

Software Supply Agreement General Terms and Conditions

1. APPLICATION OF THIS AGREEMENT

- 1.1 This agreement applies to the Licence of Software, the provision of Products and the supply of Services to the extent set out in the Agreed PO or Agreed SOW at the Site.
- 1.2 It is the parties intention that the Licence of Software, the provision of Products and the supply of Services may be extended to additional sites by the parties agreeing in writing for the supply and entering into a New Agreed PO.
- 1.3 Any New Agreed PO or Agreed SOW will be subject to these terms and conditions.
- 1.4 If a New Agreed PO is with an Affiliate of the Customer, the Customer guarantees the performance of the Affiliate's obligations under the New Agreed PO.

2. PRODUCT DELIVERY OBLIGATIONS

- 2.1 Provider shall deliver the Products to the Product Delivery Point in accordance with the Incoterms.
- 2.2 Provider shall use its reasonable efforts to deliver the Products by the Date for Product Delivery.
- 2.3 Provider may deliver the Products early, in partial shipments, or both.
- 2.4 Title in the Products will transfer to Customer at the same time as risk transfers under the Incoterms. This clause 2.4 does not apply to title in software.
- 2.5 Customer must make any claim for shortages in the delivery within 30 Business Days of delivery to the Product Delivery Point. Claims in relation to shortage made after that date will not be effective.

- 2.6 Provider shall also provide the Services at the Site, as applicable.

3. SOFTWARE DELIVERY AND INSTALLATION

- 3.1 Provider shall deliver the Software to the Customer in accordance with the Date for Software Delivery and provide installation services as may be applicable per the Agreed PO or Agreed SOW.
- 3.2 Where installation services are to be provided, the Customer shall give Provider such reasonable assistance, including the provision of personnel and facilities, as Provider reasonably considers necessary to ensure satisfactory installation of the Software. The Customer shall ensure Provider is granted all reasonable access, including necessary security clearances, for the purposes of complying with subclause 1.
- 3.3 If, in the opinion of Provider, the costs associated with the installation of the Software are greater than Provider could have reasonably contemplated on execution of this contract and are greater than the costs that would normally be associated with a similar installation project, Provider may make an Additional Charge.

4. TERM OF LICENCE

- 4.1 Subject to payment of the Fee, Provider hereby grants to the Customer a non-exclusive, non-transferable licence from the Commencement Date for the term of one (1) year. The Licence shall automatically be renewed and continue to automatically be renewed, for further

consecutive periods of one (1) year unless (30) days before the end of the current term either party notifies the other that the Licence is not being renewed. The initial year plus any renewal years described in this clause 2 are the "Term".

- 4.2 A Licence Renewal Fee shall be payable in the event the licence is extended pursuant to this clause. If the Licence is not renewed pursuant to subclause 1, the Licence immediately terminates, and the Customer must cease to use the Software.

5. DOCUMENTATION

- 5.1 The Documentation is licensed to the Customer for the Term.
- 5.2 Provider shall provide the Customer with such number of copies of the Documentation as are specified in the Agreed PO.
- 5.3 The Customer acknowledges that the Documentation contains sufficient information for the adequate use of the Software, except to the extent Provider has notified the Customer of any omission or deficiency or of any variation which it considers necessary for the proper use of the Software.
- 5.4 The Customer shall not copy or reproduce the Documentation except to the extent otherwise authorised by this contract.
- 5.5 On termination or expiry of this contract the Customer must return all Documentation to Provider.

6. LICENCE CONDITIONS

- 6.1 The Customer may only use the Software in accordance with the normal operating procedures as notified by Provider.
- 6.2 The Software may only be used pursuant to this contract, by the Customer at the Site.
- 6.3 Unless specified to the contrary in the Agreed PO, the Software may not be used on equipment other than Designated Equipment save that at the sole risk of the Customer it may be used on alternative equipment if:
 - (a) the Designated Equipment is temporarily inoperable due to malfunction, maintenance or change of installation site; or
 - (b) Provider has otherwise given its consent in writing to such alternate use.
- 6.4 The Customer shall not copy, alter, modify or reproduce the Software except to the extent otherwise authorised by this contract or as expressly authorised under Part III Div 4A of the *Copyright Act 1968 (Cth)*.
- 6.5 In addition to any other remedies available to Provider under this contract or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Software will entitle Provider to any available equitable remedy against the Customer.
- 6.6 Except to the extent specified to the contrary in this contract, Provider shall not be obliged to support the Software, whether by providing advice, training, error-

correction, modifications, updates, new releases or enhancements or otherwise.

6.7 The Customer must not create or permit to exist a security interest over the Software or Documentation or in any modifications to, or enhancements, updates or new releases of, the Software or the Documentation. For the purposes of the foregoing, "security interest" means a security interest that is subject to the *Personal Property Securities Act 2009 (Cth)* or any other mortgage, pledge, lien, charge or other arrangement of any kind which in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors.

6.8 Subject to subclause 2, the Customer shall not copy or reproduce the Software or Documentation by any means or in any form without Provider's prior written consent.

6.9 If requested by Provider, the Customer shall issue a notice in a form approved by Provider to all employees and other authorised users of the Software under its direction or control, advising such persons of the Customer's obligations under this clause and also advising of the possible civil and criminal consequences of a breach of this clause.

7. MODIFICATIONS

7.1 The Customer shall not modify or alter the Software or merge all or any part of the Software with any other software without Provider's written permission.

7.2 If the Software is modified or altered by Provider, or by the Customer with the permission of Provider pursuant to subclause 1:

(a) the costs associated with the modifications or alterations or the costs arising out of the investigation of the effects of proposed modifications or alterations will be borne solely by the Customer; and

(b) the Customer will fully indemnify Provider against all liability which may be incurred by Provider if such modifications or alterations infringe any Intellectual Property Rights of a third person or otherwise cause Provider to suffer loss, damages or expense.

7.3 The Software as modified or altered remains the property of Provider in all respects, whether modified by the Customer, Provider or a third party and whether or not authorised pursuant to this contract. Specifically, the Customer shall if necessary, assign to Provider all Intellectual Property Rights arising out of any modifications to the Software.

7.4 This contract shall apply to the Software as modified or altered.

7.5 The Customer shall execute such documents and perform such other acts as are necessary in order to give effect to subclause 3.

7.6 The Customer is not required to provide Support Services in respect of Software which has been modified by the Customer but may at its sole discretion elect to do so.

8. REVERSE ENGINEERING

8.1 The Customer shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party

to reverse assemble or reverse compile the whole or any part of the Software.

9. SECURITY

9.1 The Customer shall be solely responsible for the use, supervision, management and control of the Software and Documentation.

9.2 The Customer shall ensure that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use.

9.3 The Customer shall keep accurate records of use, copying, modification and disclosure of the Software. The Customer shall permit Provider to inspect such records at any time during the Customer's normal business hours. If Provider requests, the Customer shall furnish to Provider a copy of all or any part of such records.

10. SUPPORT

10.1 The Support Services shall be provided by Provider to the Customer for the Term.

10.2 Provider shall perform such services as it considers reasonable to ensure the Software remains in substantial conformity with the Service Specifications. Such support shall, at the sole option of Provider, take the form of:

(a) telephone advice;

(b) error correction by means of modem;

(c) on-site attendance (as may be applicable per the Agreed PO or Agreed SOW) followed by such advice, programming or re-configuration as Provider considers necessary; and

(d) such services as Provider considers are more effectively provided off-site.

10.3 Provider shall provide the Support Services in response to a report by the Customer of a suspected defect or error in the Software, which defect, or error allegedly causes the Software to deviate from the Service Specifications.

10.4 As may be applicable per the Agreed PO or Agreed SOW, if the Customer requests Provider to provide on-site support, Provider shall do so as soon as practicable.

10.5 Immediately after making a request for Support Services which may involve error correction or program modification, the Customer shall give Provider a documented example of the defect or error which it alleges prevents conformity of the Software with the Service Specifications.

10.6 The Customer shall, if so requested by Provider, give Provider a listing of output and any other data which Provider requires in order to reproduce operating conditions similar to those present when any alleged defect or error in the Software was discovered.

11. EXCLUSIONS

11.1 Support Services to be provided by Provider under this contract do not include:

(a) correction of errors or defects caused by operation of the Software in a manner other than that currently specified by Provider;

(b) correction of errors or defects caused by modification, revision, variation, translation or

- alteration of the Software not authorised by Provider;
 - (c) correction of errors or defects caused by the use of the Software by a person not authorised by Provider;
 - (d) correction of errors caused in whole or in part by the use of computer programs other than the Software;
 - (e) correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained operating and programming staff for the operation of the Software;
 - (f) training of operating or programming staff;
 - (g) rectification of operator errors;
 - (h) rectification of errors caused by incorrect use of the Software;
 - (i) rectification of errors caused by an equipment fault;
 - (j) equipment maintenance;
 - (k) diagnosis or rectification of faults not associated with the Software;
 - (l) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Provider;
 - (m) correction of errors arising directly or indirectly out of the Customer's failure to comply with this contract or any other agreement with Provider; or
 - (n) correction of errors or defects which are the subject of a warranty under another contract.
- 11.2 If so specified in this contract, the Support Services shall include the provision of updates and new releases of the Software.
- 11.3 If the Customer so requests in writing, Provider may at its option provide any of the Support Services referred to in subclause 1. Provider may make an Additional Charge for providing such services.
- 12. UPDATES AND NEW RELEASES**
- 12.1 The Support Service shall include the provision of updates and new releases of the Software.
- 12.2 Unless agreed otherwise, updates and new releases of the Software shall be provided by Provider as they become available.
- 12.3 When reasonably required to do so by the Customer, Provider shall demonstrate the extent to which an update or new release is capable of providing functions and performance specified in the Service Specifications. Provider may make an Additional Charge in respect of any such demonstration.
- 12.4 In the event that the Customer refuses to accept an update or new release of the Software, Provider may decline to continue Support Services.
- 12.5 Where the Customer accepts an update or new release:

- (a) this contract applies in all respects to that update or new release to the extent that it is incorporated or replaces the Support Software; and
- (b) the Service Specifications shall be deemed to be amended to the extent that the specifications for the update or new release supersede the existing Service Specifications.

13. LICENCE FEES AND SUPPORT CHARGES

- 13.1 The Customer shall pay the Fee and the Support Charges at the rate and in the manner specified in the Agreed PO.
- 13.2 If the Customer does not make timely payment of the Fee and/or the Support Charges, then the Customer shall also pay to Provider interest calculated at the Default Interest Rate on the amount that was not paid from the date that payment was initially due until the date of payment.
- 13.3 In the event that:
- (a) the supply or installation of the Software is delayed;
 - (b) Provider is required to deliver and install the Software or perform services in circumstances other than those expressly or reasonably anticipated to be associated with the delivery or installation or supply of services of a similar nature; or
 - (c) there is a change in the timing or complexity of the delivery or installation of the Software or the supply of Support Services;

for reasons other than a breach of this contract by Provider, then Provider shall be entitled to payment of an Additional Charge on a time and materials basis in respect of additional resources reasonably utilised in order to fulfil its obligations under this contract.

- 13.4 The Fees and Support Charges are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply, installation and support of the Software. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of the goods and services which are the subject of this contract.
- 13.5 Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- 13.6 In addition to paying the Fees and Support Charges and any other amount payable under or in connection with this contract (which is exclusive of GST), the Customer will:
- (a) pay to Provider an amount equal to any GST payable for any supply by Provider in respect of which the Fees and Support Charges or other amount is payable under this contract; and
 - (b) make such payment either on the date when Licence Fees and Support Charges or other amounts to which it relates is due or within seven (7) days after the Customer is issued with a tax invoice, whichever is the later.

14. WARRANTY FOR SOFTWARE

- 14.1 For the duration of the Warranty Period, Provider warrants that the Software will operate in conformity with the Documentation in all material respects.
- 14.2 If at any time during the Warranty Period the Customer believes there is a defect in the Software such that the Software does not comply with or cannot be used in conformity with the Documentation in all material respects, the Customer shall notify Provider of such perceived defect.
- 14.3 Provider shall investigate the perceived defect notified pursuant to subclause 2 and shall, upon the verification of the existence of the defect, rectify such defect without additional charge to the Customer.
- 14.4 If due investigation by Provider of a defect reported pursuant to subclause 2 reveals that no such defect in fact exists, Provider may make an Additional Charge in respect of such investigation.
- 14.5 Provider shall not be liable under this clause to the extent that a defect is caused by the Customer or a third party, including the failure of the Customer or a third party to maintain the operating environment designated in the Documentation or to otherwise use the Software in accordance with specifications issued by Provider from time to time, whether in the Documentation or otherwise.

15. WARRANTIES FOR PRODUCTS AND SERVICES

- 15.1 Provider warrants to Customer that:
 - (a) the Products shall be delivered to the Product Delivery Point free from defects in material, title and workmanship;
 - (a) the Services will be delivered in a competent, diligent manner and in accordance with the Service description in the Agreed PO.
- 15.2 If Customer believes during the Warranty Period that a Product or Service does not comply with these warranties, other than as to title:
 - (a) Customer shall notify Provider in writing within 30 Business Days from when Customer became or ought to have become aware of the warranty breach, and within the Warranty Period;
 - (b) if Provider requests, and in the case of a defective Product, Customer will make the relevant Product available for inspection at the Provider facility reasonably specified by Provider;
 - (c) Provider will, at Provider's option:
 - (i) repair or replace the defective Product or re-perform the defective Services; or
 - (ii) refund or credit the money paid by Customer for that Product or Service if, despite Provider's reasonable efforts, a defective Product or Service cannot be repaired, replaced or re-performed;
 - (d) the Warranty Period for any repaired, replaced or re-performed Product or Service will end at the same time as it would have for the original Product; and
 - (e) Customer will be responsible for the cost of extracting the Product from use, and transporting the Product to and from Provider's facility for

repair. However, if the Product proves to be in breach of the warranties, Provider will reimburse Customer's reasonable and substantiated transportation costs.

16. EXCLUSIONS

- 16.1 Provider's warranty obligations do not apply to:
 - (a) normal wear and tear;
 - (b) any part of the Product that is normally consumed in operation;
 - (c) Product or Software that is not properly stored, installed, used or maintained in the manner recommended by Provider;
 - (d) Product for which Customer's operational and maintenance records are not sufficient to substantiate the matters referred to in subclause (c);
 - (e) Product that has been involved in accident or has been subject to an event of force majeure of the type described in the definition of Excusable Cause of Delays;
 - (f) Products not manufactured by Provider, which will only carry any manufacturer's warranty that may apply;
 - (g) Product or Software that is modified or repaired by any party other than Provider or a contractor approved by Provider's, or the defect is caused by the installation of parts or other software not approved by Provider,

to the extent such a qualifier is permitted by Law.

- 16.2 If Customer permits a modification, repair or installation of the type contemplated by clause 16.1(g), Customer shall indemnify Provider for any Liability arising from any injury, death or physical damage to third party property caused by that modification, repair or installation.
- 16.3 If a Product fails to comply with the warranty as to title, Provider will promptly remedy that defect.
- 16.4 Clauses 14, 15 and 16 set out Customer's exclusive warranties and remedies and Provider's only Liability for all claims based on failure or defect in relation to the Product, Software and Services, whether arising during or after the Warranty Period. To the maximum extent permitted by Law, no implied or statutory warranties apply, including as to merchantability or fitness for purpose.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Subject to subclauses 2, 3 and 4, Provider shall indemnify the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use of the Software constitutes an infringement in Australia of any Intellectual Property Rights in the Software.
- 17.2 Provider shall not be required to indemnify the Customer as provided in subclause 1 unless the Customer:
 - (a) notifies Provider in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - (b) gives Provider the option to conduct the defence of such a claim, including negotiations for

- settlement or compromise prior to the institution of legal proceedings;
- (c) provides Provider with reasonable assistance in conducting the defence of such a claim;
- (d) permits Provider to modify, alter or substitute the infringing part of the Software at its own expense in order to avoid continuing infringement, or authorises Provider to procure for the Customer the authority to continue the use and possession of the infringing Software.
- 17.3 Provider shall not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from:
- (a) use of the Software in combination by any means and in any form with other goods not specifically approved by Provider;
- (b) use of the Software in a manner or for a purpose not reasonably contemplated or not authorised by Provider;
- (c) modification or alteration of the Software without the prior written consent of Provider; or
- (d) any transaction entered into by the Customer relating to the Software without Provider's prior consent in writing.
- 17.4 In the event that proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of the Software constitutes an infringement of Intellectual Property Rights, Provider may at its option and at its own expense conduct the defence of such proceedings. The Customer shall provide all necessary co-operation, information and assistance to Provider in the conduct of the defence of such proceedings.
- 17.5 The Customer shall indemnify Provider against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
- (a) the claim arises from an event specified in subclause 3; or
- (b) the ability of Provider to defend the claim has been prejudiced by the failure of the Customer to comply with any requirements of subclauses 2 or 4.
- 17.6 The Customer must not do anything that is, or is likely to be, an infringement of, or otherwise inconsistent with, any Moral Rights in the Software, Products or Services .
- 18. LIABILITY OF PROVIDER**
- 18.1 Except in relation to liability for personal injury (including sickness and death), Provider shall be under no liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this contract or in respect of a failure or omission on the part of Provider to comply with its obligations under this contract.
- 18.2 Subject to subclause 3, the Customer warrants that it has not relied on any representation made by Provider which has not been stated expressly in this contract, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Provider.
- 18.3 The Customer acknowledges that to the extent Provider has made any representation which is not otherwise expressly stated in this contract, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 18.4 The Customer shall at all times indemnify and hold harmless Provider and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
- (a) a breach by the Customer of its obligations under this contract; or
- (b) any wilful, unlawful or negligent act or omission of the Customer.
- 19. PRICING AND PAYMENT**
- 19.1 Provider may invoice Customer the Contract Price in accordance with the Agreed PO.
- 19.2 Payments terms are as per any current credit account agreement between Provider and Customer. Where no current credit account agreement is in place Customer shall:
- (a) in the case of Products, pay any invoice prior to delivery of the Products to the Product Delivery Point or within 30 days of issue whichever is the earlier; and
- (b) in the case of Software and Services, pay any invoice within 30 days of issue.
- Payment will be by electronic funds transfer to a bank account nominated by Provider.
- 19.3 Customer may only set-off, against the Contract Price payments, debts or arbitral awards that are due from Provider under this agreement.
- 19.4 If Customer fails to make payment in accordance with this clause 19, Customer will also pay to Provider interest on the late payment at the Default Interest Rate from the due date to the date of payment.
- 19.5 Provider may require a full or partial advance payment before making delivery of the Products if Provider forms a reasonable view that Customer's financial condition does not justify continuation of Provider's performance.
- 19.6 Provider may delay delivery of the Product or the Services until the advance payment required by this clause 19 has been established, and interest will accrue in accordance with clause 19.4 for each day that a deliver is delayed for this reason.
- 19.7 Provider will have a security interest in each Product or Software until Customer makes full payment to Provider for that Product or Software. If Customer fails to pay Provider for the Software, Provider may terminate Customer's licence to the Software, remove it or both.
- 19.8 The Contract Price includes the cost of Provider's usual inspection and factory tests, and commercial packing, and any testing and commissioning process that form part of the Services. The Contract Price does not include freight,

storage or insurance costs beyond the Product Delivery Point.

(a)

20. EXCUSABLE CAUSE OF DELAYS

20.1 If the performance of Provider's obligations in connection with this contract is affected by an Excusable Cause of Delay:

(a) shall not be liable nor in breach of the contract to the extent of that Excusable Cause of Delay, and the Date for Product Delivery or the Date for Software Delivery (as applicable) will be extended by a period equal to the Excusable Cause of Delay;

(b) IMT will use its reasonable efforts to mitigate the effect of the Excusable Cause of Delay; and

(c) IMT shall promptly notify Customer of the Excusable Cause of Delay and of the revised Date for Product Delivery or the Date for Software Delivery (as applicable).

20.2 If an Excusable Cause of Delay is caused by Customer's acts or omissions, the Contract Price will also be adjusted to compensate Provider for the costs of the delay.

20.3 If an Excusable Cause of Delay lasts for a period longer than 120 continuous Business Days, and so long as that Excusable Cause of Delay is ongoing:

(a) either party may terminate the contract by written notice to the other, so long as the Excusable Cause of Delay is still occurring when the notice is given; and

(b) if the contract is terminated under clause 20.3(a), Customer will pay Provider the amount set out in clause 26.4 as if this contract had been terminated for Customer breach, excluding the estimated foregone profit referred to in clause 26.4(e).

21. CONFIDENTIALITY AND PRIVACY

21.1 Each party may provide the other party with Confidential Information (the provider being the '**Discloser**' and the receiver being the '**Recipient**' in relation to that Confidential Information).

21.2 The Recipient must and must ensure that its Affiliates and their respective employees, agents and advisers:

(a) use the Confidential Information only for the purposes of this contract, or for product development;

(b) keep the Confidential Information in such a way as to ensure that it remains confidential; and

(c) disclose the Confidential Information only:

(i) to its employees who need the information for the purpose of this contract, and who are instructed to maintain confidentiality of the Confidential Information and to only use the Confidential Information for the purposes of this contract;

(ii) to its Affiliates, agents and advisers who need the information for the purpose of this contract, and who commit in writing to comply with the terms of this clause 21; or

(iii) as required by Law, a court order or an applicable stock exchange rule.

21.3 If the Recipient is required to make a disclosure under clause 21.2(c)(iii), the Recipient must, prior to making that disclosure and to the extent permitted by Law:

(a) provide the Discloser prompt written notice to permit the Discloser to seek an appropriate protective order; and

(b) make such lawful revisions to the Confidential Information to minimise the loss of its proprietary value.

21.4 The Recipient must, upon the Discloser's request and in relation to Confidential Information that the Recipient no longer has any need for that information in connection with this contract:

(a) return all originals, copies and summaries of the Discloser's Confidential Information then in the Recipient's possession or control; or

(b) certify destruction of those documents.

21.5 Nothing in this clause 21 grants the Recipient any license to any Intellectual Property owned or controlled by the Discloser. Confidential Information of each party remains, as between the parties, the property of the Provider and this contract does not give the Recipient any right, title or interest in the Confidential Information.

21.6 Provider and Customer shall comply with all applicable Laws in relation to any Personal Data provided to the other, including by providing notices to or obtaining consents from the subject of that Personal Data as required. Customer consents to Provider and its Affiliates processing Personal Data provided to it by Customer to establish its debtor database, and for factoring purposes.

21.7 Neither party may make any press or other announcements relating to this contract without the prior written approval of the other party, except as required by Law or a stock exchange.

21.8 The Customer grants Provider a non-exclusive limited license to use any data or information that it receives from the Customer that is generated, collected or recorded by any Products or Software for its internal business purposes, which include maintenance, development, upgrade or improvement of Products, Software and related product and service offerings.

21.9 This contract is taken to be both party's Confidential Information.

22. CHANGES

22.1 From time to time, Provider may make changes to the Software, Products or the Services without Customer's consent provided the change does not materially change the form, fit or function of the Software, Product or the Service.

22.2 Customer may propose changes to the Software, Product or Services. If Provider agrees to the change, the Contract Price and the Date for Product Delivery or the Date for

- Software Delivery (as applicable) will be adjusted equitably. No such change will take effect unless agreed in writing.
- 22.3 If there is a Change in Law that increases the cost to Provider of performing its obligations under this contract, notwithstanding Provider's reasonable efforts to mitigate the effects of that change:
- (a) Provider shall give notice of that change to Customer, setting out the relevant details of the change and its impact on Provider's performance; and
- (b) the Contract Price and Date for Product Delivery will be adjusted accordingly.
- 23. INSPECTION AND FACTORY TESTS**
- 23.1 The quality control exercised by Provider in its manufacture of the Products and the performance of the Services shall be in accordance with Provider's normal quality control policies and procedures.
- 23.2 Provider will attempt to accommodate Customer's requests to witness Provider's factory tests of the Products to the extent that can be done safely and without delaying work. Any such access will be at Customer's cost and risk, limited to areas directly related to the Product, and will not include areas where development work is being conducted.
- 24. SITE ACCESS AND OHS**
- 24.1 Customer will provide Provider access to the Site and the Site facilities to the extent reasonably necessary for Provider to perform its obligations, and at the time that Provider reasonably requests it.
- 24.2 Customer shall, and Provider will be permitted to suspend its performance under clause 26.3 if Customer does not:
- (a) provide Customer's Site safety practices to Provider for review prior to Provider's arrival on the Site, and provide instruction to Provider's personnel in those practices before those personnel work on the Site;
- (a) comply with occupational, health and safety Laws in relation to the Site and otherwise ensure the Site is a safe working environment for Provider's personnel, subject to Provider's compliance with clause 24.3; and
- (b) permit Provider to conduct a Site safety audit from time to time.
- 24.3 Provider shall:
- (a) ensure Provider's personnel attend the instruction in the Site safety practices provided by Customer under clause 24.1;
- (b) ensure Provider's personnel comply with those practices; and
- (c) ensure that any equipment introduced to the Site by or on behalf of Provider is in a safe working condition and is operated by suitably qualified personnel.
- 25. LIMITATION OF LIABILITY**
- 25.1 The maximum aggregate Liability of Provider to Customer in connection with this contract is 100% of the Contract Price.
- 25.2 Provider will have no Liability for Consequential Loss.
- 25.3 Clauses 25.1 and 25.2 apply only to the extent permitted by Law.
- 25.4 Provider will have no Liability for any claims in connection with this contract that are made after the Warranty Period, except for claims:
- (a) of which Customer ought not reasonably have then been aware; and
- (b) that are under the IP indemnity in clause 17.1 or for breach of confidentiality under clause 21.
- 25.5 A reference to a party in this clause 25 means that party, its Affiliates, subcontractors and employees thereof, collectively and individually.
- 25.6 If Customer supplies the Product to a third party, Customer shall require the third party to agree to be bound by this clause 25.
- 25.7 This clause 25 applies notwithstanding any other provision in the contract.
- 25.8 Customer acknowledges that Provider's CAS GPS product is a driver's aid only and should not be relied upon as the primary means of reducing the risks of high potential interactions between heavy vehicles, light vehicles, infrastructure and personnel. The CAS GPS product is intended as part of a broad risk management protocol and will not on its own achieve zero collision risk. It is not intended to replace proper training and safe operating procedures.
- 26. TERMINATION AND SUSPENSION**
- 26.1 Customer may terminate the contract if Provider:
- (a) materially breaches the contract or becomes Insolvent; and
- (a) in the case of a breach:
- (i) that breach does not have a specified contractual remedy; and
- (ii) Provider fails to commence and diligently remedy the breach within 60 Business Days of written notice of the breach.
- 26.2 If Customer terminates the contract under clause 26.1:
- (a) Provider shall be entitled to retain any amounts then paid under the contract;
- (b) Customer shall pay to Provider the applicable purchase price for any delivered Products or Services that remain unpaid upon termination;
- (c) The License for the Software immediately terminates from the date of termination; and
- (d) Provider shall pay to Customer, as Customer's sole remedy for the breach for which the contract was terminated, any amounts paid by the Customer for Services, Products or the Software due to be provided after the date of termination.
- 26.3 Provider may terminate or suspend the contract if:
- (a) Customer materially breaches the contract, including failure to pay any amount by 3 Business Days after its due date, or Customer becomes Insolvent; and

- (b) in the case of a breach, Customer fails to commence and diligently remedy the breach within 30 days of written notice of the breach.
- 26.4 If Provider terminates the contract under clause 26.3:
- (a) Provider may retain any payments already made by Customer;
- (b) Customer shall pay to Provider the applicable Contract Price for any delivered Products or Services that remain unpaid upon termination;
- (c) the licence granted to Customer terminates immediately from the date of termination;
- (d) Customer shall pay to Provider the reasonable and substantiated expense incurred by Provider in connection with the termination of the contract, including demobilisation costs, interest costs on unused capital equipment, the cost of undelivered Product or Services, break costs to Provider's subcontractors, and any Liability that Provider incurs to Provider customer's caused by the termination; and
- (e) Customer shall pay to Provider 25% of the unpaid Contract Price by way of foregone profit.
- 26.5 If Provider suspends the contract under clause 26.3:
- (a) Customer shall pay the expense reasonably incurred by Provider in connection with that suspension, including demobilisation and remobilisation costs;
- (b) the Date for Product Delivery of the Product, and the date for Provider's delivery of any Services, will be extended for the period of the suspension; and
- (c) Provider's right to terminate the contract under clause 26.3 remain available to Provider so long as the breach or Insolvency remains unremedied.
- 26.6 The termination rights set out in this clause 26, and in clause 20.2, are the parties' sole rights to terminate this contract.
- 27. OPERATING LAW AND DISPUTE RESOLUTION**
- 27.1 This contract will be construed and interpreted in accordance with the governing laws of Queensland.
- 27.2 Nothing in this contract excludes, restricts or modifies any condition, warranty, right or liability implied in this contract or protected by law to the extent that such exclusion, restriction or modification would render this contract or any provision of this contract void, illegal or unenforceable. Subject to that, any condition, warranty, right or liability which would otherwise be implied in this contract or protected by law is excluded.
- 27.3 The Customer acknowledges and agrees that:
- (a) prior to entering into this contract, it has been given a reasonable opportunity to examine and satisfy itself regarding all goods and services which are the subject of this contract and that prior to entering into this contract it has availed itself of that opportunity;
- (b) at no time prior to entering into this contract has it relied on the skill or judgment of Provider and that it would be unreasonable for the Customer to rely on any such skill or judgment; and
- (c) where any acquisition of goods under this contract has been made by reference to a sample or demonstration model, prior to entering into this contract the Customer has been given a reasonable opportunity:
- (i) to satisfy itself that the goods correspond with the sample or demonstration model as to quality, state and condition; and
- (ii) to examine the sample or demonstration model for any apparent defects, and that it has availed itself of that opportunity.
- 27.4 If there is a Dispute:
- (a) first, the party initiating the Dispute will send the other party a written notice referencing this clause, requesting that a senior executive from each side meet to negotiate the matter in Dispute in good faith; and
- (b) if the Dispute remains unresolved 60 Business Days after that notice is issued, whether or not the meeting occurred, the Dispute will be settled by arbitration.
- 27.5 Arbitration contemplated by clause 27.4(b) will be administered by the arbitral ACICA, in accordance with the ACICA Expedited Arbitration Rules, and in the seat of Sydney, Australia. The language of the arbitration shall be English. There shall be one arbitrator.
- 27.6 Notwithstanding this clause 27:
- (a) either party may seek interlocutory or interim relief from a court, though only to avoid irreparable harm; and
- (b) Provider may initiate proceedings before the courts to protect or enforce its Intellectual Property rights or Confidential Information.
- 28. PPSA**
- 28.1 If a party to this contract determines that this contract, or a transaction in connection with it, is or contains a security interest for the purposes of the PPSA, the other party will do anything that first-mentioned party reasonably requests as being necessary for the purposes of:
- (a) making the security interest enforceable, perfected and otherwise effective;
- (b) enabling the first-mentioned party to apply for any registration or renewal in connection with that security interest so that the security interest has the priority required by the first-mentioned party; or
- (c) enabling the first-mentioned party to exercise rights in connection with the security interest, including by obtaining consents or signing and producing documents.
- 28.2 In relation to any personal property the subject of a security interest (being the "Relevant Personal Property") granted under or in connection with this contract in favour of a party to this contract, the other party must:

- (a) not sell, sublease or dispose of that Relevant Personal Property or the other party's interest in that Relevant Personal Property;
- (b) not give possession of that Relevant Personal Property to another person for an indefinite or unspecified period, for more than 89 days in the case of a motor vehicle or more than 365 days in the case of other personal property;
- (c) not create any security interest over any Relevant Personal Property (other than security interests granted under this contract); and
- (d) not permit any Relevant Personal Property to become comingled with or an accession to or to be affixed to any asset that is not part of the Works,

except as contemplated by this contract.

28.3 A party must not disclose (and must not authorise any party to disclose) information of the kind mentioned in section 275(1) of the PPSA unless that disclosure is required under section 275(7) of the PPSA, notwithstanding clause 21.

28.4 If this contract, or a transaction in connection with it, is or contains a security interest for the purpose of the PPSA, then to the extent permitted by Law, the Excluded PPSA Provisions do not apply in relation to this contract or transactions contemplated by it.

29. COMPLIANCE WITH LAWS

29.1 Provider shall comply with laws applicable to the Software, the manufacture of Products and its performance of Services. Customer shall comply with laws applicable to the application, operation, use and disposal of the Software, Products and Services.

29.2 Provider's obligations are conditioned upon Customer's compliance with all U.S. and other applicable trade control laws and regulations. Customer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Customer and specified as the country of ultimate destination on Provider's invoice.

29.3 Notwithstanding any other provision, Customer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import and/or export licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfilment of Customer's obligations, except that Provider shall obtain any license or registration necessary for it to generally conduct business and visas or work permits, if any, necessary for Provider personnel. Customer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

29.4 If Customer is an agency or instrumentality of, or is owned by, the government of any country, Customer hereby unconditionally and irrevocably represents, warrants and covenants to Seller that:

- (a) the execution, delivery and performance by Customer of the contract constitutes private and commercial acts, rather than public or governmental or sovereign acts;

- (b) Customer is generally subject to civil and commercial law and to legal proceedings, and Customer hereby waives any right of immunity (governmental, sovereign or otherwise) which Customer or any of its assets may currently have or may have in the future.

30. GENERAL

30.1 (**Precedence**) If there is any inconsistency between a provision of:

- (a) the terms set out in the Agreed PO;
- (b) these terms;
- (c) the Incoterms referenced in these terms;

the provision in the document higher in this list will prevail to the extent of the inconsistency.

30.2 (**Interpretation**) The headings of the sections of this contract are for convenience, and do not affect the meaning of the contract. The use of specific lists or the word 'including' in this contract are not meant to be exclusive and are taken to mean 'including but not limited to'. A reference to a party includes that party's executors, administrators or permitted assigns.

30.3 (**Change of control**) Customer shall notify Provider immediately upon any change in ownership or control of more than 50% of Customer's voting rights or in Customer's controlling interest. If Customer fails to do so, or Provider objects to the change, Provider may:

- (a) terminate the contract;
- (b) require Customer to put in place special controls regarding Provider's Confidential Information and Intellectual Property; or
- (c) require Customer to provide adequate assurance of performance, including in relation to payment.

30.4 (**Assignment and novation by Customer**) Customer may not assign or novate this contract without Provider's consent.

30.5 (**Assignment and novation by Provider**) Provider may:

- (a) assign amounts owed to Provider under this contract as a means of factoring its receivables, or otherwise give security in this contract to its financiers;
- (b) assign or novate all or part of this contract to an Affiliate. Customer agrees to execute any documents that may be necessary to complete Provider's assignment or novation.

Other than as described in subsections (a) and (b) above, Provider may not assign or novate this contract without Customer's consent, such consent not to be unreasonably withheld.

30.6 (**Subcontracting**) Provider may subcontract the performance of its obligations under this contract but acknowledges that Provider remains responsible to Customer in relation to that performance.

30.7 (**Price adjustments**) Where this contract provides for a price adjustment, the following price rates will be used to determine the amount of the adjustment for a particular item (in order of precedence, from highest to lowest):

- (a) price rates set out in this contract for the relevant item;
 - (b) Provider's standard price rates for the relevant item; and
 - (c) the price rate that Provider reasonably determines, having regard to the relevant market for that item.
- 30.8 (**No JV or agency relationship**) Nothing in this contract constitutes or gives rise to a joint venture, agency, partnership or relationship of employer and employee between the parties.
- 30.9 (**Entire agreement**) This contract is the entire agreement between the parties in respect of its subject matter. Any additional terms (eg proposed in Customer's order form or in Provider's tender document) will not be binding.
- 30.10 (**No interpretation disadvantage against Provider**) No rule of contract interpretation will apply to the disadvantage of a party on the basis that it put forward this contract or any part of it, or that these are its standard terms.
- 30.11 (**No nuclear use**) Customer must not use or permit others to use the Products, Software or Services in connection with any nuclear facility or activity, including the transport of nuclear waste. If Customer breaches this obligation, Provider and its Affiliates disclaim, and Customer will indemnify Provider and its Affiliates for, any Liability for any damages, injury or contamination or other loss arising from that breach.
- 30.12 (**Severance**) If any provision of this contract is found to be void or unenforceable, the remainder of this contract shall not be affected.
- 30.13 (**Survival**) The following clauses shall survive the termination of this contract, together with any other clause that by its nature survives: 17, 18, 21, 25, 27, 29, 30 and 31.
- 30.14 (**Modifications or waivers to be in writing**) No modification, change or waiver shall bind the parties unless it is agreed in writing by the parties' authorised representatives.
- 30.15 (**Counterparts**) This contract may be signed in more than one counterpart, each of which will be taken to be an original document with the same effect as if the signatures to the contract were on the same document, but all such counterparts will constitute a single agreement.
- 30.16 (**Further assurances**) Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this agreement and all transactions incidental to it, including in relation to the registering of the security interest contemplated in clause 19.7.
- 30.17 (**No CISG**) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this contract.
- 30.18 (**No 3rd party beneficiary**) Except as expressly set out in this contract, this contract is not intended to give to any person who is not a party to this contract any rights to enforce any provisions contained in this contract.

30.19 (**Notices**) Notices in connection with this contract must be given in writing, including email. Notices, communications and other documents in connection with this contract will be in English.

30.20 (**Currency**) Unless otherwise specified, any monetary amounts set out in this contract or in the Agreed PO are expressed in AUD.

31. DEFINITIONS

The following terms have the meaning set out below:

Additional Charge means a charge in accordance with Provider's standard rates in effect from time to time.

Affiliate of an entity (the first entity), means any other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the first entity. For the purpose of this definition, an entity (first entity) controls another entity (second entity) if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

Agreed PO means the relevant purchase order that incorporates these terms, as acknowledged and agreed to by Provider, whether in writing or electronically, and each such purchase order forming a contract.

Agreed SOW means an applicable statement of work, if any, agreed to by Provider and the Customer in addition to the Agreed PO setting out the works to be performed in accordance with this agreement, whether in writing or electronically, and together with these terms and any relevant Agreed PO forms a contract.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane, Australia.

Change in Law means the adoption, modification of a new Law, or the repeal of an existing Law, that:

- (a) occurs after this contract is signed; and
- (b) is not a change in income Tax Law, nor is a change that is triggered because of a breach by Provider of the Law.

Commencement Date means the date of commencement of the Licence as set out in the Agreed PO.

Confidential Information means the information of the Discloser or its Affiliates that:

- (a) is made available to the Recipient at any time in connection with this contract, or is derived from such information;
- (b) concerns the business, operations, finances, plans or customers of the Provider or its Affiliates, including where Provider is the Discloser, any manuals, price lists or software; and
- (c) is marked 'confidential', 'proprietary' or 'private', or if disclosure is made orally, has been summarised within 30 Business Days of disclosure and marked as such in the written summary,

but does not include information which:

- (d) is or becomes public knowledge other than by a breach of this contract;

- (e) is already in the possession of the Recipient without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Recipient;
- (f) has been independently developed by the Recipient by people without access to the Confidential Information, and the Recipient can document that independent development; or
- (g) acquired from a source which was not subject to a duty of confidentiality to the Discloser.

Consequential Loss in relation to a breach means:

- (a) any loss of a type that does not naturally flow from the breach; or
- (b) any loss of profits or revenues, loss of product, loss of use of the Product or the Service, business interruption, cost of capital, cost of capital, loss of future contracts, loss of or damage to goodwill or reputation, provide-or-pay charges, claims of Customer's customers for such amounts, or any special, consequential, incidental, indirect, punitive or exemplary damages.

contract means this agreement, including any attached appendices.

Contract Price means the total amount payable by the Customer for the applicable Software, Products and/or Services, as set out in the Agreed PO.

Customer means the customer entity set out in the Agreed PO.

Date for Product Delivery means the estimated date for delivery of the Products set out in the Agreed PO, or, if no such date is set out, a reasonable lead time after the date of the Agreed PO.

Date for Software Delivery means the estimated date for delivery of the Software set out in the Agreed PO, or, if no such date is set out, a reasonable lead time after the date of the Agreed PO.

Default Interest Rate means the 3-month BBSW, as published by AMFA from time to time, plus 2%.

Designated Equipment means the equipment referred to as designated Equipment in the Agreed PO as amended from time to time by the agreement of the parties in writing.

Dispute means any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination.

Documentation means operating manuals and other printed materials referred to in the Agreed PO including users' manuals, programming manuals, modification manuals, flow charts, drawings and software listings and other such documentation which are designed to assist or supplement the understanding or application of the Software;

Excluded PPSA Provisions means:

- (a) for the purpose of sections 115(1) and 115(7) of the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143; and

- (b) for the purpose of section 115(7) of the PPSA, sections 132 and 137(3).

Excusable Cause of Delay means any delay to the performance of Provider's obligations under this contract caused, directly or indirectly, by an event that:

- (a) is beyond Provider's reasonable control; and
- (b) could not be overcome by Provider using its reasonable efforts,

including acts of God, fire, terrorism, war, epidemics, insurrection, acts or omissions of Customer, acts or omissions by a government authority, strikes or vendor performance that is affected by such events.

Fee means the fee set out in the Agreed PO payable by the Customer to Provider for the use of the Software.

Government Authorization means any licence, authority, permit or similar issued by a government authority.

GST means the Tax payable on taxable supplies under the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related act imposing such Tax and includes subordinate legislation in relation to those acts.

Incoterms means, in relation to Products sold under the Agreed PO, the Incoterms set out in the Agreed PO or, if no such Incoterms are specified, FCA (Provider's facilities) Incoterms 2010.

Intellectual Property or Intellectual Property Rights means any copyright, moral rights, patents and inventions, trademarks, trade names, domain names, trade secrets, Confidential Information, know-how or designs, and all rights to register or extend or in applications for the registration of any of these.

Insolvent means a party is Insolvent if:

- (a) it is insolvent;
- (b) it is in receivership, liquidation, provisional liquidation, under administration or wound up, or has had a receiver or controller all or any part of its property;
- (c) it is subject to an arrangement, assignment, moratorium or composition with its creditor, or protected from creditors under statute, other than to carry out a restructure or amalgamation while solvent;
- (d) an application or order has been made, resolution passed, proposal put forward, meeting of shareholders or creditors called or any other action is taken, in each case that is preparatory or could result in to the circumstances set out in (a) to (c), and in the case of an that application has not been stayed, withdrawn or dismissed within 30 Business Days; or
- (e) it suspends making payments on any of its debts, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness, or ceases or threatens to cease to carry on all or a substantial part of its

business, or is otherwise unable to pay its debts when they fall due;

- (f) something having a substantially similar effect to (a) to (e) happens in connection with that party under the Law of any jurisdiction.

Law means any law, legislation, statute, ordinance, regulation or other binding, mandatory rule or condition imposed by a government authority or in a Government Authorization that applies to this contract, or to a party in connection with this contract.

Liability means any damages, losses or liabilities, whether in contract, tort (including negligence), under an indemnity, statute or otherwise.

Licence Renewal Fee means the fee to renew the licence as set out in Provider's standard rates in effect from time to time.

New Agreed PO means any agreement for the supply of additional Services, Software or Products at a different Site whether with the Customer or an Affiliate of the Customer.

Personal Data means any information relating to an identified or identifiable natural person, or to any legal entity if that legal entity is subject to data protection legislation in their country of incorporation.

PPSA means the *Personal Property Securities Act 2009 (Cth)*, any regulations thereto, and any amendments made from time to time to the *Corporations Act 2001 (Cth)* or any other legislation as a consequence of the *Personal Property Securities Act 2009 (Cth)*.

Product means the products set out in the Agreed PO as being the subject of purchase from Provider.

Product Delivery Point means where risk in the Product transfers to Customer in accordance with the Incoterms.

Provider means the entity set out in the Agreed PO.

Service means the services set out in the Agreed PO as being the subject of purchase from Provider.

Service Specifications means the specifications set out in the Agreed PO describing the requirements of the Support Services;

Site means the premises or property at which the Services or the Software will be delivered, as specified in the Agreed PO or, if not specified in the Agreed PO, at the premises reasonably specified by Provider.

Software means the software designated in the Agreed PO consisting of a set of instructions or statements in machine readable medium and any enhancement, modification, update or new release of the that software or part thereof.

Support Charges means the charges specified in the Agreed PO, which are payable by the Customer to Provider in respect of the Support Services;

Support Services means the support services provided by Provider to the Customer pursuant to this contract in respect of the Software, more particularly described in Agreed PO.

Tax means any tax imposed by a government authority or agency, including excise duty, value-added, indirect, sales, stamp, or property tax, and any withholding, penalty or interest thereon.

Warranty Period means the period set out in the Agreed PO or, if no such period is specified:

- (a) for Product, the earlier of 15 months from delivery to the Product Delivery Point and 12 months from first installation, commissioning or use;
- (b) for Services, 30 days from performance; and
- (c) for the Software, during the Term.

