

TERMS OF ENGAGEMENT

In this Contract:

BACKGROUND

A. The Client wishes to appoint the Supplier to develop and maintain certain Software.

B. The Supplier has agreed to develop and maintain the Software on the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:

1. Definitions & Interpretation

1.1 Definitions

'Acceptance date' means the date upon which the software is accepted as provided by clause 10;

'Agreement' means the agreement for the provision of the Services by the Supplier in favour of the Client and comprised of:

- (a) this Agreement; and
- (b) the Schedule to this Agreement;

'Client' means the licensee of the Software as specified in the Schedule and to the extent appropriate, includes the agents, officers and employees of that party;

'Commencement date' means the date so specified in the schedule;

'Confidential information' means any documentation or information marked as confidential or which by its nature is confidential and any information, whether written or oral, which is not publicly available, including but not limited to, all trade secrets concerning or relating to the Project, all or any information pertaining to future projects, installation methods, prices, customers, suppliers, patents, patent applications, copyrights, trademarks, discoveries, inventions, improvements, know how, technical data, business plans, new releases, updates and any information that comes to the attention of the recipient as a result of this Agreement and other materials delivered or to be delivered to the recipient in the course of discussions or negotiations between the parties relating to the Project, but does not include:

- (a) information already known to the receiving party at the time of disclosure by the other party; or
- (b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement;

'Delivery date' means the date so specified in the schedule;

'Designated computer equipment' means the equipment on which the software is to be installed as specified in the schedule;

'Economic Loss' means loss of revenue, loss of profit, loss of custom, loss of goodwill, loss of overhead recovery, loss of business opportunity, loss of the use of money, loss of use of property, loss of contract, loss of production, loss or payment of financing charges or cost recovery, opportunity cost, payment of liquidated sums, payment of damages or other consequential loss (whether under any other agreement or otherwise);

'GST' means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this Agreement in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

'GST Law' means the same as 'GST law' in A New Tax System (Goods and Services Tax) Act 1999 (Cth);

'Intellectual property rights' means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

'Licence' means the licence of software granted pursuant to this Agreement;

'Licence fee' means the amount so specified in the schedule;

'Location' means the place at which the designated computer equipment is located as specified in the schedule;

'Loss' Loss means any loss, damage, cost, or expense, including Economic Loss;

'Manual of specifications' means the document which forms part of the software and which contains technical information relating to the software;

'Media' means the media on which the software is recorded or printed;

'Moral right' means:

- (a) a right of attribution of authorship; or
- (b) a right not to have authorship falsely attributed; or
- (c) a right of integrity of authorship; or
- (d) a right of a similar nature;

which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form comprised within this Agreement;

'New release' means software which has been provided primarily to implement an extension, alteration, improvement or additional functionality to the software;

'Project' means the development, licensing, installation and maintenance of the Software in accordance with this Agreement;

'Schedule' means the schedule to this Agreement;

'Services' means the services to be provided to the Client by or on behalf of the Supplier, the details of which are set out in the Schedule;

'Service fee' means the fee payable by the Client to the Supplier for the performance of the Services, as set out in the Schedule;

'Software' means the computer program and related documentation as specified in the schedule;

'Supplier' means eBMS Pty Ltd (ABN 50 068 507 808), which is the licensor of the Software and supplier of the Services; and

'Update' means software which has been produced primarily to overcome defects in the licensed software.

1.2 Interpretation

Words importing the singular include the plural and vice versa and words importing one gender shall include all other genders. Headings are for ease of reference only and shall not affect the interpretation of this Agreement.

2. Grant & Duration of Licence

2.1 The Supplier grants to the Client a non-exclusive and non-transferable Licence to use the Software and the Manual of Specifications during the term of the Agreement, subject to and in accordance with the terms and conditions set out in this Agreement.

2.2 The Agreement commences on the Commencement Date.

2.3 Subject to the terms of this Agreement, the licence shall continue in perpetuity.

3. Suppliers Duties & Responsibilities

3.1 The Supplier will exercise reasonable skill, care and diligence in the performance of the Services.

3.2 To the extent that the Services include the performance of functions independently, the Client authorises the Supplier to act independently and not as the Client's agent when performing such functions and the Supplier will perform such functions as any contract between the Client and a third party provides. To the extent that the Services are to be performed as agent for the Client, the Client appoints the Supplier as agent for that purpose.

3.3 The aggregate liability of the Supplier to the Client or any other person in respect of the Services, whether under contract, in tort (including negligence), in equity, under statute or otherwise, is limited to a total of the fees paid. To the maximum extent permitted by law the Supplier is not liable to the Client, and the Client releases the Supplier from any liability, in respect of:

(a) any Economic Loss however arising, whether under contract, in tort (including negligence), in equity, under statute or otherwise;

(b) any common exclusion from insurance cover including contamination, asbestos, toxic mould and terrorism, or any other common exclusion identified in this Contract; and

(c) use by the Client of any of the documents, drawings, reports, specifications or bills of quantities in connection with the Services for any purpose [other than the express purpose for which they were prepared or provided by the Supplier].

3.4 The Supplier:

a) makes no representation or warranty in relation to existing structures, services or infrastructure on the site of the Project;

and

(b) is not liable to the Client in respect of any Loss arising in relation to such existing structures, services or infrastructure, whether

under contract, in tort (including negligence), in equity, under statute or otherwise.

Without prejudice to any other exclusion or limitation of liability, damages or Loss, the liability of the Supplier for any claim or claims in relation to this Agreement shall be further limited to such sum as it would be just and equitable for the Supplier to pay having regard to the extent of its responsibility for the Loss or damage giving rise to such claim or claims and on the assumptions that all other such consultants, subcontractors, project managers or advisers have paid such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Loss and damage.

3.5 Except as otherwise required by law (including any rights and remedies available to the Client under the Australian Consumer Law) the liability of the Supplier in respect of the Software or Services shall be limited, at the election of the Supplier to:

(a) The repair or replacement of the Software or supply of equivalent software;

(b) The re-supply of the Services or equivalent services; or

(c) the payment of the cost of replacing the Software or the re-supply of the Services;

within the warranty period of 90 days from date of supply of the Software or Services, as specified in clause 10 below.

3.6 To the maximum extent permitted by law, on and from the date occurring three years from the completion of the Services, the Client (and anyone claiming through or the Client):

(a) releases the Supplier from all liability in respect of the Services, whether under contract, in tort (including negligence), in equity, under statute or otherwise; and

(b) is not entitled to commence any action, claim or proceeding of any kind whatsoever against the Supplier (or an employee of the Supplier) arising out of or in connection with this Contract.

3.7 The Supplier may sub-contract the performance of all or some of the Services, but the Supplier will remain responsible under this Contract for the performance of the Services.

3.8 Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of this Contract or to use or rely on any document, report or other material generated or supplied by the Supplier in connection with this Contract or the Services (Supplier Material). The Client indemnifies the Supplier against any Loss, liability or disbursement arising (directly or indirectly, in whole or in part) in connection with:

(a) any Supplier Material provided (or caused or allowed to be provided) by the Client to a third party; or

(b) the Client providing or causing or allowing to be provided to a third party any Supplier Material.

4. Client's Responsibilities

4.1 The Client:

(a) must, as soon as practicable, make available to the Supplier all necessary information, approvals, requirements, specification and licenses to enable the Supplier to properly carry out the Services; and

(b) is responsible for the adequacy, suitability and accuracy of the information, documents and other particulars provided to the Supplier pursuant to this Contract and the Supplier is entitled to rely on such information, documents and other particulars as are provided by the Client pursuant to this Contract.

4.2 The Client must keep the Supplier notified in writing of the name of the person authorised to represent the Client under this Contract.

4.3 The Client must take out and maintain all insurances that a prudent client would reasonably be expected to take out in the context of a project similar to the Project and provide details of such insurance to the Supplier, upon request by the Supplier.

4.4 The Client must use all reasonable endeavours to ensure that no events or circumstances arise which may compromise the Supplier's ability to be able to perform the Services in a timely and professional manner.

4.5 Permit any third party to use the Software other than as set out in this Agreement.

4.6 Use the Software in any way that could damage the reputation of the Supplier or the goodwill or other rights associated with the Software.

4.7 Use the Software for any purpose or in any manner other than as set out in this Agreement.

5. Manual of Specifications

5.1 The Supplier shall deliver a copy of the manual of specifications to the Client on or before the delivery date.

5.2 The Supplier warrants that the manual of specifications will be adequate to enable the Client to operate the software in the manner reasonably contemplated by the parties.

5.3 The Supplier undertakes to inform the Client from time to time of any amendments to the manual of specifications which may become necessary.

5.4 The Client acknowledges the Supplier's proprietary interest in the manual of specifications. The Client will not copy the manual of specifications or provide copies to third parties, except where necessary to enable proper use of the software in the manner reasonably contemplated by the parties.

6. Licence fee and Service fee

6.1 In consideration of the licence, the Client shall pay the Licence fee and Service fee to the Supplier as specified in the Schedule.

6.2 The Licence fee and Service fee are exclusive of all taxes, duties and surcharges payable in respect of the software and services and in respect of this Agreement.

6.3 The Supplier will submit claims for payment for the Services performed to the date of the claim progressively in accordance with the timing identified in the Schedule. The Client will:

(a) raise any queries it has about a claim within 7 days of submission of the claim; and

(b) make payment to the Supplier of the relevant part of the Fee within 14 days of submission of the claim.

6.4 If the performance of the Services is delayed for any reason other than breach of this Contract by the Supplier, the Client will pay to the Supplier a reasonable amount to cover all Loss incurred or suffered by the Supplier as a direct or indirect result of that delay.

6.5 If payment is not made within 30 days of the due date, interest will be payable by the Client at the rate of 12 per cent per annum on the overdue amount and, if any payment is owing after 60 days from the due date, the Supplier shall be entitled to suspend its remaining obligations under this Agreement and to re-possess the software.

6.6 If the Client disputes the whole or any part of the amount claimed in an invoice submitted by the Supplier pursuant to this Agreement, the Client will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the dispute resolution procedure prescribed by this Agreement. If it is subsequently resolved that a further amount is payable, the Client will pay that amount together with interest at the rate of 12 per cent per annum from the original due date.

6.7 In the event of the Supplier incurring legal or debt collection fees for recovery of any amount due in terms of this Agreement or due to the Client's breach of this Agreement then the Client will be liable for all such costs, including legal costs on a solicitor-client basis.

6.8 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.

6.9 In addition to paying the Licence fee and Service fee and any other amount payable or in connection with this Agreement (which is exclusive of GST), the Client will:

(a) pay to the Supplier an amount equal to any GST payable from any supply by the Supplier in respect of which the licence fee or any other amount is payable under this Agreement; and

(b) make such payment either on the date when the licence fee is due or within 7 days after the Client is issued with a tax invoice, whichever is the later.

6.10 The Supplier must, within 28 days of request from the Client, issue a tax invoice (or an adjustment note) to the Client for any supply under or in connection with this Agreement.

6.11 The Supplier will promptly create an adjustment note for (and apply to the Commissioner of Taxation for) a refund, and refund to the Client, any overpayment by the Client for GST but the Supplier need not refund to the Client any amount for GST paid to the Commissioner of Taxation unless the Supplier has received a refund or credit for that amount.

7. Conditions of Licence

7.1 The Supplier warrants that it has the authority to grant the licence.

7.2 If applicable, use of the software is limited to the designated computer equipment, unless the consent of the Supplier is obtained to use the software on alternative equipment. Such consent shall not be unreasonably withheld.

8. Delivery

The Supplier shall deliver the software to the location on or before the delivery date or on such other date as is mutually agreed between the parties.

9. Installation

The Supplier shall install the software and provide any services or support in respect of installation of the software as specified in this Agreement.

10. Acceptance and Warranty Period

10.1 Upon installation of the software, the Client shall be responsible for ensuring that the software is used in accordance with the manual of specifications.

10.2 If, during a period of 90 days following the commencement date, the software fails to perform substantially in accordance with the specifications, it will be deemed not to be accepted.

10.3 If the software is deemed not to be accepted pursuant to clause 10.2, Client shall inform the Supplier of any alleged defects or errors with sufficient particularity to enable the Supplier to rectify the defect or error, and the Supplier shall be given the opportunity to rectify the defect or replace the software within a further period of 14 days.

10.4 If the software fails to perform substantially in accordance with the specifications during the 14-day period referred to in clause 10.3, the Client may, at its option, grant a further period during which satisfactory performance is to be achieved or alternatively terminate the Agreement.

10.5 The software will be deemed accepted if it does not fail to substantially perform in accordance with the specifications during any of the periods referred to in the preceding sub-clauses.

10.6 The terms of this clause 10 do not apply where the substantial non-performance arises in any respect from the nature or operation of the equipment on which the software is used or the use of any materials or software not provided by the Supplier.

11. Ownership & Intellectual Property Rights

11.1 The Supplier retains ownership of the software whether in its original form or as modified by the customer during the term of the licence.

11.2 All intellectual property rights in the software are retained by the supplier.

11.3 Nothing in this Agreement affects the ownership of moral rights in the software.

12. Personal Property Securities Register

12.1 The Client acknowledges and agrees that:

- (a) the Supplier may register its security interest in the Software on the Personal Property Securities Register;
- (b) the Client will be named as the Grantor of that security interest; and
- (c) the Client has waived its right under s157 (Verification Statements - Secured Parties to Give Notice to Grantors) of the

Personal Property Securities Act 2009 (Cth) to receive a notice of any verification statement from the Supplier.

12.2 The parties agree that the following sections of the Personal Property Securities Act 2009 (Cth) are excluded:

- (a) s95 (Secured Party must give Notice of Removal of Accession);
- (b) s130 (Notice of Disposal of Collateral);
- (c) s132(4) (Secured Party to give Statement of Account);
- (d) s135 (Notice of Retention of Collateral); and
- (e) s143 (Entitled Persons may Reinstate Security Agreement).

13. Copies

13.1 Subject to the following sub-clauses of this clause, and without seeking to exclude or limit the application of sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth) the Client shall not copy the software, in whole or in part.

13.2 The Client may make such number of copies of the software as is necessary to serve its internal needs for system's back-up and security. All copies of the software and the media in which the copies are contained shall be and remain the property of the Supplier.

13.3 The Client shall mark all copies of the software and the media in which the copies are contained with a notice of:

- (a) the Supplier's ownership of the software and the media;
- (b) the confidentiality of the software; and
- (c) such other information as the Supplier requires.

13.4 The Client shall maintain records of all copies of the software made by it and the place at which those copies are situated. Such records shall be furnished to the Supplier upon reasonable notice.

13.5 The Client shall notify the Supplier immediately on becoming aware of any unauthorised use or copying of the whole or any part of the software or of the manual of specifications.

13.6 Immediately upon termination of this Agreement, the Client shall deliver up to the Supplier the software (including all copies, authorised or otherwise), the media and the manual of specifications, whether in their original form or as modified by the Client.

14. Modifications

14.1 The Client shall not modify the whole or any part of the software or combine or incorporate the whole or any part of the software in any other program or system without the prior consent in writing of the Supplier.

14.2 If the software is modified in accordance with the preceding clause 14.1, the modifications shall, unless the Supplier directs otherwise, be made in accordance with a written proposal submitted by the Client to the Supplier.

14.3 The Client shall fully indemnify and hold harmless the Supplier against any liability incurred if the said modifications infringe the intellectual property rights of a third person.

14.4 The software as modified remains the property of the Supplier.

14.5 This Agreement shall continue to apply to the software as modified.

14.6 This clause is subject to any right of modification arising pursuant to sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth).

15. Reverse Engineering

Except as expressly permitted by sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth), the Client shall not reverse assemble or reverse compile the software or any part of the software.

16. Security

The Client shall be responsible for protecting the software and the manual of specifications at all times from unauthorised access, use or damage.

17. Risk

Risk of loss or damage to the software, the media and the manual of specifications shall pass to the Client upon delivery of the software to the location.

18. Indemnity and Liability

18.1 The Supplier warrants that it has the right to grant the licence to the Client.

18.2 Subject to clause 19.3, the Supplier shall indemnify and hold harmless the Client against any claim made against the Client by a third party alleging that the software infringes the copyright of that third party.

18.3 The Supplier shall not be liable to the Client under clause 18.1 or 18.2 if:

- (a) the Client does not notify the Supplier of the other person's claim or of infringement of copyright within seven days after becoming aware of the claim;
- (b) the Supplier's ability to defend the claim has been prejudiced by the Client's non-compliance with any of its obligations under this Agreement;
- (c) the Client does not give the Supplier reasonable assistance in defending the claim;
- (d) the claim has arisen because of the use of the software in combination with equipment, materials or computer programs not supplied or approved by the Supplier; or
- (e) the Client does not permit the Supplier to have control of the defence of the claim and all related settlement negotiations.

19. Breach & Termination

19.1 If the Client is in breach of this Agreement, the Supplier may issue a notice to the Client requiring the breach to be rectified within 14 days of the date of receipt of the notice. If the breach is not remedied within that time, the Supplier may terminate this Agreement by written notice to the Client.

19.2 If the Supplier is in breach of this Agreement, the Client may issue a notice to the Supplier requiring the breach to be rectified

within 28 days of the date of receipt of the notice. If the breach is not remedied within that time, then the Client may terminate this Agreement by written notice to the Supplier.

19.3 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds 60 days, the other party may terminate this Agreement by giving written notice. This clause does not apply to any obligation to pay money.

19.4 If this Agreement is terminated for any reason, the Supplier is entitled to:

- (a) a pro-rata payment for the Services performed by it up to the date of termination; and
- (b) Consequential costs and expenses incurred as a result if the termination, including to recovery for Loss of anticipated profit (if the termination was not caused by breach by the Supplier).

20.5 Notwithstanding clauses 20.1 and 20.2 above, for the purpose of this Agreement, the following are terminating events:

- (a) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;
- (b) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;
- (c) the permanent discontinuance of use of the software or any part of the software by the Client;
- (d) the merger with or the takeover of either party by another person or entity;
- (e) the purchase of the software by the Client pursuant to an agreement between the parties.

19.6 The licence may be terminated immediately on the happening of a terminating event at the option of the affected party.

19.7 Immediately on termination of this Agreement the Client shall return to the Supplier the software and all copies of the software, all revisions, enhancements and upgrades of the software, the media and the manual of specifications. Alternatively, if the Supplier requests, the Client shall destroy such software, copies, revisions, enhancements and up-grades by erasing them from the media and shall certify in writing to the Supplier that they have been destroyed.

19.8 Any termination of the licence shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.

20. Confidentiality

20.1 A party will not, without the prior written approval of the other party, disclose the other party's confidential information.

20.2 A party will not be in breach of clause 21.1 in circumstances where it is legally compelled to disclose the other party's confidential information.

20.3 Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the

purposes of this Agreement, do not make public or disclose the other party's confidential information.

20.4 Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement (other than confidential information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

20.5 This clause will survive the termination of this Agreement.

21. Entire Agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties relating to the software. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

23. Notices

All notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out in the schedule or such other address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand, by pre-paid letter, fax or email. Unless proven to the contrary, any such notice shall be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (if posted) or when dispatched (sent by email) or on transmission by the sender (if sent by facsimile). If notice is delivered by hand, fax or email on a day which is not a business day in the State of Victoria, then delivery will be deemed to have taken place on the next business day in Victoria.

24. Assignment

Neither party shall assign, whether in whole or part, the benefit of this Agreement or any rights or obligations hereunder, without the prior written consent of the other party.

25. Law

This Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria, Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

26. Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

27. Variation

No variation of this Agreement will be effective unless in writing and signed by both parties.

28. Severability

Should any part of this Agreement be or become invalid, that part shall be severed from this Agreement. Such invalidity shall not affect the validity of the remaining provisions of the Agreement.

29. Dispute Resolution

29.1 A party will not start arbitration or court proceedings (except proceedings seeking injunctive, declaratory or interlocutory relief) in respect of a dispute arising out of this Agreement (Dispute) unless it has complied with this clause.

29.2 A party claiming that a Dispute has arisen must notify the other parties, giving details of the Dispute.

29.3 During the 21 day period after a notice is given under clause 29.2 (or longer period agreed in writing by the parties to the Dispute) (Initial Period) each party to the Dispute (Disputant) must use its best efforts to resolve the Dispute.

29.4 If the Disputants are unable to resolve the Dispute within the initial period, each Disputant agrees that the dispute must be referred for mediation, at the request of any Disputant, to:

- (a) a mediator agreed on by the Disputants; or
- (b) if the Disputants are unable to agree on a mediator within seven days (7) after the end of the initial period, a mediator nominated by the then current Chairman of LEADR or the Chairman's nominee.

29.5 The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.

29.6 Any information or documents disclosed by a Disputant under this clause

- (a) must be kept confidential; and
- (b) may not be used except to attempt to resolve the Dispute.

29.7 Each Disputant must bear its own costs of complying with this clause and the Disputants must bear equally the costs of any mediator engaged.

29.8 After the initial period, a Disputant that has complied with clauses 29.1, 29.2 and 29.3 may terminate the Dispute resolution process by giving notice to each other Disputant.

30. Binding Agreement

The Client is taken to have accepted, and the parties are taken to enter into, this Agreement on the earlier of the time when the Client:

- (a) requests or directs the Supplier to carry out any part of the Services; and
- (b) signs and returns to the Supplier a copy of this Agreement.