those agreements.

18 Consequences of termination

18.1 On termination of a Contract, in addition to any other consequences of termination included in the relevant Associated Agreement, and unless otherwise agreed in writing in the relevant Associated Agreement, and without limiting either party's rights or remedies:

(a) each party will, on request, return the other's Confidential Information in its possession or control in respect of that Contract except for copies that it may be required to hold for compliance, audit or legal reasons;

(b) all amounts owed to the Supplier under the Contract which accrued before termination will be due and payable in accordance with the payment terms in that Contract;

(c) the Supplier will deliver to the Customer all Deliverables for which for which the Customer has paid in full.

18.2 On any termination of a Contract, all clauses which by their nature survive termination, will survive the termination.

19 Liability

19.1 To the extent permitted by law and subject to clause 19.3, each party's liability to the other party under a Contract is limited to direct loss only and to the amount paid by the Customer under the relevant Contract in the 12 months preceding the event giving rise to the claim provided that nothing in this clause 19 serves to limit the Customer's obligation to pay invoices due under a Contract provided further that (a) the limitation in this clause 19.1 does not apply to, and is not intended to limit, either party's liability for any liability that cannot, as a matter of law, be limited or excluded; and (b) each party's liability to the other party under a Contract is limited to three (3) times the amount paid by the Customer under the relevant Contract in the 12 months preceding the event giving rise to the claim where the liability arises out of: (i) a breach of clause 14 (Confidential Information); (ii) infringement of the other party's Intellectual Property; (iii) fraud or wilful misconduct; or (iv) a Personal Information Breach.

19.2 To the extent permitted by law and subject to clause 19.3, in no event is either party liable to the other party for any indirect loss or for any loss of profits, lost savings, loss of data, business interruption, incidental or special damages, or for any Consequential Loss. In no event is the Supplier liable for any damages caused (whether directly or indirectly) by the Customer not accepting or not acting on a recommendation made to the Customer in writing by the Supplier or by the Customer's failure to perform its responsibilities under the relevant Contract.

19.3 If a consumer guarantee applies to a Contract or goods or services provided by the Supplier and the Supplier is liable for a breach of that guarantee, then to the extent permitted by law, the Supplier's liability is limited, at the Supplier's option:

(a) in the case of goods, to the replacement or repair of the goods; or the supply of equivalent goods; or the cost of replacing or repair of the goods; or the cost of acquiring equivalent goods; and

(b) in the case of services, to the resupply of those services or the cost of resupply,

and the Customer acknowledges and agrees that having regard to the commercial terms for the provisions of the goods and or services it is fair and reasonable for the Supplier to rely on the above limitations and that without the benefit of the limitations, among other things, the charges would be higher.

20 Dispute Resolution

20.1 In the event of any dispute arising between the parties in relation to a Contract, no party may commence any proceedings relating to the dispute (except where the party seeks urgent injunctive or interlocutory relief) unless that party has complied with the procedures in this clause 20.

20.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.

20.3 If the parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the first party, either party may refer the dispute to mediation.

20.4 If the dispute is referred to mediation, the mediation must be conducted in terms of the Resolution Institute Australia Standard Mediation Agreement. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement being reached between the parties as to the mediator and/or fee within three weeks of the dispute being referred to mediation, the mediator will be appointed by and his/her fee determined by the Law Society of the state or territory in which the Supplier is domiciled.

20.5 If the dispute is not resolved within two months following the date of the Other Party's Notice (or such longer period as may be agreed in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.

21 Non- Solicitation

21.1 Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party's personnel (including employees and contractors) who has been involved in providing or receiving (as applicable) the Product, Deliverables and Services. This clause will apply from commencement of the first Contract between the parties and will continue until there has been no Contract between the parties for a continuous period of six months (and if there is subsequently a Contract between the parties the non-solicitation period will re-commence).

21.2 A party may as a condition of granting its consent under clause 21.1 above, require the other party to pay to it a fee of 30% of the person's gross annual remuneration to cover the cost of replacing the employee or contractor.

22 Notices

22.1 Any notice or other communication in connection with a Contract must be:

(a) in writing in the English language; and

(b) marked for the attention of the primary contact person and delivered or sent to the address of the other party by prepaid post or email, as set out in the relevant Associated Agreement or if not set out in the Associated Agreement at the principal place of business of the Customer.

22.2 Notices or other communications are deemed received:

(a) if delivered by hand, on delivery;

(b) if delivered by post:

i. on the fifth Working Day following posting if sent and received within Australia; and

ii. on the tenth day following posting if posted internationally; or

(c) if sent by email, on sending the email provided that no email is successfully sent if the sender receives any type of delivery notification failure.

23 Force majeure

23.1 Either party may suspend its obligations to perform under a Contract if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

23.2 Where a party's obligations have been suspended pursuant to clause 23.1 for a period of 60 days or more, the other party may immediately terminate the Contract by giving notice in writing to the other party.

24 General

24.1 Assignment:

(a) Subject to clause 24.1(b), neither the Customer nor the Supplier is permitted to assign its rights under a Contract without the prior written consent of the other party.

(b) The Supplier may, without the consent of the Customer, assign its rights under a Contract to an assignee that it reasonably considers has the personnel, skills, experience, resources and financial standing to perform the Contract to a standard at least equivalent to the Supplier. The Supplier will give the Customer not less than 30 days' prior written notice of any assignment made pursuant to this clause 24.1(b).

24.2 Contractors: The Supplier may perform its obligations under a Contract by the use of the Supplier-selected independent contractors.

24.3 Other agreements: Subject to clauses 14 and 15, nothing in these terms and conditions prevents the Supplier from entering into similar agreements with others that are the same or similar to any Contract entered into with the Customer or from providing products, deliverables or services which are the same or similar to the Products, Deliverables or Services provided under a Contract.

24.4 Entire agreement: Each Contract constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of that Contract.

24.5 Further assurances: The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by the Contract.

24.6 Amendments: Except as specifically provided in a Contract, no amendment to a Contract will be effective unless:

(a) the amendment is in writing and signed by both parties (if the relevant Associated Agreement was signed by both parties):

(b) the amendment is in writing and signed by the Customer (if the relevant Associated Agreement was such that only the Customer needed to sign the Associated Agreement; or

(c) the amendment is in writing and accepted in the same manner that, in accordance with the Associated Agreement, the Associated Agreement was made.

24.7 Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other available right or remedy.

24.8 Partial invalidity: If any provision of a Contract or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Contract and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

24.9 Relationship of the Parties: The parties agree that the Supplier is an independent contractor to the Customer and that nothing in these terms and conditions or any Contract constitutes a partnership, joint venture or relationship of employer and employee between the parties. Neither party may:

(a) act or hold itself out as an agent or representative of the other party; or

(b) assume or create any obligations on behalf of the other party.

25 Governing Law

25.1 Each Contract is governed by the laws of the Queensland, Australia. The parties hereby submit to the non-exclusive jurisdiction of the courts of Queensland, Australia.