COMMERCE VISION

Licence Terms

The licensing and use of all Licensed Software (which includes CV ecommerce, Opmetrix and Lucy) is governed by these Licence Terms and Conditions.

Purchase of Licenses and Services requires the execution of an Order Form for each purchase of Products or Services. If Professional Services are also required in relation to that item of Licensed Software (for example, to install and implement the Licensed Software or to integrate the Licensed Software with Customer's ERP or other agreed Third-Party Materials), the Customer will also enter into a SOW for those Professional Services. The Order together with the Licence Terms and, if applicable, the SOW, will form the agreement between Supplier and Customer which shall be binding upon Customer's execution of the Order Form. (**"Effective Date"**).

Different entities within the Commerce Vision corporate group have the right to grant licences for different items of Licensed Software. '**Supplier**' and '**Customer**' in the context of an Agreement refer to the parties specified as such in the relevant Order.

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1   Software

1.1   Licence. Supplier grants Customer and its Authorised users a limited, revocable, non-exclusive, non-sublicensable, and non-transferable licence to:

(a)   use the current version of Supplier's Software as elected and described in the applicable Order form; and

(b)   permit its Authorised Users to do the same,

in each case, during the paid Subscription Term and subject to and in accordance with the terms of the Agreement. Customer agrees that the Licensed Software must only be used for Customer's internal business purposes and in accordance with the Use Profile.

1.2   Licence Restrictions. Customer must not:

(a)   install, host, access, use, sublicense, distribute, transfer, transmit or otherwise exploit the Licensed Software, except as permitted under clause 1.1;

(b)   reverse engineer, decompile or disassemble the Licensed Software, view or gain access to the source code to the Licensed Software, or use the Licensed Software to provide any product or service that is an alternative, substitute or competitor to the Licensed Software;

(c)   attempt to undermine the security or integrity of the Licensed Software or Supplier's (or its service Suppliers') computing systems and networks;

(d)   use or misuse the Licensed Software in any way which may impair the functionality of the Licensed Software, or other systems used to deliver the Licensed Software or impair the ability of any other user to use the Licensed Software;

(e)   copy the Licensed Software, develop any modification, enhancement, derivative work or other development of the Licensed Software, or incorporate any Customer, or Third-Party Materials into the Licensed Software (except as permitted under clause 1.1);

(f)   upload, distribute or display through, the Licensed Software any material that is unlawful, harmful, malicious, threatening, defamatory, obscene, infringing, offensive, sexually explicit, violent or discriminatory;

(g)   remove any product identification, proprietary, trademark, copyright or other notices applied to or contained in the Licensed Software (unless approved by Supplier in writing); or

(h)   allow or permit any person other than Customer, and its Authorised Users, to access or use the Licensed Software without the prior written consent of Supplier.

Customer must ensure that no Authorised User does any of the things that the Customer is prohibited from doing under this clause.

1.3   Access to Licensed Software. If access to, or use of, any Licensed Software is managed through Logon IDs, Customer must ensure that:

(a)   each of its Authorised Users only access the Licenced Software through their own unique Logon ID;

(b)   all Logon IDs are kept secure and confidential;

(c) a list of Authorised Users is provided to Supplier upon request by Supplier;

(d) the total number of Authorised Users does not exceed the maximum number of Authorised Users specified in the Use Profile; and

(e) all reasonable efforts are taken to ensure Authorised Users to not disclose their Logon IDs to anyone else.

1.4 Access refusal. Supplier reserves the right to deny, suspend or revoke any Logon ID, at its discretion or cancel a particular Logon ID, or direct Customer to do either of the same, at any time for reasonable cause. Reasonable cause includes the Logon ID being assigned to any person other than an authorised representative of Customer, a person who is employed by or providing access to the Licensed Software to a competitor, or any person Supplier reasonably believes is otherwise compromising the rights of Supplier. Supplier will make all commercially reasonable efforts to notify Customer in advance of any denial, suspension, or revocation of access, will upon request provide Customer with the reason for action. Supplier shall not be liable for any damages arising from such actions taken in good faith.

2 Implementation, configuration and integration

2.1 Professional Services. Customer will typically need to purchase Professional Services to install, implement and access the full functionality of the Licensed Software, and also to integrate the Licensed Software with Customer's ERP and other agreed Third-Party Materials. Customer can also purchase other Professional Services, as needed. If Customer wishes to purchase Professional Services from Supplier, the parties must execute a separate SOW which shall form part of the agreement.

3 Support Services

3.1 Support Services. Subject to the payment of the Fees, Supplier shall provide Support Services for the Licensed Software for the duration of the Subscription Term and, if Customer notifies Supplier of, or Supplier identifies, an Inherent Defect, Supplier must, as Customer's sole and exclusive remedy, rectify that Inherent Defect through the provision of those Support Services. Customer must provide Supplier with written notice that includes a reasonably detailed explanation of the Defect and provide assistance reasonably required by Supplier to perform the Support Services. The Support Services do not include any support for Customer Materials or Third-Party Materials. No Agent of Supplier is authorised to alter or expand the warranties of Supplier as set forth above.

3.2 Availability. Customer acknowledges and agrees that Supplier will use commercially reasonable endeavours to achieve the Support Levels during the paid Subscription Term but is not liable to Customer for any failure to achieve any Support Level, other than as set out in the Software Support Policy.

3.3 Maintenance. Supplier will use reasonable efforts to work with Customer in connection with the timing of updates and maintenance and will endeavour to carry out such works outside of peak use periods where possible and to give at least 48 hours' prior notice of any scheduled maintenance that will materially and adversely affect use of the Licenced Software.

4 Customer responsibilities

4.1 Usage responsibilities. Customer uses the Licensed Software at its own risk and is solely responsible for:

(a) the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Materials, Third-Party Materials which Customer uses and all hardware, software, services and network connectivity necessary to use the Licensed Software;

(b) ensuring the Licensed Software is accessed and used strictly in accordance with the Agreement. Customer is responsible for each act and omission of an Authorised User in connection with the Agreement or the Licensed Software as though it were an act or omission of Customer;

(c) ensuring that Customer's and each Authorised Users' use of the Licensed Software, and all Customer Materials and data uploaded, distributed or displayed through the Licensed Software, complies with all applicable laws, regulations and contractual obligations;

(d) providing a list of Authorised Users to Supplier on request by Supplier;

(e) obtaining all consents, licences and approvals, and making all notifications, necessary to lawfully Process all Customer Materials and data (including that protected by Intellectual Property Rights, confidentiality, or privacy) uploaded, distributed or displayed through the Licensed Software and all output of the Licensed Software; and

(f) all use of, and reliance upon, the Licensed Software by Customer and each Authorised User.

4.2 Third Party Material. The Licensed Software may include, integrate with, interoperate with, or link through to, Third Party Material. Customer acknowledges and agrees that:

(a) Supplier has no control over, and is not responsible for, the functionality, availability, security or performance of any Third-Party Materials or Connections;

(b) Third Party Material is provided directly to Customer by the relevant Third-Party Material Supplier, does not form part of the Licensed Software and is not governed by the Agreement;

(c)   Customer is solely responsible for entering into, and complying with, its own agreement with each Third-Party Material Supplier that contains the rights necessary for Customer's (and its Authorised Users') proposed use of the Licensed Software;

(d)   if Supplier is required to use any Third-Party Material on behalf of Customer, that use (**Required Supplier Use**) is permitted under Customer's licence with the Third-Party Material Supplier;

(e)   except to the extent that the Agreement requires the Supplier to integrate any Third Party Materials Customer is solely responsible for integrating the Third Party Materials it opts to use with the Licensed Software in accordance with the integration or application programming interface specifications provided by Supplier and for conducting end-to-end systems integration and user acceptance testing to ensure the Licensed Software and integrated Third Party Materials perform in accordance with Customer's requirements;

(f)   Customer uses all Third-Party Material at its own risk and that (as between Customer and Supplier) Customer is solely responsible for all costs, Claims and Losses relating to Third Party Material, other than use by Supplier that is not Required Supplier Use; and

(g)   Third Party Material may be subject to change, suspension, termination or discontinuation at any time and without notice by the Third-Party Material Supplier (and that this may cause the Licensed Software to cease to be compatible).

5   Fees, invoicing and payment

5.1   Fees. The Fees are payable in consideration of Supplier's supply of the Licensed Software, Support Services and any Professional Services. Supplier reserves the right to change pricing levels, discounts or fee structures subject to providing reasonable prior notice under an Order Form.

5.2   Invoicing and payment. Supplier must issue invoices for the Fees to Customer at the times specified in the Order or applicable Licenced Software Schedule or SOW. Customer must pay all Fees invoiced by Supplier, without any set-off or deduction and in immediately available funds, by the method and within the period specified in the Order, Licenced Software Schedule or SOW (as applicable).

5.3   Card payments and direct debit. Where Supplier offers payment of the Fees via card or direct debit from a nominated bank account and Customer utilises either of those payment options, payment will be processed by a third-party processor and the Customer's use of the third-party payment processor services may be subject to additional terms and conditions. All card and direct debit payments will be processed in accordance with the agreed invoicing schedule in the Order. Customer authorises Supplier to (as applicable) charge the credit card nominated by Customer for the full amount due on or about the due date or deduct the full amount due directly from Customer's nominated bank account. Customer must ensure that card and direct debit details provided are valid and that sufficient funds are available. In the event that a payment is declined or fails, Customer authorises Supplier to make further reasonable attempts to charge the credit card or deduct the amount from the nominated bank account provided these are within a reasonable time of the original transaction. Supplier may also charge Customer for any reasonable costs or fees incurred by Supplier due to the failed transaction and Customer remains liable to pay the amount due.

5.4   Late Payment. If Customer fails to pay any Fees (that are not disputed in good faith) by the due date for payment, Supplier may:

(a)   suspend the licence of the Licensed Software, and the provision of Support Services and any Professional Services from the due date for payment until the date that payment is made by Customer; and

(b)   charge a reasonable late or failed payment fee in addition to the overdue Fees.

5.5   Taxes. The Fees are exclusive of all taxes, levies, withholdings, duties and other amounts imposed by taxing authorities. Where a supply is a taxable supply, all amounts payable must be increased by the amount of GST and other applicable taxes payable in relation to the supply. All such taxes must be paid at the time any payment for any supply to which it relates is payable (provided a valid tax invoice has been issued for the supply).

6   Supplier IP

6.1   Ownership. All Intellectual Property Rights in and to the Licensed Software (and any content, templates or other materials accessible through the Licenced Software) and output of the Support Services and Professional Services, including those in any copy, modification, enhancement, configuration, derivative work or other development of these things developed by or on behalf of Customer and Authorised Users, vests or remain vested in Supplier.

6.2   No other rights. Neither Customer nor any Authorised User receives any right, title or interest in or to the Licensed Software other than the licence expressly granted to Customer under clause 1.1.

6.3   Notice of infringement. Customer must immediately notify Supplier in writing upon becoming aware of any:

(a)   infringement or unauthorised use of the Licensed Software by any person, including any Authorised User; or

(b)   IP Claim by any person related to the use of the Licensed Software by Customer or any Authorised User.

6.4 **Defence of IP Claims**. If the Licensed Software is the subject of an IP Claim then, subject to clauses 6.5, 6.7 and 6.9, Supplier will indemnify Customer solely for Losses that are (i) finally awarded against Customer in a court of competent jurisdiction, from which no appeal is available, or (ii) agreed to in a settlement that Supplier expressly authorizes in writing. Supplier retains sole control over the defense and settlement of any IP Claim and shall not be responsible for any costs, settlements, or judgments incurred without its prior written consent.

6.5 **Conditions of defence.** Supplier's obligations under clause 6.4 are contingent on Customer notifying Supplier immediately in writing of the IP Claim and allowing Supplier to conduct the defence and/or settlement of any IP Claim. If Customer declines Supplier's proffered defence, or otherwise fails to give full control of the defence to Supplier, then Customer waives its rights, and releases Supplier from its obligations, under clause 6.4.

6.6 **Customer's participation.** Customer will have the right to participate in the defence and/or settlement of an IP Claim with counsel of its own at its sole expense. Customer must provide all reasonable co-operation, information and assistance to Supplier in the conduct of the defence and/or settlement of any IP Claim.

6.7 **Supplier's rights**. If the Licensed Software is the subject of an IP Claim, Supplier may (at its cost and option) either:

(a)   procure the right for Customer to continue using the affected Licensed Software;

(b)   replace or modify the affected Licensed Software such that it no longer infringes the relevant Intellectual Property Rights and provides Customer with substantially equivalent functionality and performance as provided for under the Agreement; or

(c)   if neither of the options in subclauses (a) and (b) are feasible on a commercially reasonable basis, terminate the Agreement and provide Customer with a pro-rata refund of any Fees paid in advance for use of the affected Licenced Software after the effective date of termination.

6.8 **Exceptions.** Supplier will have no liability or obligation for any IP Claim to the extent based on:

(a)   the unauthorised use, misuse, combination with other systems or other modification of the Licensed Software or the combination of the Licensed Software (in whole or in part) with any other software or equipment by Customer not supported by Supplier if such alleged infringement would not have occurred without such use, modification or combination;

(b)   Customer's continuing use of the Licensed Software after receiving notice that the Licensed Software infringes Intellectual Property Rights of a third party;

(c)   use of a superseded version of the Licensed Software if the infringement or violation would have been avoided or mitigated by the use of a subsequent version or update of the Licensed Software that is provided or made available to Customer; or

(d)   use of the Licensed Software after Supplier has provided Customer with a suitable replacement or modification in accordance with clause 6.7(b).

6.9 **Customer's response.** In responding to a Claim, Customer must not take any action, that is prejudicial to Supplier's rights, or through inaction prejudice Supplier's rights.

6.10 **Liability and remedy.** This clause 6 sets out the entire liability of and obligations of Supplier to Customer and the entire remedy of Customer with respect to infringement or violation of any Intellectual Property Rights of a third party.

7   Customer Material

7.1 **Ownership**. All rights, title and interests in Customer Material remains vested in Customer or its licensors.

7.2 **Licence**. Customer:

(a)   grants Supplier and its Personnel the right to Process Customer Material (including any Personal Data); and

(b)   warrants that it has obtained all consents, licences and approvals and given all notifications necessary to enable Supplier and its Personnel to Process Customer Material,

in each case, to the extent necessary to perform the Professional Services, Support Services, and as otherwise contemplated by the Agreement.

7.3 **Limited indemnity.** Customer indemnifies Supplier and its Affiliates against all Losses suffered or incurred by any of them related to any third-party Claim that the Customer Material, or any Processing of Customer Material by Supplier (or its authorised representatives) in accordance with the Agreement, is not compliant with any law or infringes any third-party rights.

8   Privacy and data security

8.1 **Privacy**. Each party must comply with all Privacy Laws applicable to that party in Processing any Personal Data comprised in the Customer Material. If Customer discloses, or provides Supplier with access to, any such Personal Data, that Personal Data will be Processed in accordance with Supplier's privacy policy.

8.2 **Licensed Software security**. Customer Material in the Licensed Software will be hosted in Australia. In some circumstances, Customer Material may be accessed from other countries outside of Australia (for example, by

Supplier support staff who may be located in overseas, including in New Zealand and the United Kingdom). Back-ups will be encrypted and may be stored offshore. Supplier must, in relation to the Licensed Software (other than where hosted in Customer's environment), implement reasonable technical and organisational security controls to protect the Customer Material (and Personal Information therein) against Security Breaches in accordance with the applicable privacy laws including:

    (a)   not disclosing the Customer Material except to other appropriately authorised users, and its sub-processors and their respective Personnel for the purpose of performing the Agreement; and

    (b)   maintaining reasonable business continuity and disaster recovery measures.

8.3 **Data back-up**. While Supplier will take regular back-ups of all Customer Material hosted by it, Customer must ensure that it continues to keep its own records (including of Customer Material).

8.4 **Security Breaches.** If either party becomes aware of any actual or suspected Security Breach:

    (a)   that party must promptly notify the other party in writing, including in such notice all known details of the actual or suspected Security Breach;

    (b)   where the Customer Material was stored in the Licensed Software, Supplier must provide Customer with information and assistance reasonably required by Customer to investigate and assess the actual or suspected Security Breach;

    (c)   Customer is responsible for determining whether the actual or suspected Security Breach is notifiable under Privacy Laws, subject to subclause (e);

    (d)   Customer must not reference Supplier or its Affiliates in any notification or communication relating to the actual or suspected Security Breach without Supplier's prior written approval as to the form and content of the reference; and

    (e)   Supplier may make a notification or communication about the Security Breach if Customer fails to do so or Supplier is required to do so under applicable Privacy Laws.

9   Confidentiality

9.1 Exclusions. Confidential Information does not include information that the Receiving Party, at the time of disclosure is: (a) in the public domain through no fault of the Receiving Party; (b) known to the Receiving Party at the time of disclosure; (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (d) independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information.

9.2 **Obligation of confidence**. With respect to any Confidential Information disclosed under this Agreement by the Disclosing Party, the Receiving Party will treat such Confidential Information as confidential and will handle it using at least the same procedures and degree of care which it uses to prevent the misuse and disclosure of its own confidential information of like importance, but in no event less than reasonable care. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations hereunder and subject to confidentiality and non-use obligations at least as protective of the Disclosing Party as those set forth in this Agreement (in which case the Receiving Party will remain responsible for any noncompliance by such employees or other individuals or entities). Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of this Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the Receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law. **Usage data and analyses**. Supplier may:

    (a)   Process data relating to Customer's and Authorised User's use of the Licensed Software in identifiable form for billing, capacity planning, compliance, security, integrity, availability, providing and improving the Licensed Software; and

    (b)   freely create and Process analyses, materials, data, insights, works and other things derived (wholly or partly) from use of the Licensed Software in anonymised and aggregated form provided that neither Customer nor Authorised Users are identifiable.

10   Warranties

10.1 **Supplier warranty.** Unless otherwise set forth in the applicable Order Form, Supplier warrants that (i) during the period of ninety (90) days after the Delivery Date (the "Software Warranty Period"), the On-Premises Software and/or Hosted Services will function in conformance with the Documentation, and (ii) during the period of thirty (30) days

after performance (the "Service Warranty Period"), the Support Services and Professional Services will materially conform with the applicable specifications. If Customer becomes aware of the On-Premises Software or Hosted Services not functioning in material conformance with the Documentation or the Support Services or Professional Services not materially conforming with the applicable specifications (a "Defect"), Customer must provide Supplier with written notice that includes a reasonably detailed explanation of the Defect within the Software Warranty Period or Service Warranty Period, as applicable. If Supplier is able to reproduce the Defect in Supplier's own operating environment, Supplier will use commercially reasonable efforts to promptly correct the Defect or work in good faith with Customer to provide software product or service to Customer with substantially similar functionality. THE FOREGOING SETS FORTH SUPPLIER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE ON-PREMISES SOFTWARE, HOSTED SERVICES, SUPPORT SERVICES AND PROFESSIONAL SERVICES.

10.2 **Disclaimer** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 8, THE PROVIDER IP, PROFESSIONAL SERVICES AND SUPPORT SERVICES ARE PROVIDED "AS IS". CUSTOMER'S USE OF THE PROVIDER IP, PROFESSIONAL SERVICES AND SUPPORT SERVICES IS AT ITS OWN RISK. PROVIDER DOES NOT MAKE, AND PROVIDER HEREBY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT (EXCLUDING INDEMNIFICATION OBLIGATIONS), QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, PROFESSIONAL SERVICES OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. THE EXPRESS WARRANTIES MADE BY PROVIDER IN SECTION 8 ARE FOR THE BENEFIT OF THE CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY.

10.3 NO AGENT OF PROVIDER IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF PROVIDER AS SET FORTH HEREIN. PROVIDER DOES NOT WARRANT THAT: (I) THE USE OF THE PROVIDER IP OR PROFESSIONAL SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (II) THE PROVIDER IP, PROFESSIONAL SERVICES OR SUPPORT SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; OR (III) THE PROVIDER IP OR PROFESSIONAL SERVICES WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE PROVIDER IP WILL BE CORRECTED.

11 Liability

11.1 Exclusion of Indirect Loss. Supplier excludes any and all liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence) or any other basis in law or equity, for any Indirect Loss**.**

11.2 Exclusion of liability for outputs. Supplier is not liable to Customer or any third party for any Loss arising in connection with use of or reliance on any output generated by or through the Licensed Software**.** The Customer acknowledges that the Licensed Software is a tool only and not a substitute for appropriate review of outputs, usual diligence or common sense.

11.3 **Limitation of liability.** IN NO EVENT WILL SUPPLIER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE,

INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER SUPPLIER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

11.4 EXCEPT FOR DAMAGES CAUSED BY SUPPLIER'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, IN NO EVENT WILL SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING INDEMNIFICATION OBLIGATIONS, BREACH OF CONTRACT, TORT (INCLUDING GROSS NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED AT ANY POINT IN TIME THE AMOUNT PAID BY CUSTOMER TO SUPPLIER IN THE PRIOR TWELVE MONTH PERIOD UNDER THE APPLICABLE ORDER FORM GIVING RISE TO THE CLAIM.

11.5 CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 11 (LIMITATIONS OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

(a)

(b)   .

11.6 Injunctive relief. Each Party acknowledges that damages would not be an adequate remedy for any breach of Confidentiality Obligations, or in the Case of Customer of the Agreement and that Supplier is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or anticipated breach of those clauses (in addition to any other remedies).

12   Term, suspension and termination

12.1 Term. The Agreement commences on the date the last party executes the Order and will remain in force until the Subscription Term has ended or the Agreement is terminated by either party in accordance with its terms.

12.2 Auto-renewal of Subscription Terms. At the end of the Subscription Term specified in the Order, the Subscription Term will automatically extend by 12 months on and from the end of the current term, unless either party notifies the other party in writing at least 90 days prior to the end of the then current Subscription Term that it does not wish for the extension of that Subscription Term to occur.

12.3 Suspension. Supplier may suspend the licences granted pursuant to clause 1.1:

(a)   during any period in which Customer is in breach of the Agreement; or

(b)   as long as reasonably necessary to prevent or mitigate actual or suspected illegal activity, damage to Supplier's systems, or threat to the integrity of the Licensed Software.

12.4 Termination. A party may terminate the Agreement in whole or in part with immediate effect on written notice if the other party: In addition to any other express termination right set forth in this Agreement:

(a)   Supplier may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than three (3) days after Supplier's delivery of written notice thereof; or (B) breaches any of its obligations under Confidentiality Obligations or

(b)   either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach

(c)   either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (B) makes or seeks to make a general assignment for the benefit of its creditors; or (C) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

(d)   the Parties mutually agree to terminate this Agreement.

(e)

12.5 Consequences of termination or expiry.

    (a)   On termination or expiry of the Agreement:

        (i)   all rights to the Licensed Software granted under the Agreement cease immediately and Customer must immediately cease using the Licensed Software and delete all copies of the Licensed Software in its possession or control; and

        (ii)   Customer must immediately pay Supplier any balance due and payable as at the date of termination or expiry.

    (b)   Expiry or termination of a SOW will not otherwise affect the Agreement or any other SOW or the Subscription Term. On termination or expiry of the SOW, Customer must immediately pay Supplier all Fees due and payable as at the date of termination or expiry.

    (c)   The accrued rights, obligations and remedies of the parties are not affected by termination of the Agreement, and clauses that are intended to survive termination will continue to be effective after termination and/or expiry of the Agreement.

    (d)   Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Supplier IP (inclusive of On-Premises Software and/or Hosted Services, and Documentation) and, without limiting Customer's Confidentiality obligations, Customer shall delete, destroy, or return all copies of the Supplier IP and certify in writing to the Supplier that the Supplier IP has been deleted or destroyed. Customer acknowledges Supplier shall have the right to destroy or dispose of any Customer data after ninety (90) days of contract termination or expiration

13   Miscellaneous

13.1 Marketplace terms. Where Customer downloads the Licensed Software from the Apple App Store, Google Play or similar digital marketplaces (**Marketplace**) Customer acknowledges and agrees that:$

    (a)   the Agreement is solely between Customer and Supplier (and not the Marketplace) and neither the Marketplace nor its Affiliates has any liability under or in connection with the Licensed Software or the Agreement. However, if any term of the Agreement is inconsistent with any Marketplace terms applicable to the Licensed Software, the Marketplace terms apply to the extent of the inconsistency;

    (b)   Supplier is solely responsible for the Licensed Software, the Support Services, Licensed Software warranties given in the Agreement, Licensed Software Claims and IP claims. If Customer has any complaints about the Licensed Software, or becomes aware of any IP claim, it must notify Supplier (and not the Marketplace);

    (c)   any information collected by Supplier in connection with the Agreement will be Processed in accordance with the Agreement or the Supplier privacy policy and not the privacy policy or data processing agreement of any Marketplace;

    (d)   Customer must comply with all applicable third-party terms and conditions when using the Licensed Software;

    (e)   Customer is not on a US government restricted parties' list and Customer does not live in a country subject to a US government embargo or which is designated as "terrorist supporting country"; and

    (f)   the Marketplace and its subsidiaries are third party beneficiaries of this clause 13.1, and will have the right to enforce this clause 13.1 against Customer as a third party beneficiary of them.

13.2 Entire agreement. The Agreement is the entire agreement between the parties in respect of its subject matter. In the event of any inconsistency between the terms of these Licence Terms, the relevant Order and any relevant SOW, the terms of the document listed first will prevail to the extent of the inconsistency.

13.3 Force Majeure Events. In no event shall Supplier be liable to Customer, or be deemed to have breached this Agreement, for any delay nor failure to perform its obligations under the Agreement to the if and to the extent such failure or delay or failure is due to any circumstances beyond Supplier's reasonable control, such as a Force Majeure Event. Notwithstanding the foregoing, nothing in this section shall negate or excuse Customer's payment obligations under this Agreement.

13.4 Severance. If a provision of the Agreement is unenforceable as a result of it being invalid, illegal in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render such other provision unenforceable in any other jurisdiction. t

13.5 Transfer. Customer must not assign, subcontract, novate or otherwise dispose of its rights or obligations under the Agreement without the prior written consent of Supplier. Customer consents to Supplier:

    (a)   assigning its rights under the Agreement to its Affiliates;

    (b)   assigning or novating the Agreement in connection with any solvent amalgamation, reconstruction, restructure, sale of shares, assets, raise, or financing of Supplier and/or its Affiliates; and

    (c)   subcontracting its obligations under the Agreement to third parties, including its Affiliates.

13.6 **Amendment, and Modification; Waiver.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13.7 **Third party rights**. Subject to clause 13.1(f), no person other than Supplier and Customer has the right to enforce any term of the Agreement (whether at law or otherwise) or approve any amendment to the Agreement.

13.8 **Relationship of the parties**. The parties are and will remain independent contractors. Nothing contained in the Agreement will be construed to create an agency, joint venture, partnership or other relationship between the parties.

13.9 **Governing Law**. All claims and disputes arising under or relating to this Agreement between the Parties shall first be resolved by mediation with written notice to the other Party of its intent to mediate. In the event that mediation does not resolve the dispute within forty-five (45) days of said notice, all claims and disputes arising under or relating to this Agreement in Australia, New Zealand, and Thailand are to be settled by binding arbitration under Delaware law with venue being proper in Kent County, Delaware unless another location is mutually agreeable to the Parties; provided, however, that a Party may seek any available legal or equitable remedies from a court of competent jurisdiction with respect to any disputes regarding intellectual property rights or breaches of confidentiality obligations. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA); Each party irrevocably submits to the exclusive jurisdiction of the courts in the place of the applicable governing laws (and relevant appellate courts) and waives any objection to proceedings being brought in those courts.

13.10 **Currency.** Unless specified otherwise in the Order or a SOW, all dollar amounts are expressed in United States Dollars (USD).

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14 Definitions

In the Agreement, these terms have the following meanings:

Affiliate of a party means with respect to a party, any corporation, or other legal entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Party.

Agreement Year means a period of 12 months from the date that the last party executes the Order or an anniversary of that date.

Authorised User means a person authorised or permitted by Customer to access and use the Licensed Software in accordance with the licence in clause 1.1 and User Profile. Such user may include Customer's employees, consultants, contractors, and agents.

Claim means any demand, claim, action or proceeding, however arising and whether present, unascertained, immediate, future or contingent.

Confidential Information. Information about the Disclosing Party's business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, that is marked, designated or otherwise identified as "confidential". **Control** in respect of a person, includes the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise, and includes the following:

(a) direct or indirect ownership of more than 50% of the voting rights of such person; or

(b) the right to appoint the majority of the members of the board of directors of such person (or similar governing body) or to manage on a discretionary basis the assets of such person.

Customer Material means any data, information, content, software, functionality, service or other materials which are owned or controlled by Customer (or any Authorised User) and transmitted, inputted, integrated with, or otherwise Processed through the Licensed Software.

Fees means the amounts payable for the supply of the Licensed Software and Support Services specified in the Order (or any applicable Licenced Software Schedule) and any Professional Services specified in the applicable SOW.

Force Majeure Event means any incident, event, act or omission beyond the reasonable control of that party, including any acts of God, strikes, civil strife, riots, wars, fire, explosion, storm, flood, earthquake, failure of communications networks, subsidence, pandemics or epidemics.

Inherent Defect means an error or defect caused by a programming error that significantly impacts Customer's ability to use the Licensed Software other than one that is the result of:

(a) an alteration or modification to the Licensed Software not made by Supplier;

(b) use of the Licensed Software other than in accordance with the Agreement;

(c)   use of the Licensed Software in combination with equipment, programs or services not provided or supported by Supplier; or

(d)   failure by Customer to meet its obligations under the Agreement or any other agreement relating to the Licensed Software.

Indirect Loss means:

(a)   loss of profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of use, loss or corruption of data, loss of reputation, loss of goodwill, or loss of contract; and

(b)   any Loss that does not arise naturally or according to the usual course of things from a breach, act or omission relating to the Agreement,

in each case, including any Authorised User and third-party claims for any of the above forms of loss.

Intellectual Property Rights means intellectual property rights, including existing and future copyright, rights in designs, patents, semiconductors and circuit layouts and rights in trademarks, trade names and service marks, in each case, whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of the Agreement.

IP Claim means any Claim by a third party that use of the Licensed Software by Customer (or an Authorised User) in accordance with the Agreement infringes any copyright or patent owned by any third party in Australia.

Licensed Software means the software products and services specified in the Order as licensed to Customer and any associated Supplier proprietary ios or Android mobile application, including any Updates but excluding all Customer Material and Third-Party Material.

Logon ID means a username and password that enables an Authorised User to access the Licensed Software.

Loss means loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, outgoing, fine or payment of any nature or kind.

Order means an order specifying the details of Customer's purchased licence to the Licensed Software in any:

(a)   Supplier's Order Form executed by the parties; or

(b)   online order form completed by Customer and logged in Supplier's customer relationship management system,

including details of the applicable Fees and Subscription Term.

Personal Data means information about an identified individual or an individual who is reasonably identifiable, including 'personal information', 'sensitive information' and 'health information' as defined in applicable Privacy Law.

Personnel means individuals who are the employees, contractors or agents of a party, or the subcontractors of that party.

Privacy Law means any applicable law governing the Processing of Personal Data, including the *Privacy Act 1988* (Cth).

Process means to collect, store, access, use, copy, adapt, modify, reformat, transform, disclose or perform any other set of operations on.

Professional Services means any support, implementation, training, data migration bespoke customisation, new feature development or other service not forming part of the Support Services.

Security Breach means any loss, unauthorised access, modification or disclosure.

SOW means a statement of work setting out the details of the Professional Services to be provided by Supplier, including the agreed scope and fees for the Professional Services.

Subscription Term means the use period for an item of Licenced Software as set out in the Order, as extended in accordance with clause 12.1.

Support Services means:

(a)   support for the Licensed Software; and

(b)   provision of Updates from time to time.

Third Party Material means content, data, products, software, functionality or services owned or controlled by third parties, and other services which are delivered through or integrate with the Licensed Software.

Updates means any new version, release, update, patch, fix, configuration or other modification of the Licensed Software made available by Supplier to its customers generally during the Subscription Term.

Use Profile means any attribute or measure used to define or measure the licence entitlements of Customer as set out in the Order including, but not limited to, the number of licensed sites and test sites, hosting requirements and data volumes, as varied from time to time.