

Maintenance + Support Services Agreement

<p>1. BACKGROUND</p> <p>The Customer has been granted certain rights to use the Software under the terms of the Software as a Service Agreement and agrees to the provision by the Company to it of maintenance and support services as described in and on the terms set out in this Agreement.</p>	<p>3.8.1 reasonable commercial efforts to correct reported Errors;</p> <p>3.8.2 Minor Software Enhancements (at the Company's discretion);</p> <p>3.8.3 user account creation;</p> <p>3.8.4 ongoing access to the company's product support website;</p> <p>3.8.5 telephone support (up to four (4) hours per year, per licence);</p> <p>3.8.6 supplying Releases and Updates - which shall be licensed under and form part of the Software as a Service Agreement;</p> <p>3.8.7 responding to support requests - on the basis of the relevant Priority Level assigned in respect of the use of the Software: extending only to guidance and clarification over the usage of the Software and its component parts; diagnostic activity review; Software error rectification; addressing configuration issues or fine-tuning of the Software; advanced fault diagnosis and rectification (relevant procedures in relation to incidents are addressed in further detail in Schedule 1); and</p> <p>3.9 Services are provided only for the relevant Software which is the subject of the Software as a Service Agreement and does not include support or maintenance of third party software.</p> <p>3.10 The Company's obligation to provide Services is limited to:</p> <p>3.10.1 the Release of the Software current at the time; and</p> <p>3.10.2 the immediately preceding Release at the relevant time, but only for a period of 12 months from the date on which the superseding Release was made generally available.</p> <p>3.11 The Services do not include (subject to clause 14):</p> <p>3.11.1 training of staff</p> <p>3.11.2 co reversing entries or repairing data caused by incorrect operation;</p> <p>3.11.3 in-depth or highly technical queries i.e. non-operational questions such as those regarding product integration or development;</p> <p>3.11.4 use of third party applications or third party software unless provided by the Company, and while being used in</p>	<p>conjunction with software provided by the Company;</p> <p>3.11.5 assistance with Viruses;</p> <p>3.11.6 assistance with Virus protection systems that impede the proper use of the Software;</p> <p>3.11.7 system recovery or transfer to another server or machine in the case of server upgrades or replacement, hard disk failures, etc;</p> <p>3.11.8 support for third party products and applications, including, but not limited to: operating systems, databases, network devices and access control systems (except the third party software);</p> <p>3.11.9 testing;</p> <p>3.11.10 new or additional integration;</p> <p>3.11.11 correction of errors or defects in the Software caused by the use of the Software together with Information Technology Products not authorised or approved in writing by the Company;</p> <p>3.11.12 correction of errors or defects in the Software caused by Modifications not authorised by the Company;</p> <p>3.11.13 correction of errors or defects in the Software caused by the Customer's failure to have suitably qualified and adequately trained operational staff or a failure to meet the requirements of this Agreement;</p> <p>3.11.14 correction of errors or defects in the Software caused by incorrect use;</p> <p>3.11.15 hardware failures or defects of any sort for:</p> <p>A hardware not supplied by the Company; or</p> <p>B hardware acquired by the Company as agent for the Customer,</p> <p>but subject to statutory rights of the Customer which cannot be lawfully excluded and the provisions of clause 14 of this Agreement;</p> <p>3.11.16 setup of additional/new functionality or components that are outside of a subsequent Statement of Work, Proposal or Professional Services Agreement;</p>
<p>2. TERM</p> <p>The Company shall provide the Services to the Customer for the Term subject to the terms of this Agreement.</p>		
<p>3. SERVICES</p> <p>3.1 Subject to payment of the Fees and, compliance by the Customer with the terms of this Agreement, the Company agrees to provide the Services to the Customer.</p> <p>3.2 The Company will provide the Services with reasonable skill and care.</p> <p>3.3 The Company reserves the right to review the use of the Services during the Term to assess fair use and will advise the Customer if it reasonably considers that the Customer's demand for Services during the Term does not or is likely not to satisfy the requirement of fair use. Fair use presupposes that the amount of time spent by the Company in the provision of the Services will not materially exceed the amount of time which the paid Fees would allow based on the Company's standard professional services charge out rates for maintenance and support.</p> <p>3.4 If the use of Services does not satisfy the requirements of fair use then the Company may suspend the provision of the Services for an appropriate time period and/or render an additional invoice at relevant professional services rates to rectify the deficiency.</p> <p>3.5 The Company agrees to act in good faith with respect to the issue of determining fair use.</p> <p>3.6 Subject to clause 14, the Customer will not be entitled to a refund of the Fees in the event of termination or suspension of the Services.</p> <p>3.7 The Company shall during the Term, remotely by telephone and/or email (except for installation assistance as party of quality control), provide to the Customer the Services detailed below in accordance with this Agreement.</p> <p>3.8 The Services comprise:</p>		

- 3.11.17 third party applications or hardware which are not supported by the Software in respect of which any issues must be addressed with the supplier of the third party application or hardware;
 - 3.11.18 the development or release of any major functional revision to the Software;
 - 3.11.19 conversion of software; or
 - 3.11.20 any service, support or maintenance item for Licensed Software that cannot be conducted remotely i.e. a Company representative is required onsite.
- 3.12 The Company has no obligation to provide and may suspend the provision of the Services and the rights of access to and use of the Software and/or third party software (as the case may be) as well as any collateral (including licences or rights of use) rights and services if a payment is not made when due under this Agreement or under any other relevant document or agreement between the Company and the Customer.

4. RESPONSIBILITIES

- 4.1 The Company will provide support for the Software by telephone and/or by email during Support Hours in the form of assistance and advice on the Software and will make reasonable endeavours to respond to requests for such assistance and advice in accordance with the Target Response Table, subject to the Customer complying with the provisions of this Agreement.
- 4.2 The Customer must provide the Company with:
 - 4.2.1 a return call service during usual business hours for all calls made by the Company to the Customer in the course of providing remote support; and
 - 4.2.2 a listing of outputs and all such other data as the Company may reasonably request from the Customer in order to reproduce operating conditions similar to those present when the problem was discovered.
- 4.3 The Customer shall provide the Company with access to and use of all Customer information and facilities reasonably necessary to provide the Services.
- 4.4 It is recommended that the Customer maintains, or causes to be maintained, all computer hardware and equipment that is

used in any connection with the Software in a manner that does not in any way interfere with the operation of the Software and at the latest required manufacturer's level.

- 4.5
- 4.6 All operators and managers of the Software should complete such training courses as may be reasonably specified by the Company from time to time.

4.7 Only Authorised Users may have access to the Company for support. The Customer shall ensure that such Authorised Users have appropriate background experience and computers skills to undertake the Software training (as contemplated below).

4.8 The Customer must advise the Company of Software faults and problems and queries requiring software support, using the reporting mechanisms set out below.

4.9 The Customer's manager of information systems or other agreed suitably trained designee shall be responsible for determining the indicative severity of any problems as well as contact and communications with the Company to resolve the problems.

5. CONDITIONS OF SUPPORT

5.1 The Company shall not be responsible for any errors, data corruption, operational scheduling conflicts or software failures caused by the misuse of the Software due to any negligence, error, malicious intent or misunderstanding by the Customer. In the event of any such errors, the Company shall use reasonable efforts to assist the Customer in correcting such errors at Customer's sole expense.

5.2 The Company shall be under no obligation to provide or perform any Software support if any such Software support is required because of any improper use, damage, modification of or accident to the Software and/or any hardware or equipment used in connection with the Software, caused by anyone other than the Company; or where Customer is in default under any agreement with the Company. In the event that any services are required as a result of the causes stated above, such services may be provided by the Company, if requested by Customer and payable by it at the Standard Rates subject to availability of the Company's Personnel.

5.3 In the event that the Company, acting reasonably, elects to attend or, at the

Customer's request, attends at the Customer's relevant Site, then the Customer agrees to pay the Customer's expenses including per diems at Standard Rates. If the Company thereafter discovers that the problem does not qualify for Services, the Company will quote for the repairs and if the Customer does not authorise the repairs, then the Customer hereby agrees to pay the Company's Fees and expenses at Standard Rates, for the time spent by the Company in attending the Customer's Site, assessing the fault and advising the Customer accordingly.

6. PROFESSIONAL SERVICES

6.1 The services which are not included as part of the Services under this Agreement may be provided under a separate Professional Services Agreement, Purchase Order, Proposal, Statement of Work or other document.

6.2 If the Company does in fact provide services to the Customer which are not within the scope of the Services under this Agreement, not being under a signed Professional Services Agreement or relevant Purchase Order, Proposal, Statement of Work or other document (including time spent to rectify, consider or address issues that are not the responsibility of or supported by the Company, or due to interference with or a change to configurations contrary to specification, instructions of the Company or changes to Software without the prior approval of the Company in writing) then the Customer will in addition pay to the Company the applicable professional services fees at then applicable or published hourly or other professional services Standard Rates and the terms of the Company's standard form Professional Services Agreement shall apply to the provision of such professional services. The making of enquiries or the provision of a response by the Company is not indicative and may not be taken as evidence of an acceptance by the Company that a particular issue is within the scope of the Services.

7. CONFIGURATION CHANGES

7.1 The Customer may only configure the Software within the scope of and in accordance with its licensed functionality.

7.2 The Company shall not be obliged to support and/or maintain the configuration changes or rectify any instability or performance issues resulting or arising, directly or indirectly, from or in connection with such configuration changes unless it has previously consented in writing to the

configuration changes and also so agreed to provide support and maintenance services with respect to such changes.

8. SUPPORT LEVELS

8.1 The Company has three distinct Priority Levels outlined in Schedule 1, which complement each other to provide a comprehensive support offering.

8.2 Errors, defects and non-conformities of the Software will be categorised by the Company in accordance with the table at Schedule 1.

8.3 In relation to each of the Priority Levels, the Company will use its reasonable endeavours to:

8.3.1 meet the target Initial Response Times;

8.3.2 provide a temporary resolution to the problem within the Target Resolution Time; and

8.3.3 provide support in the nature described in the Target Response Table.

8.4 After three unsuccessful attempts to contact (during Support Hours) the person reporting the issue or request the priority will be changed to a Priority Level 4.

9. REPORTING MECHANISMS

9.1 Subject to clause 9.3, reporting mechanisms by the Customer must be via the e-mail address supplied by the Company to receive reports from the Customer, which will be monitored during Support Hours.

9.2 The customer must provide the company with detailed information and analysis on reported software faults, as well as step by step instructions on the reproduction of the problems, where possible.

9.3 Priority 1 reports must be notified by person to person contact.

10. RELEASES + UPDATES

10.1 Releases and Updates only apply to the Company's Software and excludes any third party software.

10.2 Subject to clause 10.4, Releases and Updates are provided during the Term as part of the Services and form part of the Software, provided always that the Company only supports and maintains the current Release. The Customer shall permit the Company to correct malfunctions or errors and carry out

modifications to the Software by way of Update or new Release.

10.3 The purpose of these Updates or new Releases is to provide updated versions of the Software. Updates are provided on an ad hoc basis to resolve specific incidents, at the sole discretion of the Company.

10.4 The Company will provide the Customer with Updates and Releases to the Software, provided such Updates and Releases are made generally available to licensees or other permitted users of the Licensed Software.

10.5 With each new Release or Update, the Company will provide the Customer with documentation containing a detailed explanation of how the new Release or Update operates including any effect that it will have on the functionality or performance of the Software.

10.6 The Customer acknowledges that future Releases and/or Updates of the Software and/or third party software may require modifications by the Company to the Software (if it has been customised or modified, as applicable) and that the cost of such modifications will be payable by the Customer at Standard Rates, in order for same to remain compatible.

10.7 It is recommended that the Customer should install new Releases and Updates of Licensed Software promptly upon receipt from the Company or as instructed by the Company's Personnel. If the Customer does not install new Releases and Updates when received, the Customer acknowledges that such action may hinder the Company's ability to correct errors as reported by the Customer.

10.8 If the Customer elects not to implement a new Release, the Company will continue to provide Services only for the immediately preceding Release of the licensed version of the Software.

11. TRAINING

11.1 The Customer acknowledges that the Software is specialist technology that may require professional training which is provided by the Company.

11.2 The provision of the Services is predicated on the Customer's staff and relevant numbers of persons having received the appropriate training, and having at all times appropriate technical skills to fulfil their job roles as applicable for use of the Software.

11.3 Training levels and competence levels are determined by the Company in its reasonable discretion.

11.4 The Company reserves the right to recommend remedial training for the Customer's support staff where excessive use of the software support hotline indicates a lack of expertise and/or preliminary analysis by the Customer.

11.5 The Customer shall ensure that its Authorised Users have the appropriate computer skills to undertake the Software training.

12. RESUMPTION OF SERVICES

12.1 In circumstances where the Customer wishes to resume Services after an interruption in coverage (for example, due to termination for failure to make a payment or following a suspension by the Company), the Customer may reinstate the provision of the Services with 90 days written notice to the Company only if the Customer pays the Company the Fees which would have been payable over the intervening period had the Customer not cancelled the provision of Services, and the Customer installs (at its own cost) all Updates and Releases of the Software released over the intervening period, as supplied by the Company. An additional Fee may be payable as the Company requires.

12.2 The Company reserves the right to undertake a review of the Customer's system to ascertain if any changes have been made that may be material to the supportability of the system. A review of the Customer's system may include an on-site visit by a Company engineer and the compilation of a report describing the configuration of the system plus any pertinent diagnostics, which must be rectified prior to the resumption or non-suspension of Services.

12.3 A review of the Customer's system is a fixed price professional service at applicable Standard Rates.

13. INDEMNITY

The Customer indemnifies and shall keep the Company and its Related Bodies Corporate and Personnel indemnified against all and any claims, actions, damages, outgoings, charges, payments paid or suffered, losses, costs, amounts incurred, expenses and liabilities, which any of them may incur or suffer or may be liable for in connection with the death, personal injury or damage incurred or sustained by any person, directly or indirectly,

as a result of the negligence, default, breach or omission of the Customer, its Related Bodies Corporate and affiliates, its and their employees, agents, contractors, managers and other persons or entities, in connection with the provision by the Company of the Services or any Professional Services to or for the Customer except to the extent that the death, personal injury or damage is directly caused by the Company or its Related Bodies Corporate.

14. STATUTORY GUARANTEES + LIMITATION OF LIABILITY

14.1 Certain provisions of the *Competition and Consumer Act 2010* (Cth) (including, without limitation, the Australian Consumer Law) and other State, Territory or Commonwealth laws in Australia, as amended or replaced from time to time (collectively, **ACL**) provide **consumers** (as that expression is used in the ACL) and others with certain rights (collectively, the **consumer guarantees**) in relation to goods or services purchased by consumers.

14.2 The Company does not give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, with respect to the supply by the Company of any goods or services in connection with his Agreement, except as expressly set out by way of consumer guarantee (as may be relevant).

14.3 Subject to clauses 14.1, 14.2, 14.4 and 14.1 the aggregate liability of the Company for breach of or liabilities under, in respect of and in connection with this Agreement and any Professional Services Agreement, Statement of Work, Proposal, Purchase Order, Software as a Service Agreement related to it as well as its duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis is limited to the greater of:

14.3.1 an amount equivalent to the value of the following remedy or amount:

A in the case of goods (which for these purposes includes any licensed software or third party software licensed to the Customer) - the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; or

B in the case of services (which for these purposes includes use of any Hosted Software and any hosted third party software) - the supply of the Services again or the payment of the cost of having the Services supplied again; and

14.3.2 the amount paid or indemnified by an insurer in favour of the Company in respect of the liability to the Customer under an insurance policy required to be taken out by the Company under a relevant Purchase Order, Professional Services Agreement Statement of Work or Proposal, or the amount the Company would have been entitled to be paid or indemnified for such liability by such an insurer but for any failure by the Company to effect, maintain or claim under an insurance policy required by this Agreement; or

14.3.3 where a dishonest act or omission of the Company results in an insurer lawfully declining the Company's coverage under an insurance policy required to be taken out by the Company under a relevant Purchase Order, Professional Services Agreement, Statement of Work or Proposal (which liability of the Company to the Customer would be, but for the dishonest act or omission, covered by insurance), the amount equal to the indemnity that would have been payable under such insurance coverage in respect of the liability of the Company to the Customer if the dishonest act or omission had not occurred.

14.4 Subject to rights that the Customer may have under the ACL, which are not excluded, modified or restricted (to the extent to do so is unlawful), the Company is not liable to the Customer or any other person, whether in contract, tort or otherwise, for any loss or damages (including without limitation specific, indirect, consequential or economic loss) howsoever caused arising from any event.

14.5 In no circumstances, but subject to clause 14.4, will either Party be liable to the other or its successors in title or permitted assignees for any indirect or special or consequential loss or damage arising out of, in connection with or relating to the performance, breach, termination or non-observance of this Agreement. Each Party agrees that loss of profits, revenue, goodwill,

bargain, opportunities, loss or corruption of data or loss of anticipated savings however and whenever occurring, will constitute indirect or consequential loss or damage.

15. TERMINATION

15.1 This Agreement terminates immediately if the Software as a Service Agreement terminates.

15.2 Either the Company or the Customer may terminate this Agreement for any reason upon not less than 90 days' prior written notice to the other, such termination to take effect at the end of the Initial Term or any Subsequent Term (as the case may be) but without prejudice to antecedent rights and continuing obligations.

15.3 The Company may terminate this Agreement immediately by notice in writing to the Customer if:

15.3.1 the Customer fails to pay any sum payable under or in connection with this Agreement, the Software as a Service Agreement, a Statement of Work, a Proposal, a Professional Services Agreement, a Purchase Order or other relevant agreement or document on or before the due date for payment of that sum; or

15.3.2 the Customer materially breaches any term of this Agreement, the Software as a Service Agreement, a Statement of Work, a Proposal, a Professional Services Agreement, a Purchase Order or other relevant agreement or document not otherwise mentioned in this clause 15.2 and the Customer does not remedy the default or breach (if capable of remedy) to the full satisfaction of the Company within 10 days after receipt by the Customer of a notice from the Company specifying the relevant material breach.

15.3.3 Termination under clauses 15.3.1 and 15.3.2 becomes effective on the date that notice in writing is delivered to the Customer stating that a sum has not been paid or that a material breach has occurred which is not capable of remedy or has not been remedied within the relevant 10 day period.

15.4 If a breach occurs pursuant to clauses 15.3.1 and 15.3.2, the Company may exercise its rights:

- 15.4.1 notwithstanding the prior acceptance of any part of any amount payable under this Agreement;
 - 15.4.2 notwithstanding the occurrence of any previous or other breach; and
 - 15.4.3 without the necessity for any notice to or of any consent or concurrence on the part of any other person.
- 15.5 Upon termination of this Agreement neither Party will have any further obligations under this Agreement other than:
- 15.5.1 in respect of any liability for antecedent breach; or
 - 15.5.2 any liability in respect of provisions of this Agreement which are expressed to continue in full force and effect notwithstanding termination.
- 15.6 Upon termination of this Agreement, the Customer must immediately:
- 15.6.1 subject to clause 15.7, cease to use the Software and certify in writing to the Company that it has done so; and
 - 15.6.2 promptly take such further steps as the Company may reasonably require to vest in the Company all its relevant Intellectual Property Rights.
- 15.7 Any access or hosting charges payable for the continued use of or access to the archive copy of the Software for these purposes only will be payable by the Customer at relevant rates.
- 15.8 Services for the archive copy of the Software can be purchased on an *ad hoc* basis at Standard Rates and must be paid prior to the provision of such support services.
- 15.9 The following clauses of this Agreement shall continue in full force and effect notwithstanding termination of this Agreement: clauses 13 (*indemnity*), 14 (*statutory guarantees + limitation of liability*), 15 (*termination*), 16 (*assignment*), 18 (*governing law*) and 19 (*definitions*).

16. ASSIGNMENT

- 16.1 Subject to the following provisions of this clause 16, the Customer may not assign, dispose of or otherwise transfer this Agreement or any rights or obligations under this Agreement without the prior written permission of the Company.
- 16.2 The Customer may in no circumstances assign or transfer any rights or obligations under this Agreement.

16.3 The Company may assign, in part or in full, its rights and/or obligations under this the Agreement without the consent of the Customer.

16.4 Subject to this clause 16, this Agreement shall be binding on the Parties to it and their respective successors and permitted assigns.

17. FORCE MAJEURE

17.1 Notwithstanding any other provision in this Agreement, no default, delay or failure to perform on the part of the Company will be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the Company, including, but not limited to a Force Majeure Event.

17.2 If a Force Majeure Event arises, the time for performance required by the Company under this Agreement will be extended for any period during which performance is prevented by the event.

18. GOVERNING LAW

This Agreement is governed by the laws of New South Wales which shall have non-exclusive jurisdiction with respect to any disputes.

19. DEFINITIONS

In this Agreement, unless the context otherwise requires or provides:

Agreement means this maintenance + support services agreement.

Authorised Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software.

Business Days means a day which is not a Saturday or Sunday or a bank or public holiday in Sydney, Australia.

Commencement Date means the date stated in a relevant Statement of Work, Proposal, Purchase Order or other relevant document accepted by the Company or as otherwise agreed or applicable.

Company means Productivity Development Solutions Pty Ltd (ACN 147 900 641) of c/- Suite 2, 16 Bull Street, Cooks Hill 2300 but for the purposes of this Agreement shall include its permitted assigns from time to time.

Competitor means another software vendor or developer that is or may reasonably be considered by the Company to be a competitor of the Company.

Customer means the relevant entity identified in a Statement of Work, Proposal, Purchase Order or other relevant document.

Customisation(s) means a development, enhancement or other Modification to the Software which is undertaken by the Company at the request of the Customer pursuant to a Statement of Work, Proposal or other relevant document.

Error means a reproducible failure of the Software to perform in substantial conformity with the Software specifications.

Fees means the fees payable by the Customer to the Company for the Software, and where relevant the standard published fees of the Company for relevant goods and/or services (as the case may be) as stated in a Purchase Order, Statement of Work, Proposal or other relevant document.

Force Majeure Event means strikes, lock-outs or other labour disputes, riots, civil disturbance, actions or inaction of governmental authorities, epidemics, wars, computer downtime, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, nuclear disasters or default of a carrier or any other event which is not within the Company's reasonable control.

Frequency of Payment means the frequency of payment of Fees specified in a relevant Professional Services Agreement, Statement of Work, Proposal, Purchase Order or other relevant agreement or document and in the absence of any stated frequency shall be in advance for the Term.

Hosted Software means the software which is hosted by the Company (or on its behalf) made available and provided as a service to and accessible remotely by the Customer (not being third party software) as stated in a Purchase Order, Statement of Work, Proposal or other relevant document, including each Release, Update and Customisation of that software.

Initial Response Time means the initial response time specified in the Target Response Table in Schedule 1 in relation to each Priority Level.

Information Technology Product includes without limitation, any software, hardware, firmware, operating system, telecommunications or other equipment used for acquisition, storage, processing, display, transmission or reception of data to or from the Software.

Licensed Software means the software to be supplied by the Company (not being third party software) as stated in a Purchase Order, Statement of Work, Proposal or other relevant document, including each Release, Update and Customisation of that software supplied by the Company.

Minor Software Enhancement means any minor Release, Update, modification or "bug fix" which does not necessarily provide materially new functionality, and that is made generally available to the Company's customers

Modification means, in relation to the Software, any adaptation or derivative of the same within the meaning of the *Copyright, Designs and Patents Act 1988* (Cth) (as amended).

Parties means the Company and the Customer.

Personnel means the Company's officers, employees, agents, nominees, authorised representatives, carriers, delegates and sub-contractors.

Priority Levels means the priority levels specified in Schedule 1.

Professional Services Agreement means an agreement in writing between the Company and the Customer for the provision to the Customer of professional services.

Purchase Order means an order form or purchase order (howsoever expressed) submitted by the Customer to the Company.

Related Bodies Corporate means as defined in the *Corporations Act 2001* (Cth).

Proposal means an agreement in writing for the provision of goods and/or services which may include certain deliverables and/or Customisations in respect of relevant goods and/or services. Such agreement in writing may incorporate or comprise the terms of or be subject to a Professional Services Agreement.

Release means software which has been produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining (in whole or in part) the original or substantial similar designated purpose of the Software, but for the avoidance of doubt shall not include new software products so designated by the Company (even if the new software has some or all of the same functionality).

Services means the maintenance and support services specified in this Agreement.

Site means the geographical location and title of the mining operation, preparation plant, industrial, port or other facility from which the Software is accessed (as specified in a relevant Software as a Service Agreement, Professional Services Agreement, or other relevant document or agreement).

Software means the Hosted Software and/or the Licensed Software (not being third party software) as the context requires or provides including new Releases and Updates to the extent provided by way of the Services.

Software as a Service Agreement means the software as a service agreement entered into between the Company and the Customer concerning the hosting of the Software.

Standard Rates means the Company's then current standard consultancy rates for professional services.

Statement of Work means an agreement in writing for the provision of goods and/or services which may include certain deliverables and/or Customisations in respect of relevant goods and/or services. Such agreement in writing may incorporate or comprise the terms of or be subject to a Professional Services Agreement.

Support Hours means 8.30 a.m. to 5.00 p.m. Sydney, Australia time on Business Days.

Target Resolution Time means the target resolution time specified in the Target Response Table in Schedule 1 relative to Support Hours.

Target Response Table means the target response table specified in Schedule 1 as varied from time to time, by mutual agreement between the Parties.

Term means the term specified in the Statement of Work, Proposal, Purchase Order or other relevant document but if a term is not so specified, the remainder of the calendar year from the Commencement Date (**Initial Term**), and thereafter (subject to renewal in writing and payment of relevant Fees and other amounts owing or due) on a rolling annual basis for a full calendar year (each a **Subsequent Term**).

Territory means anywhere in Australia, unless specified to the contrary in a relevant Purchase Order, Statement of Work, Proposal or other relevant document (but only to the extent lawful in any particular jurisdiction).

Update means software which has been provided to overcome defects in the Software and includes patches.

Virus means a hidden, self-replicating section of computer software, usually malicious logic, that propagates by infecting - i.e., inserting a copy of itself into and becoming part of another program. This includes malware, worms, trojans and BOTs.

Schedule 1

A. Priority Levels

Priority Level Table

Priority Level 1 (Critical)	<ul style="list-style-type: none"> - An error that causes the software and/or hosting service to be unavailable, inoperable or materially degraded; or - An error that results in loss or corruption of data.
Priority Level 2 (Severe Impact - Functionality Disabled)	<ul style="list-style-type: none"> - An error which is not a critical error, but which materially and adversely affects the use of the software; or - An error that causes intermittent system failure.
Priority Level 3 (Degraded Operations)	<ul style="list-style-type: none"> - An error that causes non-critical features to consistently malfunction; or - Specific functions of the software do not perform as intended (as documented on the product support website) and adversely affect the use of the software.
Priority Level 4 (Minimal impact)	<ul style="list-style-type: none"> - Specific functions of the software do not perform as intended (as documented on the product support website) and do not adversely affect the use of the software; or - Cosmetic deficiencies in the software that do not adversely affect the use of the software.

B. Target Response Table

Target Response Table

Priority Level	Initial Response Time	Target Resolution Time	Nature of support
1	2 hours	4 hours	The problem will be worked on until fixed or a patch applied in the Support Hours
2	4 hours	12 hours	The problem will be worked on until fixed or a patch applied in the Support Hours
3	6 hours	40 hours	<p>The problem will be attended to in a mutually agreed time which avoids critical disruption of the Customer's operations.</p> <p>AND/OR</p> <p>The problem will be scheduled into the Company's normal work program in the Support Hours</p>
4	24 hours	160 hours Release	<p>The problem will be attended to in a mutually agreed time which avoids critical disruption of the Customer's operations.</p> <p>AND/OR</p> <p>The problem will be scheduled into the Company's normal work program in the Support Hours</p>