

GENERAL TERMS AND CONDITIONS

BACKGROUND

- A. Kalgoorlie IT provides managed information technology services.
- B. The parties have agreed to enter into this Agreement for Us to provide the Managed Services to You on these terms and conditions and in accordance with the Proposal and Agreement Summary document provided to You.

OPERATIVE PROVISIONS

1 DURATION

- 1.1 This Agreement commences on the date as stated in the Agreement Summary document and continues for the Initial Term as specified in the Proposal. This Agreement may continue for a Subsequent Term as outlined in the Agreement Summary.

2 SERVICE FEE

- 2.1 The Fees listed in the Proposal are payable for the provision of the Managed Services.
- 2.2 The Fees which do not appear on a Tax Invoice for a particular period may appear on future Tax Invoices.
- 2.3 You must pay all Tax Invoices through a third party payment provider, by the due date, or if You elect to pay by credit card or by direct debit, We will debit the credit card or nominated direct debit account for the amount of the Tax Invoice and any other Fees on or after due date.
- 2.4 If You fail to pay any amount in accordance with our Tax Invoice (and You have not disputed the Tax Invoice in accordance with clause 2.5):
 - (a) We may charge interest on the outstanding amount at the rate of 2% per year above the base lending rate of the National Bank of Australia accruing daily, and such interest may compound monthly at such a rate after as well as before any judgment;
 - (b) We may refer the debt to a debt collection agency;
 - (c) We may suspend or terminate the Managed Services. If relevant, You authorise us or our agents without further notice to enter Your premises to collect our materials. You agree that We are not liable for any loss or damage You suffer because We exercised our rights under this clause; and
 - (d) You must indemnify us from and against all costs and disbursements incurred by us in pursuing the debt, including legal costs and any collection agency costs. You will be liable for all reasonable and necessary collection costs (including legal fees charged on a solicitor/client basis and indemnify Us for such costs) that We incur to collect an amount outstanding.
- 2.5 If You reasonably dispute the whole or any portion of the amount claimed in a Tax Invoice submitted by Us, You must:
 - (a) pay any non-disputed amounts;
 - (b) notify Us in writing (within five (5) Business Days of the date that payment was required) of the

reasons for the dispute; and

- (c) promptly pay any disputed amounts that are subsequently found to be correctly payable with interest on that amount in accordance with this Agreement.

Fee Adjustment

2.6 Fees may be adjusted as outlined in the Proposal or the Agreement Summary (if any).

2.7 Fees may be adjusted at any time, with reasonable notice to You. If You do not agree to any adjustment of the Fees, either party may terminate this Agreement or We may agree to continue providing the services at the current rates.

2.8 Where the cost of supplying the Managed Services increases due to:

- (a) any increase in the cost of supplying the Managed Services associated with any change in a Tax Charge;
- (b) a Third-Party Vendor increasing the fees charged to Us for goods and services that are required to provide the Managed Services; and
- (c) the introduction of a new charge or an increase in existing administrative charges for ancillary services, such as credit card transaction fees,

We may, by reasonable notice in writing to You, adjust the Fees accordingly (where We are permitted by law to pass these charges onto You, and it is reasonable for us to do so).

Change of scope of the Managed Services

2.9 If You require any major or substantial changes to the Managed Services during the Term:

- (a) You must notify Us of any changes You require;
- (b) following notification, We will provide You with written notice of:
 - (i) the changes required to the Agreement Summary or Proposal, the Managed Services or any other aspect of this Agreement;
 - (ii) the additional services required by such changes (**Additional Services**); and
 - (iii) the additional charge required to undertake such Additional Services (**Additional Charge**); and
- (c) if You agree by written notice to:
 - (i) the changes required to the Agreement Summary, the Managed Services or any other aspect of this Agreement;
 - (ii) the Additional Services; and
 - (iii) the Additional Charge,

this Agreement will be varied to include such changes as set out in the notice provided by Us pursuant to this clause.

- 2.10 If You do not accept the changes required as notified to You under clause 2.9(b), We may:
- (a) continue providing the Managed Services in accordance with the original Proposal and Agreement Summary; or
 - (b) cease providing the Managed Services and terminate this Agreement effective immediately with written notice.
- 2.11 Any changes to the Managed Services which in our reasonable opinion are considered minor will not be subject to an Additional Charge.

Out of scope

- 2.12 The Fees only apply to the Managed Services.
- 2.13 If Kalgoorlie IT provides any services other than the Managed Services, such services will be charged in accordance with the Out-of-Scope Hourly Rate.
- 2.14 For the avoidance of doubt, services which are out of scope include:
- (a) services relating to any software that is not an Approved Software;
 - (b) travel time to and from locations which are not listed in the Supported Site Location list (for example, the home of your staff);
 - (c) installation of new or additional devices or provision of services which are not specifically mentioned in this Agreement or covered by the scope of this Agreement;
 - (d) the relocation of Equipment if you move location;
 - (e) any changes made to the Network, the Software or the Equipment made by another service provider;
 - (f) any modification of your Equipment, Your Software or Third-Party Software not authorised by us or against our instructions or advice to you;
 - (g) any significant or unreasonable interference of your Equipment, Software or the Network;
 - (h) a failure or corruption of Equipment, Your Software, Network beyond our reasonable control; or
 - (i) your breach of this Agreement.

Expenses

- 2.15 You must reimburse Us for any expenses reasonably and properly incurred in the performance of our duties under this Agreement, including travel expenses, accommodation and subsistence expenses, third party payment provider fees and all other expenses incurred or required to be incurred by Us to promptly and efficiently provide the Managed Services. We will provide You with prior notice of any expenses incurred that exceed \$100.00.

3 MANAGED SERVICES

Scope of the Managed Services

- 3.1 We will provide You the Managed Services for the Approved Software, as described in the Proposal and Agreement Summary. You acknowledge, understand and agree that We are not required to provide any Managed Services for any software that is not listed as Approved Software and if We do, You will be charged at the Out-of-Scope Hourly Rate.

Delivery of services

- 3.2 We must provide the Managed Services to You:
- (a) in accordance with any terms outlined in the Proposal and the Agreement Summary;
 - (b) in a professional and workmanlike manner;
 - (c) with due care, competence and diligence;
 - (d) to a high standard, in accordance with best industry practices and protocol, and in an efficient and timely manner;
 - (e) in compliance with all relevant laws connected with the performance of the Managed Services;
 - (f) consistently and in compliance with any third-party products, protocols and licences to which the Managed Services relate (including without limitation Microsoft products);
 - (g) in accordance with the Response Time Guarantees (where relevant); and
 - (h) otherwise on the terms and conditions of this Agreement.
- 3.3 The method of delivering the Managed Services will be determined at Our reasonable sole discretion.
- 3.4 You acknowledge, understand agree that:
- (a) (except where a Response Time Guarantees applies) We will use all reasonable efforts to meet any agreed due dates for the provision of the Managed Services. However, such due dates are estimated delivery dates only, and We will not be liable for any failure to meet such due dates; and
 - (b) if We agree to provide to You any other services in relation to any matter which is outside Our direct responsibility under this Agreement, We do so only in an attempt to assist You and without incurring any liability (other than any which cannot lawfully be excluded).

Hours

- 3.5 Except as otherwise stated in the Proposal or the Agreement Summary or a Response Time Guarantee, We will provide the Support Services during Business Hours.
- 3.6 Except as otherwise stated in the Proposal or the Agreement Summary or a Response Time Guarantee, We do not warrant that We will be capable of promptly receiving, processing or otherwise acting upon a request for support which is made outside our Business Hours or that We can provide on-site Support Services outside Business Hours.

Training

- 3.7 Unless specified in the Proposal or the Agreement Summary, the Fees do not include Fees related to the training of Your staff, including initial training, ongoing or periodic training or ad hoc training as

required.

- 3.8 We may provide training in the use of the Equipment, the Software and any other aspect of the Managed Services, if You request, subject to payment of an additional fee.

Interruptions

- 3.9 Subject to Your rights under any Non-Excludable Guarantee, We aim to provide, but cannot guarantee, a continuous Managed Services free of any interruptions or error-free. You acknowledge that:

- (a) the Network or Software may be unavailable for Your use during periods of planned maintenance or upgrades, or where Us considers such unavailability is necessary to rectify an issue with the Network or Software;
- (b) We may be reliant on Third-Party Vendors for supplying some aspects of the Managed Services to You and that circumstances beyond our control may cause interruptions or errors from time to time;
- (c) the availability of the Managed Services will be subject to any bandwidth limitations, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions as set out in the Agreement Summary (if any); and
- (d) the Managed Services is highly dependent on the proper function of the Internet and any other computer and telecommunications networks and infrastructure upon which the Managed Services operate, interface with or connect to.

- 3.10 You acknowledge that the Software may be unavailable for use by You during periods of planned maintenance or upgrades, or where Us considers such unavailability is necessary to rectify an issue with the Software (including any relevant Third-Party Software).

- 3.11 We will use best endeavours to notify You in advance of any scheduled outage of the Network in connection with the Managed Services.

- 3.12 Subject to Your rights under any Non-Excludable Guarantee, if the Proposal or Agreement Summary requires Us to provide operating systems, data storage, backup functionality, anti-virus functionality, disaster recovery functionality, hosting functionality and/or computer security functionality as part of the Managed Services, You acknowledge, understand and agree that We do not provide any express warranty that the functionality will perform uninterrupted or error-free.

Issues with Equipment

- 3.13 We will advise You of any serious, potential or any other issue regarding the age, configuration or implementation of the Equipment, if relevant.

- 3.14 Where, in our reasonable opinion, Equipment requires additional support or support beyond the scope of the obligations of Our under this Agreement due to its age, configuration or implementation, We may reserve the right (in our sole discretion) to cease support of that Equipment until the equipment is brought up to industry standards and requirements.

Remote access to Alternative Networks

- 3.15 If We are required to provide the Managed Services on Alternative Networks, We will use Our best effort to adequately provide the Managed Services. However, You acknowledge, understand and agree that:

- (a) Alternative Networks may have limitations, including inadequate internet connectivity and equipment to effectively allow us to provide the Managed Services; and
- (b) unless stated in the Agreement Summary, We are not responsible for any inadequacies relevant to the Alternative Networks or to secure those connections, or for the security of the Alternative Networks.

4 RESPONSE TIME GUARANTEES

- 4.1 Our obligations in relation to Response Time Guarantees are set out in the out in the Agreement Summary.
- 4.2 Subject to any Non-Excludable Guarantee (if applicable) to the fullest extent permitted by law, the remedies outlined in the Agreement Summary are Your sole and exclusive remedies for any failure by Us to achieve the Response Time Guarantee.

5 FAIR PLAY POLICY – HOURS AND SCOPE OF WORK

- 5.1 If the Proposal or Agreement Summary outlines that We will provide to You an unlimited number of hours in respect of the Managed Services, such unlimited hours are subject to this clause 5 (the **Fair Play Policy**).
- 5.2 The Fair Play Policy aims to ensure that We are able to provide quality service to all our customers in an effective and timely manner.
- 5.3 We may, from time to time, reasonably identify You to be making excess, unfair or unreasonable usage of support provided by Us in respect of the following:
 - (a) hours of work, including outside of Business Hours;
 - (b) damage or fault arising in respect of the Equipment or Software due to You or Your employee's abuse, misuse or neglect.
- 5.4 Upon determining that, in our reasonable opinion You are making excess, unfair and unreasonable usage of the Managed Services, We will notify You of our determination in writing or by email.
- 5.5 Subject to clause 5.6, in the event that We make such a determination and notification, either party may terminate this Agreement by giving fourteen (14) days' notice in writing to the other party.
- 5.6 Termination of this Agreement pursuant to clause 5.5 becomes effective upon service of such notice and payment of all outstanding invoices and any other amounts payable for any work performed that has yet to be invoiced.
- 5.7 In the event that neither party elects to terminate the Agreement pursuant to clause 5.5, We reserve the right to do the following (upon giving fourteen (14) days' notice in writing to You):
 - (a) suspend provision of the Managed Services for such period of time that We think fit according to the circumstances; and/or
 - (b) charge You a reasonable amount at our Out-of-Scope Hourly Rate, on the basis You have exceeded the fair and reasonable usage of the Support Services in breach of this Fair Play Policy.

6 SUPPORT REQUESTS

- 6.1 Where You require technical or troubleshooting support (which falls within the scope of the Managed Services) (**Support Services**), You may make a request in accordance with the procedure outlined in Schedule 1 and the Agreement Summary (**Support Request**).
- 6.2 You understand, acknowledge and agree that the Support Services:
- (a) will only be provided in respect of versions of the Software which have been accepted by You (as described in any Specifications, the Agreement Summary or otherwise used in a Live Environment by You);
 - (b) will only be provided to Your Users and Approved Devices, or any other individual we agree in writing;
 - (c) if an error or defect is reported in relation to the Software, We may, in Our sole discretion, attempt to rectify that error or defect by:
 - (i) providing You with a workaround (being a temporary method to resolve the error or defect);
 - (ii) taking the Software or Network offline, restricting access to all or part the Software or Network or suspend the operation of the Network, the Equipment or the Managed Services for a specified period;
 - (iii) undertaking programmatic changes to Your version of the Software; or
 - (iv) providing You with an update of the relevant Software, which rectifies the relevant error or defect.
- 6.3 You acknowledge that not all errors or defects are capable of rectification.
- 6.4 You acknowledge that We may refuse to provide Support Services where:
- (a) You are in breach of this Agreement; or
 - (b) the error or defect reported by You:
 - (i) is not reproducible by Us;
 - (ii) is determined by Us to not be an error or defect, but instead to be an intended consequence of the functionality of the Software; or
 - (iii) is determined by Us to be new functionality or a customisation of existing functionality.

7 CLIENT'S RESPONSIBILITIES

Preparation for providing the Managed Services

- 7.1 You must ensure that prior to the Commencement Date:
- (a) You have the Minimum Standards in place as outlined in the Agreement Summary;
 - (b) You obtain and maintain all relevant Third-Party consents and authorisations in respect of the Equipment, Your Software and Third-Party Software as necessary for Us to provide the Managed Services, including from Your Internet Service Provider, web and domain hosting provider and telephone provider. In the event that We are not authorised as required under

this clause, We may (at our sole discretion) charge You an hourly fee at the Out-of-Scope Hourly Rate for any work that We perform to obtain the authorisations and communicate with the relevant Third-Party Vendor to obtain the necessary consents and authorisations; and

- (c) You provide Us with all usernames, passwords, and other credentials in Your possession or control for the Network, Equipment, Your Software and Third-Party Software, so that We can have continual access to these in order to provide the Managed Services.

Assistance in providing the Managed Services

7.2 You agree to:

- (a) comply with any requirements that we require from You as outlined in the Proposal or the Agreement Summary;
- (b) provide all reasonable assistance requested by our personnel in the diagnosis of any problem within the Network and follow our reasonable directions;
- (c) make available free of charge and within a reasonable time all information, access details, personnel and facilities reasonably required to enable Us to provide the Managed Services;
- (d) where relevant, provide reasonable access to Your Approved Premises and You grant Us a non-exclusive licence to Us to enter Your premises;
- (e) undertake all tasks required by Us in relation to the Managed Services which are specified in this Agreement, or which could reasonably be expected from You; and
- (f) provide Us with all documentation that describes any necessary installation and usage in terms of architecture, interfaces, modules, design, build, business function and call flows.

General obligations

7.3 You agree to:

- (a) cooperate as reasonably necessary for Us to carry out Our obligations;
- (b) comply with all laws and guidelines concerning Your use of the Managed Services;
- (c) comply promptly with Our reasonable directions in relation to the provision of the Managed Services;
- (d) ensure that all information or decisions we may reasonably require is provided on a timely basis and is accurate and complete. If You subsequently learn that the information You have provided to Us is inaccurate, incomplete or otherwise cannot be relied upon by Us, You must notify Us immediately;
- (e) if not included in the Managed Services, carry out and maintain restorable backup copies of all relevant software licensed by You, whether operating systems, discrete applications or configurations and where We require them to supply the Managed Services, make the same available to Us upon request;
- (f) if requested, provide Us with reasonable evidence that You have adequate, published guidelines and procedures for occupation health and safety purposes in respect of each site, and that You have satisfactory public liability insurance cover;

- (g) provide Us safe access to and egress at the Approved Premises (if any) and obtain the consent of the owner (where required) for Us to install, inspect, repair, maintain or remove Equipment;
- (h) secure Your and Your Users account passwords;
- (i) not use the Managed Services in relation to crimes such as theft and fraud or in breach of laws or in any manner that is illegal, discriminatory, abusive or obscene;
- (j) not resell or resupply the Managed Services; and
- (k) not allow the unauthorised use or modification of or tampering with the Managed Services by third parties.

7.4 You indemnify Us in respect of all loss and damage incurred by Us as a result of Your breach of Your obligations under this clause 7.

8 YOUR DATA

8.1 You license Us to use Your Data for the purpose of providing the Managed Services.

8.2 As between the parties, You own all Your Data and this Agreement does not transfer any Intellectual Property Rights in Your Data to the Us.

8.3 Each time You use the Managed Services, You warrant, agree and represent that:

- (a) You will only upload, input and transfer Your Data into and/or via the Managed Services, or otherwise disclose to Us Your Data, which You are fully entitled and authorised to so upload, input, transfer and disclose; and
- (b) Our collection, use, storage and/or disclosure of Your Data does not and will not breach any applicable law or right of any person.

8.4 You are solely responsible for the accuracy, legality, quality and for obtaining any permissions, licenses, rights and authorisations necessary for Us to use, host, transmit, store and disclose Your Data for the purposes of providing the Managed Services.

8.5 Except in respect of any Non-Excludable Guarantee, and except to the extent that the Managed Services expressly requires Us to backup and/or archive, host and/or secure Your Data, You agree that You are solely responsible for providing or procuring each of the following:

- (a) backing up and archiving of all Your Data;
- (b) hosting Your Data;
- (c) securing Your Data; or
- (d) any loss, corruption or hacking of Your Data.

8.6 You indemnify Us in respect of any loss and damage We incur in respect of any claim that any of Your Data infringes the Intellectual Property Rights or other rights of any person or breaches any law, regulation, code or standard.

9 IP ADDRESSES AND TELEPHONE NUMBERS

- 9.1 You acknowledge, understand and agree that in order for You to use the Managed Services, We may need to allocate to You one or more identifiers such as an IP address or a domain name (**Identifiers**).
- 9.2 You acknowledge, understand and agree that the Identifiers are not owned by Us and Us may need to forego, reallocate or reassign the Identifiers to comply with rules and other requirements (as applicable) in respect of the Identifiers, such as the Australian Communications and Media Authority's regulations and directions from the administrators of domain names.
- 9.3 We will notify You if We are required to forego, reallocate or reassign any Identifier allocated to You by the Us.

10 SUSPENSION OR TERMINATION

- 10.1 We may suspend the Managed Services immediately with notice (which may be written or verbal) to You if:
- (a) there is an emergency;
 - (b) We are directed/required to do so under the law;
 - (c) You fail to pay an amount due and payable, after seven (7) days past the due date, which is not the subject of a genuine dispute, and for which a valid Tax Invoice has been issued;
 - (d) You are in material breach of this Agreement and the breach is not capable of rectification;
 - (e) You are in breach of this Agreement and the breach by its nature is one which is capable of rectification, but You fail to remedy the breach within 10 Business Days following the written notice, requiring that the breach be remedied;
 - (f) You are in breach of a Third-Party Licence which cannot be remedied, and which in Our reasonable opinion will expose Us to a liability if this Agreement continues;
 - (g) a director is convicted of a criminal offence or is subject to regulatory action resulting in a civil penalty declaration or administrative banning order or adverse finding, including an 'enforceable undertaking' (as defined in the Corporations Act).
- 10.2 We may terminate this Agreement immediately with written notice if:
- (a) You breach a material breach of a provision of this Agreement;
 - (b) You suffer an Insolvency Event;
 - (c) You are in breach or default of this Agreement and We give You ten (10) Business Days' written notice:
 - (i) specifying the nature of Your breach or default;
 - (ii) telling You what is required to be done to remedy the breach or default; and
 - (iii) advising You that We intend to terminate this Agreement if You fail to remedy the breach or the default within the given notice period; and
 - (d) You fail to remedy the breach or default within the given notice period.

10.3 You may immediately terminate this Agreement, by sending Us a written notice of that fact if:

- (a) We are in material breach of a provision of this Agreement; or
- (b) We suffer an Insolvency Event.

10.4 Any suspension, termination or expiry of this Agreement will not prejudice any equitable or legal right of action or remedy which may have accrued or manifest to either party prior to or after termination of this Agreement.

10.5 Termination of the Managed Services in accordance with this Agreement does not affect the application of the provisions of these terms and conditions relating to limitation of liability or indemnity.

Termination by You prior to the expiry

10.6 Your rights and obligations to terminate this Agreement before the expiration of the Term is outlined in the Agreement Summary.

Transition Services

10.7 Upon termination of this Agreement, We may agree to assist You in the transition of the provision of Managed Services to a new provider or to You (**Transition Services**). You must pay the cost of the Transition Services at the Out-of-Scope Hourly Rate, which will include hourly charges of technicians to accomplish the transfer and any services maintained by containing Your Data.

10.8 There will be no obligation on Us to perform Transition Services where We terminate this Agreement as a result of Your default or where a Force Majeure applies.

Obligations upon termination of this Agreement

10.9 Upon the termination of this Agreement:

- (a) You must immediately pay all Fees which are unpaid (including, to the fullest extent permitted by law, any amount owing for the remainder of the Term), together with any work in progress (including any third-party charges) which have been incurred by Us but which We have yet to invoice (including third-party charges received by Us after termination but which relate to a period prior to termination);
- (b) We will cease providing all Managed Services other than any Transition Services agreed under clause 10.7; and
- (c) You will delete or destroy, or where specified by Us, return to Us, any Material supplied by Us and any backup or archival copies of the Material.

Backups

10.10 Upon termination of this Agreement, You acknowledge, understand and agree that:

- (a) You are responsible for transferring backups to a system administered by You or a third-party on Your behalf, and for paying any costs of transferring and/or setting up backups maintained by Us; and
- (b) to the fullest extent permitted by law, if You do not provide for any transfer of backups, the backups will be terminated within ninety(90) days of the termination of this Agreement, or such other minimum period required as required by law. You assume all responsibility for Your backups and We have no responsibility to retain backups. If You place Your own backups on

site or obtain Your own cloud backups then You must notify Us so that the backups We hold for You can be terminated.

11 COMPLIANCE WITH THIRD-PARTY LICENCES

- 11.1 The Software may incorporate components, or make use of services, licensed or provided to Us by third parties (including Third-Party Software), which may be subject to their own service or licence agreements (**Third-Party Licences**).
- 11.2 You agree:
- (a) to be bound by and observe all terms and conditions of such Third-Party Licences which are disclosed to You in writing by Us; and
 - (b) to not undertake any act, or cause any omission, which places Us in breach of a Third-Party Licence.

12 CONFIDENTIALITY OBLIGATIONS

- 12.1 Each party must keep confidential, the Confidential Information of the other party and must only use that Confidential Information for the purposes of this Agreement.
- 12.2 A party may only disclose the Confidential Information of the other party:
- (a) to the extent that the information disclosed is in the public domain (but not as a result of a breach of this Agreement);
 - (b) to the extent required by law or the rules of a stock exchange on which the disclosing party is listed; and/or
 - (c) to the disclosing party's professional advisors and employees, but only on a need-to-know basis and only where those persons are under a similar obligation of confidentiality as set out in this clause.

13 INTELLECTUAL PROPERTY

- 13.1 The parties each acknowledge, understand and agree that this Agreement does not transfer or assign any Intellectual Property Rights of either party to the other party.
- 13.2 As between the parties:
- (a) We own and will own all Intellectual Property Rights in any documentation and/or materials produced and/or developed in connection with this Agreement by Us or on Our behalf of ; and
 - (b) You own and will own all Intellectual Property Rights in any of Your Software and Your Data.
- 13.3 Each party must not take any step to invalidate or prejudice the other party's (or the other party's licensors') Intellectual Property Rights.

14 LIMITATION AND EXCLUSION OF LIABILITY

General limitation on Our liability

- 14.1 You acknowledge that We are not responsible or liable for any issues in the Software as a result of

a Third-party Software or hardware issues or failures or software bugs.

- 14.2 You acknowledge that We have not made and will not make any express or implied warranties in relation to the Software or the Managed Services or any other goods or services provided by Us under this Agreement, other than those warranties expressly contained in this Agreement. Subject to any Non-Excludable Guarantees, any term that would be implied into this Agreement, including without limitation any condition or warranty, is excluded.
- 14.3 Subject to clauses 14.4 to 14.6, You agree that We will not be liable in respect of any claim by You that arises due to a failure by Us to provide the Managed Services, to the extent such failure is caused or contributed to by a Force Majeure Event.
- 14.4 Subject to any applicable Non-Excludable Guarantees, to the fullest extent permitted by law, You agree that Your sole remedy in relation to any defect or errors in the Managed Services or the Software, is to request Support Services in accordance with clause 6.

Consumer law limitations

- 14.5 If the consumer guarantees under the Australian Consumer Law apply to the provision of any goods or services by Us to You, then We provide the following notice to the extent required by the Australian Consumer Law:
- (a) our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, You are entitled:
 - (i) to cancel Your service contract with Us; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
 - (b) You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, You are entitled to have the failure rectified in a reasonable time. If this is not done, You are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- 14.6 If the Australian Consumer Law applies to this Agreement and permits the limitation of liability for breach of warranty implied by statute, the liability of We are limited, at the option of Us, to:
- (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
 - (b) in the case of services:
 - (i) the supplying of the Managed Services again; or
 - (ii) the payment of the cost of having the Managed Services supplied again.

14.7 Nothing in this Agreement purports to modify or exclude any Non-Excluded Guarantees. Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or liability implied in this Agreement or protected by law to the extent that such exclusion, restriction or modification would render this Agreement or any provision of this Agreement void, illegal or unenforceable. Subject to that, any condition, warranty, right or liability which would otherwise be implied in this Agreement or protected by law is excluded.

15 INDEMNITIES

15.1 We indemnify You, Your officers and employees (together the **Client Indemnified Parties**) for any direct loss, cost, expense or damage (including legal costs on a full indemnity basis) which are suffered or incurred by Client Indemnified Parties as a direct result of:

- (a) the death or personal injury of any person;
- (b) loss of, or damage to, any tangible property; and
- (c) the gross negligence or any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation by Us,

to the extent caused or contributed to by any act or omission by Us or Our personnel.

15.2 You indemnify Us, Our agents, officers and employees (together the **Indemnified Parties**) against any direct loss, cost, expense or damage (including legal costs on a full indemnity basis) which is suffered or incurred by the Indemnified Parties as a direct result of:

- (a) death or personal injury of any person;
- (b) loss of, or damage to, any tangible property;
- (c) any action, claim, demand or proceedings instituted against Us by a third party as a result of Your use of the Software; or
- (d) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation,

to the extent caused or contributed to by any act or omission by You, Users, Your personnel, subcontractors or agents.

Third Parties

15.1 You acknowledge and agree that We are not responsible for any service interruption in the event that an interruption of the Managed Services is caused by any third-party services. You must reimburse Us for all costs and expenses (including legal fees on a solicitor-client basis) incurred by Us in connection with any such action or claim.

15.2 The parties agree that they will use best endeavours to mitigate any loss arising from this clause 15.

Indirect loss

15.3 Subject to any applicable Non-Excludable Guarantee, to the fullest extent permitted by law, You agree that We will not be liable in respect of any claim by You (whether contractual, tortious, statutory or otherwise) for any indirect, special, incidental, or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Managed Services or the provision of any other goods or services under this

Agreement and whether as a result of any breach or default, by Us.

Liability limitation

15.4 Subject to any applicable Non-Excludable Guarantee, to the fullest extent permitted by law, our maximum liability under this Agreement for any and all breaches of this Agreement, and for any negligence in relation to this Agreement, will not exceed the amount of the Fees paid in the prior 12 months by You.

16 WARRANTIES

16.1 You warrant that:

- (a) You are the owner of the Equipment and Your Software (if any) and that You are the holder of the Third-Party Licence for any Third- Party Software, Equipment or any other licenses required on Your Network;
- (b) You have the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by Your duly authorised representative;
- (c) You have the authority to grant any rights to be granted to Us under this Agreement, including the right to provide the Software and Equipment to Us as indicated in this Agreement and for the same to be used in the provision of the Managed Services and otherwise in connection with this Agreement;
- (d) You will comply with and use the Managed Services in accordance with the terms of this Agreement and all applicable laws, and must not do any act that may infringe the rights of any Third-Party including the publishing or transmission of any materials contrary to relevant laws; and
- (e) You own or have obtained valid licences, consents, permissions and rights to use, and where necessary to license to Us, any materials reasonably necessary for the fulfilment of all our obligations under this Agreement, including any Third-Party Licences and consents in respect of any of Your Software.

16.2 We warrant and represent that:

- (a) We have the full capacity and authority to enter into and perform this Agreement and this Agreement is executed by Our duly authorised representative;
- (b) We own or have obtained valid licences, consents, permissions and rights to enable Us to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for Your use and receipt of the Managed Services;
- (c) We will comply with all applicable laws in performing our obligations under this Agreement; and
- (d) all personnel and sub-contractors used by Us in the performance of this Agreement are adequately skilled and experienced for the activities they are required to perform.

16.3 To the fullest extent permitted by law, We exclude all other warranties implied by law except as expressly set out in this Agreement.

17 SECURITY

- 17.1 If not provided as part of the Managed Services, You must:
- (a) ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to the Managed Services, the Software, the Materials, and Your Data, in accordance with industry practice;
 - (b) Software is designed, maintained, and upgraded at all times so as to minimise the risk of attack by viruses.
- 17.2 You must promptly inform Us if You suspect or uncover any breach of security.
- 17.3 You acknowledge and accept that any access to the Internet involves security risks and that new threats to Internet security are continually evolving. You acknowledge that all users remain responsible for maintaining the security of their devices.

18 RELIANCE ON OUR REPORTS

- 18.1 Any reports or advice issued or provided by Us in respect of the Managed Services is provided solely for Your use and benefit. The report or advice may only be used in connection with the purpose provided.
- 18.2 We will not assume any responsibility to any third party to which any report or advice is disclosed or otherwise made available to regardless of whether consent has been provided or not. Our prior written consent is required in the event that a copy, extract or quote from any advice provided to You by We are made available to any third party.
- 18.3 If You wish to provide a third party with copies of our reports, letters, information, advice or other deliverables, You must obtain Our prior written consent and Us reserves the right to:
- (a) set the terms on which those copies are given or used; or
 - (b) require the third party to enter into a direct relationship with us.
- 18.4 You agree that We are not responsible for and We disclaim all liability to any third party for all costs, loss, damage and liability that the third party may suffer or incur arising from or relating to or in any way connected with the provision of the deliverables to the third party without our prior written consent.

19 DISPUTE RESOLUTION

- 19.1 If a party has a dispute with the other party in relation to this Agreement, then the party must attempt to resolve that dispute in accordance with this clause 19, before instituting legal proceedings in relation to the dispute. The forgoing however will not prohibit a party from applying to a court for injunctive relief or other urgent relief.
- 19.2 If a dispute arises, either party may serve a notice (**Dispute Notice**) on the other party setting out the nature of the Dispute. The parties must then use best commercial endeavours to meet within fifteen (15) Business Days' of the Dispute Notice being served, to attempt to resolve the dispute.
- 19.3 If the dispute remains unresolved for more than forty (40) Business Days following a Dispute Notice being served under clause 19.2, then either party may require that the Dispute be submitted to mediation. If this occurs, then:

- (a) the parties must refer the dispute to the Resolution Institute (ACN 008 651 232), for facilitation of a mediation in accordance with the Resolution Institute's Mediation Rules; and
- (b) the parties must co-operate with Resolution Institute as facilitator.

20 NOTICE

- 20.1 Any notice, consent or other communications given or made to a party under this Agreement must be in writing and delivered or sent by email or pre-paid ordinary post to the address of the party as last or reasonably known to either party or to such other address as the party may from time to time notify for the purpose of this clause.
- 20.2 Proof of posting by prepaid or ordinary post is deemed receipt within three (3) Business Days after posting.
- 20.3 Proof of delivery by email is proof of receipt upon production of a delivery confirmation report appearing on the sender's computer. If the sender's computer indicates delivery has not been carried out, delivery will be deemed not to have been affected.

21 ASSIGNMENT AND SUBCONTRACTING

- 21.1 This Agreement may not be assigned without the consent of all the parties.
- 21.2 We may subcontract our obligations under this Agreement.

22 FORCE MAJEURE

- 22.1 Subject to our obligations under the Agreement Summary and any Non-Excludable Guarantees, neither party shall be liable for any delay or default in the performance of its obligations under this Agreement caused directly or indirectly by a Force Majeure Event. That party shall, for the duration of such event, be relieved of any obligation under this Agreement that is affected by the event provided that that Party shall use its best efforts to cure such event (if curable) and to comply with each of its obligations as soon as any such event ceases to affect the performance of each of its obligations.
- 22.2 Subject to Our obligations under the Agreement Summary and any Non-Excludable Guarantees, neither party shall be liable for any delay or default in the performance of its obligations under this Agreement caused directly or indirectly by a Force Majeure Event.

23 MISCELLANEOUS

Non solicitation

- 23.1 You must not solicit or attempt directly or indirectly to solicit any of Our employees, either directly as an employee, as a contractor or as a subcontractor for employment or separate engagement as a contractor during the term of this Agreement and for twelve (12) months after the date of expiration of this Agreement.

Waiver

- 23.2 The waiver by either party of any breach of this Agreement does not licence the other party to repeat or continue any such breach. Such a waiver will not operate as a waiver of any subsequent breach.
- 23.3 The failure of either party to exercise any right is not deemed to be an abandonment or waiver of any

right for damages injunction or otherwise.

Entire Agreement

23.4 This Agreement constitutes the entire agreement of the parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings, undertakings and negotiations in respect of the matters dealt with in this Agreement.

Governing Law

23.5 This Agreement is governed by, and is to be construed and take effect in accordance with, the laws of Western Australia.

Order of Precedence and Conflicts

23.6 In the event of inconsistency, the documents comprising this Agreement, the documents must be read in the following order of precedence (but only to the extent of such inconsistency):

- (a) the Proposal;
- (b) the Agreement Summary;
- (c) the Schedules; and
- (d) the terms and conditions of this Agreement.

Severability

23.7 The parties consider the covenants, obligations and restrictions contained within this Agreement to be reasonable in all the circumstances of this Agreement.

23.8 Unenforceability of a provision of this Agreement does not affect the enforceability of any other provision.

23.9 If any provision is void, voidable or unenforceable, it is taken to be severed from this Agreement.

Non merger

23.10 All obligations of the parties which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect notwithstanding such expiration or termination.

Variation

23.11 This Agreement may not be changed or modified in any way except in writing signed by or on behalf of all the parties.

Counterparts

23.12 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

Definitions

- (a) **Agreement Summary** means the document named Agreement Summary (and includes any appendices) provided by Us to You and signed by You.
- (b) **Agreement** means these General Terms and Conditions, the Agreement Summary, the Proposal and any attached Schedule.
- (c) **Alternative Network** means any network or infrastructure, including any home network, that is not:
- (a) Your Approved Premises; or if this does not apply
 - (b) Your main network at Your usual premises or place of business.
- (d) **Approved Devices** means the devices which will be the subject of the Managed Services, as agreed by Us in writing.
- (e) **Approved Software** means the software the subject of the Managed Services, as outlined in the Proposal or Agreement Summary, or as otherwise agreed by Us in writing.
- (f) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act (2001)* Cth.
- (g) **Business Day** means a day in Western Australia that is not a Saturday, a Sunday or a gazetted public holiday in that state.
- (h) **Business Hours** means between 9 am to 5 pm, Australian Western Standard Time, on any day except Saturday, Sunday or a public holiday in Western Australia.
- (i) **Client Indemnified Parties** has the meaning provided in clause 15.1.
- (j) **Commencement Date** means the date for the commencement of the Managed Services as specified in this Agreement.
- (k) **Confidential Information** means, in relation to a party:
- (a) any information relating to a party, its staff, customers or suppliers;
 - (b) all pricing information, business and financial information, sales and supply details, marketing strategies, customer and supplier listings (including customer details or supplier details), staff information, business listings;
 - (c) all processes, procedures, techniques, concepts, systems, manuals, licence agreements, disclosure documents, documents, agreements, contracts, notes, file and data base structures and software relating to the Managed Services;

- (d) any information which, by its nature, places or potentially places a party at an advantage over its present or future business competitors;
 - (e) any information that would otherwise at law be considered secret or confidential information, whether or not marked "Confidential" but does not include information which:
 - (i) at the time of first disclosure by a party is or is reasonably known to be or to have been a part of the public domain;
 - (ii) after disclosure by a party is or becomes part of the public domain otherwise than by disclosure in breach of the terms of this Agreement; and
 - (iii) was in the possession, knowledge, custody, power or control of the other party prior to disclosure.
- (l) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (m) **Dispute Notice** has the meaning provided in clause 19.2.
- (n) **Equipment** means any relevant equipment, device or hardware listed in the Agreement Summary, to be managed by Us in providing the Managed Services.
- (o) **Fair Play Policy** has the meaning provided in clause 5.1.
- (p) **Force Majeure Event** means an event arising out of or caused, directly or indirectly, by circumstances beyond a party's reasonable control, which prevents the party from complying with this Agreement, including, without limitation, power failure; telecommunications failure; technical failure; acts of God; weather conditions; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; epidemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or a telephone communication service; accidents; labour disputes; acts of civil or military authority; governmental actions; or inability to obtain labour, material, equipment or transportation; pandemic; epidemic and disruption to business operations or any restrictions imposed by a government or Government Agency.
- (q) **Fees** means the fees payable for the provision of the Managed Services, as outlined in the Proposal.
- (r) **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.
- (s) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (t) **Identifiers** has the meaning provided in clause 9.1.
- (u) **Indemnified Parties** has the meaning provided in clause 15.2.
- (v) **Initial Term** means the initial commitment of this Agreement as outlined in the Agreement Summary.
- (w) **Insolvency Event** occurs where, in relation to a party:
 - (a) an external insolvency administrator is appointed to any such party under the provisions of the Corporations Act or any companies or securities legislation of another jurisdiction;
 - (b) a controller (as that term is defined in the Corporations Act) or mortgagee in possession is appointed to the assets of You, or any such appointment is reasonably likely;
 - (c) the party fails to comply with a statutory demand in the manner specified in section 459F of the Corporations Act, and has not made an application to set aside such demand under section 459G of the Corporations Act;
 - (d) the party is unable to pay its debts as and when they fall due; or
 - (e) the party becomes an externally administered body corporate for the purposes of the Out of Scope means services provided that do not form a part of the Support Hours or Fees schedule or base costing of this Agreement to any extent applicable.
- (x) **Intellectual Property Rights** means all intellectual property rights of any kind whatsoever throughout the world including, without limitation, all present, future, registered and unregistered rights which subsist in copyright, trademarks, patents, designs, circuit layouts, plant breeders' rights and the right to keep Confidential Information, confidential;
- (y) **Us, We, we, Our, our, Us and us** means KPCD Pty Ltd (can 613 473 242) trading as Kalgoorlie IT.
- (z)
 - (aa) **Live Environment** means Your use of the Software in Your business, for purposes other than testing the Software.
 - (bb) **Managed Services** means the services to be provided by Us as set out in the

	Proposal and/or the Agreement Summary.
(cc) Material	means user manuals, whitepapers and other materials or information which We provide to You (in digital or hardcopy form) in relation to the Managed Services (if any).
(dd) Minimum Standards	has the meaning provided in the Agreement Summary.
(ee) Non-Excludable Guarantee	means any guarantee, provision of term that cannot be excluded by law, including the Australian Consumer Law (if applicable) implied.
(ff) Network	means Your technology network and infrastructure that is subject to the Managed Services.
(gg) Out-of-Scope Hourly Rate	means the times and materials hourly rate listed in the Schedule of Rates, or if none are listed, Our commercial rates applicable at that time..
(hh) Personal Information	to the extent applicable to this Agreement, has the same meaning as in sub-section 6(1) of the <i>Privacy Act 1988</i> (Cth).
(ii) Response Time Guarantees	means the guaranteed service response times as set out in the Agreement Summary.
(jj)	
(kk) Schedule of Rates	means the schedule in the Proposal outlining the applicable Fees payable.
(ll) Software	means any software required for the provision of the Managed Services, and includes Approved Software, Your Software and Third-Party Software (as applicable).
(mm) Specifications	means any specifications and requirements relevant to the provision of the Managed Services, as outlined in the Agreement Summary.
(nn) Subsequent Term	means any extension of the term of this Agreement in accordance with the procedure outlined in the Agreement Summary.
(oo) Support Request	has the meaning provided in clause 6.1.
(pp) Approved Premises	means the sites listed in the Agreement Summary where the Managed Services may be provided in-person.
(qq) Support Services	has the meaning provided in clause 6.1.
(rr) Tax Invoice	means a tax invoice within the meaning of the GST Law.
(ss) Termination Notice	has the meaning provided in clause 10.6.
(tt) Third-Party Licence	means any licence of a third-party software which are used or incorporated in the Managed Services.
(uu) Third-Party Software	means any third-party software.

(vv) Third-Party Vendor	means the vendor of any Third-Party Software or any other goods or services that are supplied to Us in connection with the Managed Services (as the context requires).
(ww) Term	means the Initial Term and any Subsequent Term as set out in this Agreement.
(xx) Transition Services	has the meaning provided in clause 10.7.
(yy) Users	means Your staff who are authorised by Us to receive the Managed Services.
(zz) You, you, Your, your,	means the person, company or entity named in the Proposal and the Agreement Summary as the party to receive the Managed Services.
(aaa) Your Data	means all data and information provided by You or that We have access to in connection with the provision of the Managed Services.
(bbb) Your Software	means any software owned or managed by You that is required for the provision of the Managed Services.

Interpretation

24.2 In this Agreement except where the context otherwise requires:

- (a) any terms not defined in these General Terms and Conditions are defined in the Agreement Summary;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) a reference to a definition that is capitalised may also be a reference to such definition in lower case;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (h) a reference to time is to the time in Western Australia;
- (i) a reference to a party is to a party to this Agreement;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other

instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) headings are for ease of reference only and do not affect interpretation;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or these terms and conditions or any part of them; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

SCHEDULE 1 Service Requests

1. You must issue a request for support to Us via only our online support helpdesk system or telephone via the contact details set out in the Agreement Summary.
2. When issuing a Support Request, you must ensure that you provide to Us:
 - (a) the name and contact details of your staff member who is experiencing the error;
 - (b) a detailed description of the error;
 - (c) evidence of the error; and
 - (d) any other information reasonably required by Us.
3. Immediately after making a request for Support Services which may involve error correction or program modification, You must provide Us a documented example of the defect or error.
4. It is important that you and your team follow this process to ensure you are guaranteed to receive the support at the levels we have promised.
5. You agree to make sure your team is aware of any restrictions you have in place regarding who is authorised to lodge Service Requests, as all requests received by Us will be chargeable and/ or allocated against this Agreement.
6. Upon receipt of a valid Support Request, We will provide the following Support Services:
 - (e) Us must confirm receipt of the request for support and assign a severity to the error (low, medium or high or critical);
 - (f) Us must use best endeavours to resolve the error so that the Managed Services perform materially in accordance with the Requirements; and
 - (g) until the error is resolved, We will provide you with regular updates on the status of the request and the time anticipated by Us for resolution.
 - (h) Critical and high Service Requests must be lodged via telephone only, otherwise our Response Time Guarantee will only be applicable at Our Medium priority level for these.