

THE ACCESS GROUP (APAC)

STANDARD TERMS AND CONDITIONS

BACKGROUND

1. We are a provider of Access Products and You wish to be provided with Access Products.
2. You wish to be provided with Access Product, technical support, and the benefit of IT consulting services on request.
3. The Parties have agreed that these Terms and Conditions and the relevant Statement of Work(s) will collectively make up the Framework Agreement (as more particularly defined below) and will apply to the supply of Access Products by Us to You.

THIS FRAMEWORK AGREEMENT COMPRISES OF

1. The Statement of Work(s); and
2. These Terms and Conditions, being:
 - 2.1 **Background, Definitions and Interpretations**
 - 2.2 **Core Terms** at Schedule 1: these govern the relationship between Us and You across any Access Product.
 - 2.3 **Product Specific Terms** at Schedule 2: these apply only to the extent that We are to provide You with that Access Product.

DEFINITIONS AND INTERPRETATION

In this Agreement (including the Statements of Work) the following expressions shall have the following meanings:

Acceptable Use Policy	means the following policy which is available here: Acceptable Use Policy .
Access Group (APAC)	means Access Workspace Pty Ltd (ACN 636 482 383) of Level 11, The Zenith Tower B, 821 Pacific Highway, Chatswood NSW 2067 Australia (as such address may be updated from time to time) or an Affiliate.
Access Product	means SaaS, Software (including components or modules that are owned by Us and made available under this Agreement either on premise or in the cloud), FlightPath, Direct Debit, Hosting Infrastructure Services, Managed Services, Variable Consumed Services or other product or service provided by Us to You and as may be further described in the Statement of Work. Where multiple Access Products are purchased, the definition shall apply to multiple Access Products.
Affiliates	means any entity that directly or indirectly controls, is controlled by, or is under common control with, the subject entity, where "control" is the direct or indirect ownership or control of at least a majority of the voting rights in the entity, or otherwise the power to direct the management and policies of the entity. An entity is an Affiliate only so long as such control continues.
Agreement	means the Framework Agreement, as described above.
Annual Licence Fees	means the fee payable for the Licence in each 12-month period, as set out in clause 3 of Schedule 1.
Authorised User	means any employee of Yours that You have authorised to use an Access Product.
Business Days	means Monday to Friday excluding bank holidays and public holidays in the country You are located.
Business Hours	means the hours of 0900 to 1700 in the country You are located on Business Days unless otherwise specified in the Customer Success Plan.
CaaS	Content as a Service means the cloud based online Access Product as set out in a Statement of Work.
CaaS Content Maintenance Statement	means the following statement which is available here: Content Maintenance Statement .
Confidential Information	means any information, however conveyed or presented that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by the party as being confidential to it (whether or not it is marked "confidential information"), or which ought reasonably be considered to be confidential.
Consulting Services	means the consultancy services specified in an applicable Statement of Work and may include, but not be limited to, FlightPath, training, implementation, configuration, integration and/or general IT consultancy services.
Customer Data	means any data submitted by Permitted Users, or otherwise on Your behalf, into the Access Product and/or Service.
Customer Success Plans	means any packaged support service that is specified in the Statement of Work.
Customer Materials	means any material provided or made available by or on behalf of You to Us for the purposes of incorporation into the SaaS for You, including any registration data supplied by You but excluding Customer Data.
Customer System	means Your computer equipment, operating system, computer network infrastructure hardware and associated telecom links and networks.
Data Breach	means, in respect of any of Your data held by Us under this Agreement, any (i) unauthorised access to, modification or disclosure of; or (ii) any interference with loss or misuse of; such data.
Direct Debit Authority	means the Direct Debit Authority attached to the Statement of Work.
Documentation	means documents or on-line help (provided in any media) relating to the Access Product which may be updated from time to time. This definition includes any documents within the Schedules to this Agreement.
Effective Date	has the meaning set out clause 1.5 of Schedule 1.

End User	means the person who uses the relevant Access Product.
Event of Insolvency	means the situation in which a party becomes insolvent, has an insolvency practitioner appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution for it to be wound up (otherwise than in the furtherance of a scheme for solvent amalgamation or reconstruction), or an analogous event occurs in respect of a party in any jurisdiction to which that party is subject.
Exit Policy	means (if applicable) the policy document which sets out the manner in which We enable You to exit an Access Product, which may be updated from time to time.
Fees	means the Annual Licence Fee, Initial Licence Fee, Support Fees, SaaS Fee, and fees for Services or any of them and any other fees, charges costs and expenses paid or payable under this Agreement by You.
FlightPath	means (if applicable) a defined implementation for Access Product as set out in a Statement of Work.
Further Term	means a further term of 12 months commencing at the conclusion of the Initial Term or any Further Term.
Group Companies	means any company which is a holding company or subsidiary of Yours, or a subsidiary of a holding company of Yours.
Hosting Infrastructure Services	means the deployment set out in the relevant hosting Statement of Work.
Initial Licence	means, if applicable, the permission granted to the Licensee to hold the Software only but not access or use the Access Product.
Initial Term	means 36 months from the Start Date or other such period as is set out in a Statement of Work.
Initial Licence Fee	means the fee for the Initial Licence (if applicable) as set out in the relevant Statement of Work.
Installation Date	means the sooner of go live or 90 days after the Effective Date.
Intellectual Property Rights	means all intellectual and industrial property rights, including patents, trademarks, logos, brand, company names, rights in databases, rights in designs, inventions, discoveries, know-how and copyrights (including rights in computer software) (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
Licence	means the permission granted to the Licensee to Use (if applicable) the Access Product on the terms of this Agreement during the Term.
Licence Fee	means the fee payable for the Licence as specified in the Statement of Work (as may be amended from time to time in accordance with clause 1.1 of Schedule 2).
Licence Term	means the Initial Term plus any Further Term.
Licensee	means You and/or the Permitted Users.
Managed Server	means a hardware device that is hosted in a data centre by Us and provided to the Client for their use. We provide hardware support, rack space, power and network connectivity for such servers either directly or via an external hardware support provider which may be the vendor or an accredited third party.
Notice	means in accordance with clause 13.11 of Schedule 1.
Party	means You and Us and collectively the 'Parties'
Payroll Services	means payroll services as set out in the applicable Statement of Work.
Permitted Users	means the permitted entities of the Access Product which shall be You (excluding any Group Companies) or as set out in the Statement of Work.
Personal Information	means information or an opinion about an identified individual, or an individual who is reasonably identifiable.
Privacy Laws	means any applicable laws that deals with the regulation, storing and using of Personal Information in the country You are located.
Privacy Policy	means the Access Privacy Policy.
Services	means, as applicable, the Technical Support, Consulting Services, and hardware support to be provided by Us and as set out in Statements of Work.
SaaS	Software as a Service means the cloud based online Access Product as set out in the Statement of Work.
SaaS Fee	means the fee payable for the SaaS in each 12-month period as set out in clause 3 of Schedule 2.
Service Location	means the location(s) where the Services will be provided, as set out in the Statement of Work.
Software	means Access Software and Third-Party Software specified in an applicable Statement of Work but, for the avoidance of any doubt, not including SaaS.
Specification	means (if any) each specification for the Access Product(s) as set out in the relevant Documentation and/or the Statement of Work.
Statement(s) of Work	means each statement of work specifying the Access Products to be supplied under this Agreement which incorporate these Terms and Conditions. For the avoidance of doubt, an order form signed by You will be a Statement of Work for the purposes of this Agreement.

Start Date	means either the Effective Date or such other date as set out within a Statement of Work.
Subscription	means the subscription purchased by You that authorises You to access and use the SaaS and CaaS.
Subscription Term	means the term for which access to the SaaS and/or CaaS is granted, as set out in the Statement of Work.
Support Fee	means either the fee for the Technical Support as set out in a relevant Statement of Work, or in the case of Customer Success Plans, the Customer Success Plan Fee.
Technical Support	means technical operating support in relation to the operation and/or use of the Access Product(s).
Terms and Conditions	means these terms and conditions.
Third Party Software	means software or SaaS that is owned by a party other than either You or Us which may be supplied under this Agreement as specified in a Statement of Work.
Thresholds	means any thresholds for use of any Access Product set out in a Statement of Work.
Variable Consumed Services	means services which are chargeable, as consumed, and offered in conjunction with Our Access Product(s) subject to any minimums payment as included in a Statement of Work.
Warranty Period	means the applicable warranty period for the Access Product(s) being 12 months from the start of the Initial Licence or SaaS provision, as the case may be, unless otherwise as set out in an applicable Statement of Work.
We (Us, Our)	means The Access Group (APAC) and its Affiliates
You (Your)	means the customer as set out in the Statement of Work.

Other terms in boldface have the respective meanings given to them elsewhere in this Agreement.

SCHEDULE 1 CORE TERMS

1. TERM AND STATEMENT OF WORK

- 1.1. This Agreement is for the Initial Term and will continue for consecutive Further Terms unless terminated in accordance with clause 6.
- 1.2. This Agreement shall subsist for as long as at least one Statement of Work subsists. Termination of any one Statement of Work shall not affect any other Statement of Work, save where specified therein, (although if grounds to terminate apply to the Agreement or to multiple Statements of Work, then each affected Statement of Work may be terminated simultaneously).
- 1.3. For the supply of further Access Product, the parties shall agree a new Statement of Work. Unless an express statement to the contrary is included in a new Statement of Work, all Statements of Work will be governed by the Terms and Conditions attaching to the Statement of Work which has most recently been entered into between the parties.
- 1.4. If there is any conflict or inconsistency between any provision of these Terms and Conditions and any Statement of Work, these Terms and Conditions shall prevail unless specifically stated in writing in a Statement of Work with reference to this clause.
- 1.5. Each Statement of Work will be effective on execution by authorised signatories from each party and the Effective Date shall be deemed to be the date on which You executed the Statement of Work or such other date as set out on the Statement of Work.

2. TIME AND MATERIALS

- 2.1. All Consulting Services to be carried out by Us are on a time and materials basis or on the basis of a 'FlightPath' (as applicable).
- 2.2. Except as set out in this Agreement, all dates, timescales and Consulting Services are estimates only and the actual fees payable will be determined on a time and materials basis. Furthermore, due to projects often requiring a collaborative nature the Parties agree that failure to meet a specified date will not be treated as a breach of contract by Us.

3. FEES AND PAYMENT

- 3.1. You agree to pay the Fees in accordance with the terms specified in each Statement of Work and without deduction or set off. The Fees are non-refundable.
- 3.2. All Fees and other charges are exclusive of any applicable taxes or duties which will be added at the appropriate rate.
- 3.3. We have the right to increase all Fees annually. For the avoidance of doubt, the Annual Licence Fees, as set out in each Statement of Work will not be reduced for the Licence Term.
- 3.4. At the conclusion of the Initial Term, We reserve the right to revert Fees to the then current price list.
- 3.5. We reserve the right to suspend the supply of and/or access to the Access Products to You where any amounts owed by You to Us are overdue (except for Fees being disputed reasonably and in good faith) and remain overdue 30 days after Us having provided You written notification (which may be by email) of such default, until all such amounts have been paid in full (together with any accrued interest). Interest shall be payable on overdue amounts at a rate of 4% per annum above the base rate of HSBC in the country You are located from time to time. All potential disputes relating to Fees shall be raised in advance of the payment due date.
- 3.6. All Fees must be paid via the Australian Direct Debit payment system (and You agree to complete the Direct Debit Authority) or by credit card. You recognise and agree that by completing a Direct Debit Authority We are authorised to debit the Fees from Your nominated account.

4. USE OF ACCESS PRODUCTS

- 4.1. You acknowledge that any Access Products are provided on an "as is" basis and have not been prepared to meet Your individual requirements. It is Your responsibility to ensure the Access Products meet Your requirements.
- 4.2. The right to use (whether by Licence or otherwise) Access Products is granted to You, as identified by Your relevant company registration number, or other unique identifier, where applicable, and the right to use will transfer with You should Your ownership change, provided that the company registration number does not change.
- 4.3. The Access Products may be used by the Permitted Users.
- 4.4. You acknowledge that the use of Access Products may be restricted by Thresholds. In the event of the excess usage above a Threshold, We will invoice You for the excess usage from the time the excess usage commenced for the then current Subscription Term and increase the relevant Threshold and associated Fees for the Following Subscription Term in accordance with the prevailing rates.
- 4.5. You shall ensure the security and confidentiality of all log-on identifiers, including usernames, passwords or any other credentials, assigned to, or created by, You or any Authorised User in order to access or use any Access Product (an ID). You acknowledge and agree that You will be solely responsible for all activities that occur under such ID. You shall promptly notify Us upon becoming aware of any unauthorised access to or use of any Access Product and provide all reasonable assistance to Us to bring an end to such unauthorised access or use. Your ID is for Your internal use only and You may not sell, transfer or sublicense any ID to any other entity or person, except that You may disclose ID to Authorised Users in accordance with this Agreement.
- 4.6. You shall designate one contact and one alternate as the responsible party for communication with Us during any term of this Agreement (**Your System Administrator**). You may amend Your System Administrator by Notice to Us from time to time.
- 4.7. You shall ensure that each Authorised User shall, as a condition of being granted access to an Access Product, be required by Your System Administrator to acknowledge the obligations on You under this Agreement respecting authorised use (and restrictions on use) of and agree to comply with the same. You shall immediately notify Us if You become aware of any breach of the terms of this Agreement or Our Acceptable Use Policy by any Authorised User.
- 4.8. You will ensure that all Authorised Users comply with Your obligations under this Agreement, including Our Acceptable Use Policy, and that the terms of any agreement entered into between You and an Authorised User for the use of the SaaS are consistent with this

Agreement. If You become aware of any violation of Your obligations under this Agreement by an Authorised User, You will immediately terminate such Authorised User's access to the SaaS.

- 4.9. Except to the extent such actions cannot be prevented, You, any Authorised User and any Permitted User, shall not (nor permit any third party to) disassemble, decompile, modify, support, maintain, adapt, reverse engineer, merge or make error corrections to any Access Product, in whole or in part, or in any way expose the source code, instruction sequences, internal logic, protocols, or algorithms of any Access Product. Nothing in this clause shall prevent You from configuring interfaces and other elements in an Access Product which are intended by the parties to be configured by You.
- 4.10. You acknowledge that You have no right to have any Access Product in source code form or in unlocked coding of any kind. You agree that You must not attempt to (nor permit any third party, or agree to use any systems, process or software) in any way remove or circumvent any security devices present within an Access Product.
- 4.11. You have no right to perform penetration testing on any Access Product without Our prior written consent which will be subject to a specific penetration test access agreement.
- 4.12. Where Third Party Software is provided under this Agreement, We may provide such software to You under the software licence terms provided by the third-party licensor of such software. Upon notification from Us, You undertake to comply with the terms of any End User Licence Agreement for Third Party Software in relation to Third Party Software.

5. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

- 5.1. You acknowledge that all Intellectual Property Rights (including any new Intellectual Property Rights) arising out of or in connection with the Access Products and associated Documentation, belong at all times to Us or Our licensors.
- 5.2. Nothing in this Agreement shall transfer any Intellectual Property Rights in or arising from Access Products or Documentation to You but that these shall remain vested in Us or Our licensors. No rights to use any such Intellectual Property are granted, except as expressly stated in these Terms and Conditions or the relevant Statement of Work. If, notwithstanding this, any Intellectual Property Rights in or arising from the Access Product and/or Documentation are acquired by You (including any new Intellectual Property Rights), You hereby assign (and to the extent that any such Intellectual Property Rights are not capable of such assignment, agree to hold on trust) and agree to do all such things and sign all such documents as We may reasonably require in respect of the assignment of all such Intellectual Property Rights to Us or Our licensors as may be appropriate.
- 5.3. Subject to clauses 5.6 and 5.7, We will indemnify You against all direct costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against You arising out of or in connection with any claim that Your use of the Access Product(s) any Documentation, information, data, computer facilities or material that We supply, infringes a third party's Intellectual Property (**Infringement Claim**).
- 5.4. We warrant that We are not aware that the Access Product(s) any Documentation, information, data, computer facilities or material that We supply, or Your use of the same in accordance with the terms of this Agreement, will infringe any third party's Intellectual Property Rights but We have not carried out any investigation into the same. We shall indemnify You against all direct costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against You arising out of or in connection with any breach of the warranty contained in this clause.
- 5.5. If an Infringement Claim is alleged or threatened against either You or Us, or if We believe that the Access Product or the Documentation or any part thereof may infringe any third party's copyright or registered patent (effective at the date of this Agreement), We may, at Our sole option, (i) procure such licence, authorisation or consent as is necessary to enable Your continued use of the Access Product and/or the Documentation; (ii) modify or replace the same as necessary to avoid infringement without any material adverse effect to the functionality of the Access Product; or (iii) terminate this Agreement and/or the affected Statement of Work and refund an amount equal to the unused portion of any Annual Licence Fees pre-paid in respect of such Software (as the case may be) to You.
- 5.6. You shall permit Us to have access upon reasonable Notice during the Licence Term to inspect during Business Hours the premises and the Customer System at or on which the Software is being kept or used, and any records kept pursuant to the Licence, for the purposes of ensuring that You are complying with the terms of this Agreement. In carrying out such an inspection We will comply with any reasonable restrictions You require, and We will only request such an inspection where We believe We have reasonable cause to do so. In the event that You have unauthorised copies of the Software, without prejudice to any other rights or remedies that We may have, You shall pay an additional fee to Us in respect of any such unauthorised copies calculated by reference to the standard list price prevailing at the date of invoice in respect of such Software.
- 5.7. Without prejudice to clause 5.8, We shall only be liable under the terms of this Agreement for an Infringement Claim or alleged Infringement Claim if (i) You promptly notify Us of any infringement or alleged infringement of which You are aware, or ought reasonably to have been made aware of; (ii) You make no admission as to liability or agree any settlement of such claim without Our prior written consent; (iii) You allow Us (or a relevant third party supplier), at Our expense, to conduct and/or settle all negotiations and litigation arising from any claim or action relating to the alleged infringement; and (iv) You, at Our expense, give Us (or a relevant third party supplier) such reasonable assistance as may be requested in such settlement or negotiation.
- 5.8. We shall have no liability for any Infringement Claim or alleged Infringement Claim to the extent such claim arises from (i) possession, use, development, modification, or operation of the Access Product or part thereof by You other than in accordance with the terms of this Agreement, the relevant Statement of Work or the Documentation; (ii) failure by You to take any reasonable corrective action directed by Us (including using an alternative, non-infringing version of the Access Products); or (iii) is based upon any item provided by You and incorporated into the Access Product(s) or used in combination with the Access Product(s) at Your request.

6. TERMINATION AND SUSPENSION

- 6.1. If a party is in material breach of its obligations (which are capable of remedy) under this Agreement, the party not in breach must provide

Notice to the party in breach providing that party 30 days to remedy the material breach. If the material breach is not remedied the party affected by the breach may, without prejudice to its other rights and remedies and at its option, terminate the Agreement or any affected element of the Access Product by a further Notice to the other party.

- 6.2. If a party is in material breach of its obligations (which are capable of remedy) under a Statement of Work, the other party not in breach must provide Notice to the party in breach providing that party 30 days to remedy the material breach. If the material breach is not remedied the party affected by the breach may, without prejudice to its other rights and remedies and at its option, terminate the Agreement or any affected element of the Access Product (provided that such Access Product can be effectively severed from the other Access Products) by a further Notice to the other party.
- 6.3. Either party may terminate this Agreement with immediate effect on Notice if the other party is subject to an Event of Insolvency or in the event of a material breach incapable of remedy.
- 6.4. Either party may terminate a Statement of Work (and, if applicable, this Agreement) at the end of the Initial Term or Further Term (as applicable) by giving not less than 90 days' prior Notice to the other Party.
- 6.5. We may suspend and/or terminate the Technical Support immediately if You do not pay the Support Fees by the due dates.
- 6.6. The termination of this Agreement or any Statement of Work in whole or in part for whatever reason shall not affect any provision of this Agreement which is expressed, or by its nature, implied to continue, survive or come into force in the event of such termination.
- 6.7. Upon termination of this Agreement or any Statement of Work in whole or in part for any reason:
 - 6.7.1. the Parties shall (without prejudice to any other rights and remedies) promptly pay to each other all sums which are due or outstanding in respect of part of the Agreement or Statement of Work that has been terminated;
 - 6.7.2. the Parties shall, upon the request of the other, either delete or return any Confidential Information, save for nothing will prevent either party from retaining any Confidential Information as may be required by the applicable law;
 - 6.7.3. You, Your Permitted Users and Authorised Users, shall cease all access and use of the Access Product(s) and shall, at Our request, return or destroy as soon as reasonably practicable any copies of the Access Product(s) subject to such termination; and
 - 6.7.4. We will manage Your discontinued use of the Access Product(s) or cessation of Your use of the Access Product(s) in accordance with any Exit Policy and shall cease all access to the Customer System. Where such Exit Policy does not exist, We shall do so in accordance with any applicable law and good industry practice.

7. CONFIDENTIAL INFORMATION

- 7.1. Each party may be given access to Confidential Information from the other party either in pre-contractual discussions or in order to perform its obligations or receive delivery under this Agreement. Confidential Information will not be deemed to include information that:
 - 7.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 7.1.2. was in the other party's lawful possession before the disclosure;
 - 7.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 7.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence;
- 7.2. Subject to clause 7.4 each party will hold the Confidential Information in confidence and not make the Confidential Information available to any third party or use the other's Confidential Information for any purpose other than as contemplated by this Agreement.
- 7.3. Each party may disclose the other party's Confidential Information to its employees, agents and sub-contractors only as reasonably required to perform its obligations under this Agreement and shall procure that any employees, agents or sub-contractors to whom such information is disclosed enter into written confidentiality obligations in respect of such Confidential Information that are at least as stringent as those in this clause 7.
- 7.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 7.5. Where Confidential Information is shared pursuant to clause 7.4, neither party will be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party;
- 7.6. The provisions of this clause 7 will continue notwithstanding the termination of any Statement of Work and/or these Terms and Conditions for any reason.

8. DATA AND PRIVACY

- 8.1. We must comply with the Privacy Laws in respect of all Personal Information disclosed to Us by You.
- 8.2. You must comply with the Privacy Laws in respect of all Personal Information which is disclosed to Us, or collected by the You in relation to Your use of the Access Products.
- 8.3. Where You disclose or input any Personal Information in connection with the Access Products, You warrant that You have the express written consent of the relevant individuals to disclose or input that Personal Information.
- 8.4. Any Personal Information We collect or hold in providing the Access Products will be handled in accordance with Our Privacy Policy. You agree that You consent to the collection, use and disclosure of Personal Information by Us in accordance with Our Privacy Policy. If the Access Product's log-in page incorporates a separate privacy policy, the Access Product's specific privacy policy shall take precedence over the Privacy Policy to the extent of any inconsistency.
- 8.5. If You obtain Third-Party Software that requires access to, or transfer of, Customer Data, You acknowledge that any such access or transfer is between You and the provider of the Third-Party Software (**Third-Party Provider**) pursuant to the Third-Party Provider's privacy notes and policies.

- 8.6. At any time, You may provide Us Notice authorising Us to provide Customer Data requested by the Third-Party Software. We are not responsible for any modification, loss, damage or deletion of Customer Data by Third-Party Software.

9. MANAGEMENT OF DATA BREACHES

- 9.1. In the event of a Data Breach, We will:
- 9.1.1. promptly notify You in writing;
 - 9.1.2. promptly take all reasonable steps to remediate the Data Breach and mitigate the risk of harm (if any) to any individuals affected by the Data Breach; and
 - 9.1.3. co-operate with You in investigating what has occurred and the circumstances of the Data Breach, including by providing all information reasonably requested by You for the purpose of determining the likelihood that the Data Breach will result in serious harm to any individual affected by the Data Breach.
- 9.2. If either You or Us determine or has reasonable grounds to believe that a Data Breach is serious and reportable to the privacy authority, then the Parties will work together to coordinate any notifications required under applicable Privacy Laws. You must not make any required notification unless You have first obtained Our prior written consent (such consent not to be unreasonably withheld).
- 9.3. If We provide Access Products over the internet via networks We only partially control. Our obligations under this clause 9 extend only to networks and equipment within Our control and We are not responsible for any delay, loss, interception or alteration of Customer Data on a network or infrastructure outside Our control.
- 9.4. Nothing in this clause 9 requires a party to take any action, or refrain from taking any action, that would result in that party breaching its obligations under any applicable Privacy Laws.

10. LIMITATION OF LIABILITY

- 10.1. Except as set out in this Agreement, all warranties, conditions and other terms whether express or implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 10.2. Subject to clause 10.4, the total liability of either party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with this Agreement or any Statement of Work shall be limited to an amount equal to the Fees paid or payable to Us in the preceding 12-month period under the relevant Statement of Work.
- 10.3. Subject to clause 10.4, neither party shall be liable for any misrepresentation (other than fraudulent misrepresentation), loss of profits, loss of business, goods or contract, depletion of goodwill or loss of use (in each case whether direct or indirect), punitive damages, cost or procurement of substantive service nor for any indirect, special incidental or consequential loss or damage suffered by the other in connection with this Agreement whether an action is in contract or tort and regardless of the theory of liability, even if a party has been advised of the possibility of such damages. The foregoing disclaimer will not apply to the extent prohibited by law.
- 10.4. Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury resulting from negligence; fraud; or any other liability which may not be properly limited or excluded under applicable law nor in respect of the indemnities given in clauses 5.3 or 5.4 nor (for the avoidance of doubt) your obligation or liability to pay all and any of the Fees under this Agreement.

11. THIRD-PARTY SERVICES AND SOFTWARE

- 11.1. We may present to You services offered by a third party (Third-Party Services) or Third-Party Software.
- 11.2. We do not endorse or make any representation, warranty or promise regarding, and do not assume any responsibility for, any such Third-Party Services or Third-Party Software, regardless of whether it is described as "authorised", "certified", "recommended" or the like and regardless of whether the Third-Party Services or Third-Party Software are included in Your Statement of Work. You should review the applicable terms, conditions and policies, including the privacy and data gathering policies, and should make whatever investigation You feel is necessary or appropriate before obtaining Third-Party Services or Third-Party Software.
- 11.3. We have no obligation to provide support for the Third-Party Services or Third-Party Software and do not guarantee the initial or continuing interoperability of Access Products or Services with any Third-Party Services or Third-Party Software.
- 11.4. If the Third-Party Services or Third-Party Software cease to be available for interoperation with any such feature of the Access Product or Services, on reasonable terms and without liability We may cease providing any such feature.

12. DISPUTE RESOLUTION & GOVERNING LAW

- 12.1. This clause 12 shall not apply to unpaid undisputed Fees which, for the avoidance of any doubt, shall be deemed to be a material breach and shall be dealt with under clause 6.1 or 6.2 as applicable.
- 12.2. Where discussions take place between Parties to explore and /or resolve dissatisfaction such discussions shall take place on a "without prejudice basis" save for where otherwise expressed to be made on an open basis.
- 12.3. In the event of any other dispute, or where the Parties agree, any dispute over Fees, the Parties agree to the following dispute resolution procedure (**Dispute Resolution Procedure**):
- 12.3.1. If a dispute arises between the Parties in relation to any other matter, the representatives for each Party in relation to the applicable Statement of Work shall, in the first instance attempt to agree on a resolution for such dispute. If after 30 days (or such other time as agreed) such representatives are unable to resolve the dispute the Parties shall arrange for a senior representative to attend one or more meetings solely in order to resolve the matter in dispute. Such meetings shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question.
 - 12.3.2. If the senior representatives are unable to resolve the matter in question within 30 days (or such other time as agreed) then the Parties will have recourse to mediation in accordance with the Resolution Institute Mediation Rules (or any other mediation procedure as agreed). To initiate a mediation either party may give Notice (Mediation Notice) to the other requesting mediation of the dispute and shall send a copy thereof to the Resolution Institute or agreed equivalent mediation organisation asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither Party will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve

the dispute. Each Party will co-operate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or, in the absence of such determination, such costs will be shared equally.

12.3.3. The Parties accept that in mediating prior to court proceedings commencing, the issues in dispute may not be fully articulated.

12.3.4. If a dispute is not resolved in accordance with the Dispute Resolution Procedure, then such dispute can be submitted by either party to the non-exclusive jurisdiction of the courts as shown in Table A.

12.3.5. Nothing contained in this clause 12 shall restrict either party's freedom to commence summary proceedings to procure or ensure performance of obligations and/or any required action to prevent further damages, preserve any legal right or remedy or to prevent the misuse of any of its Confidential Information.

12.4. This Agreement is governed by, and shall be construed in accordance with Table A.

13. GENERAL

13.1. No variation of these Terms and Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives). For the avoidance of doubt, an email exchange will not constitute effective variation.

13.2. Each provision of this Agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

13.3. The Parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement.

13.4. The laws in the country You are located may afford You certain non-excludable rights, such as guarantees about fitness for purpose and acceptable quality. Nothing herein shall be read to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which cannot be excluded, restricted or modified. For example, under the **Australian Consumer Law (ACL)**, consumers have certain rights which cannot be excluded. Nothing in this Agreement shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

13.5. As both Parties benefit from the certainty of setting out all relevant rights and liabilities, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreements, whether written or oral, made between us, save that the foregoing shall not exclude any fraud or fraudulent concealment. In entering into this Agreement, You acknowledge and accept that You have not relied on any pre-contractual statement.

13.6. Subject to Your approval, we may refer to You as a client and as a user of Access Products in Our marketing and public relations materials.

13.7. With the exception of payment obligations, if due performance of this Agreement by either party is affected in whole or in part by any reason or any event, delay or failure beyond the reasonable control of such party and occurring without that party's fault or negligence, with the exception of strikes or other labour problems involving Our or Your employees, respectively ("**Force Majeure Event**"), such party shall give prompt Notice to the other party and shall be under no liability for any loss, damage, injury, or expense of whatever kind, howsoever caused, suffered by the other party due to the affected performance. Such party shall use reasonable efforts to avoid or overcome the causes affecting performance as soon as it becomes practical to do so. Notwithstanding the foregoing, if the Force Majeure Event continues for a period of 45 days or more, the party not experiencing the Force Majeure Event may terminate this Agreement upon written notice to the other to be provided no later than 15 days after the 45th day of the Force Majeure Event.

13.8. You shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of Your rights or obligations under this Agreement, or purport to do so, without the prior written consent of Us. We may transfer or assign this Agreement to any current subsidiary or parent company, or successor in interest in the event of a sale or merger, such transfer or assignment to be effective upon Notice to You.

13.9. Any failure to exercise or delay by either Party in exercising a right or remedy arising in connection with this Agreement shall not constitute a waiver of such right or remedy or of any other rights or remedies.

13.10. In performing its obligations under the Agreement, both Parties shall comply with all applicable laws, statutes, regulations.

13.11. Any Notice, claim or demand to be given by either party to the other in connection with this Agreement shall be sufficiently given served or made by (i) written communication; (ii) in English; (iii) provided by email or letter; (iv) expressed as a Notice under or with reference to these Terms and Conditions; (v) addressed to the attention of the appropriate person within that party.

SCHEDULE 2

PRODUCT SPECIFIC TERMS

1. SOFTWARE AS A SERVICE (SaaS)

- 1.1. In consideration of and conditional upon the full payment of the SaaS Fee to Us (on the terms set out in the relevant Statement of Work) We grant You a non-exclusive, revocable, non-transferable right, without the right to grant sub-licences, to use the SaaS. Such right shall commence on the provision of the SaaS and shall continue for the Subscription Term.
- 1.2. We warrant that during the Warranty Period the SaaS, when used in accordance with the Documentation, will operate in all material respects in accordance with the Documentation and Specification (where applicable). We will obtain and at all times during the term of the Agreement maintain all necessary licences and consents and comply with all applicable laws and regulations relating to the SaaS. This warranty is further dependent on all Fees being paid up to date and You using current virus scanning software from time to time. This warranty does not cover minor errors that do not materially affect the functionality of the Software and, for the avoidance of doubt, We do not warrant that the operation of the SaaS will be uninterrupted or error free.
- 1.3. If agreed, We shall configure the SaaS (including any agreed incorporation of any Customer Materials and any agreed integration with Your systems). You will ensure that the Customer Materials are accurate, up-to-date, and complete and compliant with all applicable laws, including Privacy Laws.
- 1.4. We reserve the right to add, delete, and amend features of the SaaS without notice. In relation to any APIs relating to the SaaS that We have changed or discontinued, We will use commercially reasonable efforts to continue supporting the previous version of any API so changed or discontinued, or for 12 months after the change or discontinuation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities).
- 1.5. You understand that the SaaS may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Us and/or content providers who provide content to the SaaS. You may not attempt to override or circumvent any of the usage rules embedded into the SaaS. Any unauthorised reproduction, publication, further distribution or public exhibition of Our Content, in whole or in part, is strictly prohibited.
- 1.6. You acknowledge and agree that We may derive or create anonymous data and information about the use of the SaaS by You and its Users (**Use Data**) and We may use and disclose Use Data to Third-Party Providers in order to improve the SaaS.
- 1.7. You hereby grant to Us a non-exclusive, fully paid, world-wide and irrevocable license to use Customer Data as required to provide the SaaS, and to copy, anonymise, de-identify, aggregate, process, and display Customer Data, to derive anonymous statistical and usage data related to the Service (**Anonymous Data**) to compile, combine or incorporate such Anonymous Data with or into other similar data and information available, derived or obtained from other clients, customers, licensees or users of Ours, or otherwise (collectively, **Anonymous Data** and such compiled, combined or incorporated data and information shall be referred to as **Aggregate Data**). Your grant of licence to Us to copy, anonymise, aggregate, process, use, and display Customer Data and Use Data shall survive the expiry or termination for this Agreement.
- 1.8. While We do not currently do so, We reserve the right to use the Aggregate Data to provide additional services to Our customers, including the copying, publication, distribution, display, licensing or sale of Aggregate Data and related or similar other statistics or data to third parties pursuant to a separate licensing or services arrangement or agreement. We will be the owner of all right, title and interest in and to Anonymous Data and Aggregate Data.
- 1.9. The SaaS SLA is provided here: [SaaS SLA](#).

2. CONTENT AS A SERVICE (CAAS)

- 2.1. In consideration of and conditional upon the full payment of the CaaS Fee to Us (on the terms set out in the relevant Statement of Work) We grant You a non-exclusive, revocable, non-transferable right, without the right to grant sub-licences, to use the CaaS. Such right shall commence on the provision of the CaaS and shall continue for the Subscription Term.
- 2.2. We will supply the CaaS in accordance with the CaaS Content Maintenance Statement.

3. SOFTWARE

- 3.1. In consideration of and conditional upon the payment of the Initial Licence Fee to Us, if applicable, and the continued payment of the Annual Licence Fee to Us (on the terms set out in the relevant Statement of Work), We grant the Licensee a non-exclusive, revocable, non-transferable Licence which shall commence on the date of this Agreement and shall continue for the Licence Term. The Software may not be used unless the Annual Licence Fee is paid in full.
- 3.2. You are permitted to make such copies of the Software as are reasonably required for the purposes of bona fide operational purposes, security and backup only and shall ensure that such copies are marked as proprietary to, copyright of, and licensed by, Us. No other copies may be made. You may not make any copies of the Documentation, manuals, or other documentation (including electronic documentation) other than for use by Permitted Users without Our written permission.
- 3.3. You are not permitted to provide services to third parties using the Software, except as set out within a Statement of Work.
- 3.4. The Software will be deemed as accepted by You unless You notify Us otherwise within 60 days of installation or supply of the initial activation keys.
- 3.5. We shall provide You with upgrades relating to the Software for which You are validly licensed for free of charge and within a reasonable period of time following such upgrades becoming available. Services relating to the installation of such upgrades are normally subject to charge. Subject to payment of the relevant Support Fee, We shall provide Technical Support in respect of the version of the Software used by You from time to time in accordance with the terms set out of this Agreement.

- 3.6. We shall use reasonable endeavours in accordance with good industry practice to prevent the introduction of known computer viruses or other program code which is likely to damage the Software or the Customer System and will check each release of the Software with the same diligence as would be expected from an organisation similar to Us using up-to-date virus scanning software from time to time.
- 3.7. You shall use reasonable endeavours in accordance with good industry practice to prevent the introduction of any known computer viruses into the Customer System and will check each release of the Software with the same diligence as would be expected from an organisation similar to You using current virus scanning software from time to time.

4. SERVICES

CONSULTING SERVICES

- 4.1. We will perform the Consulting Services specified in the applicable Statement of Work.
- 4.2. In the event that You cancel or postpone the provision of any Consulting Services within 5 Business Days of the agreed start date then 100% of the Fees will be payable as a cancellation charge. If You cancel or postpone between 6 and 9 Business Days of the agreed start date, then 50% of the Fees will be payable as a cancellation charge. Notwithstanding the foregoing, You shall reimburse Us in full for all costs and expenses that We suffer or incur if You cancel or postpone any Consulting Services prior to the agreed start date.
- 4.3. This is a time and materials Agreement and where Our obligations are extended by Your act or omission (which includes employees, agents, contractors or subcontractors (including the provision by any such person of any incorrect or inadequate data, information or instructions) which causes a delay or impediment to delivery which obliges Us to spend additional time or incur additional expense in the performance of any of Our obligations under this Agreement then, notwithstanding anything else contained in this Agreement or Statement of Work, You will pay Us, at Our current standard rates, for the additional time spent and reasonably incurred expenses in carrying out such obligations.
- 4.4. Unless expressly stated to the contrary, all Consulting Services detailed in a Statement of Work are estimates only and exclude actual travel and accommodation expenses.

TECHNICAL SUPPORT

- 4.5. Technical Support shall be provided from the Effective Date and continue during the Licence Term. For customers with a Customer Success Plan, Technical Support will be delivered based on the level of Customer Success Plan purchased. Where a Customer Success Plan is not expressly specified within a Statement of Work, You will receive an Essential Customer Success Plan. We will provide support services and service levels as specified in the Customer Success Plan datasheet in effect at the start of the Effective Date. We reserve the rights to amend the Services specified within the Customer Success Plan, provided that any such changes would only come into effect at the beginning of each renewal.
- 4.6. The Customer Success Plan datasheet is available here: [Customer Success Plans](#).
- 4.7. Technical Support is available via Our online service, subject to You enabling the required connections (in each case We shall determine the most effective medium for efficient support).
- 4.8. If You use third party consultants not approved by Us to configure the Access Product(s), We will have the right to charge You for Our Consulting Services to fix any configuration issues caused by those third parties and/or terminate Technical Support.
- 4.9. Where You purchase additional licences, sites or modules or otherwise expand upon any existing Statement of Work, any additional purchase shall have the same level of Customer Success Plan and associated Fees, applied to that purchase.
- 4.10. Our obligation to provide the Technical Support shall not extend to:
 - 4.10.1. rectification of lost or corrupted data arising by reason other than Our (or Our suppliers') negligence;
 - 4.10.2. any supported Access Product(s) which has been changed, altered, added to, modified or varied by anyone other than Us;
 - 4.10.3. attendance to faults caused by Your failure to use the supported Access Product in accordance with the requirements of the Documentation and/or documentation or manuals supplied with the supported Access Product(s), or caused by operator error or omission; or
 - 4.10.4. attendance to faults attributable to faults in the Customer System or its use or interaction with other software with which the Access Product(s) is not compatible or its use or interaction with Access Product or on equipment that We have not approved in writing.

HOSTING INFRASTRUCTURE SERVICES

- 4.11. We shall provide such Hosting Infrastructure Services requested by You which are agreed in a Statement of Work. If Your Hosting Infrastructure Services usage exceeds the number of Permitted Users, CPUs, storage or RAM (each as set out in the relevant Statement of Work), We will invoice You for the excess usage from the time the excess usage commenced in accordance with Our then current price book.
- 4.12. We shall ensure that Our provision of Our Hosting Infrastructure Services and You shall ensure that Your use of the Software Hosting Infrastructure Services complies in all respects with all applicable laws. Our Hosting Infrastructure Services will be provided in accordance with Our SaaS SLA.

SERVICES - GENERAL

- 4.13. We will perform all Services in accordance with good industry practices and will use appropriately skilled and qualified personnel.
- 4.14. You agree that We will be relying upon the accuracy of all representations, statements, information, materials and documents (**Data**) supplied by You in connection with the Services and that We shall be under no obligation to test, check or confirm the accuracy of any Data prior to performing the Services unless set out in the Statement of Work. We accept no responsibility or liability whatsoever for or

resulting from any Data prepared and/or supplied by You or a third party on Your behalf.

- 4.15. You shall:
- 4.15.1. provide, where applicable, reasonable access to the areas in which the Services are to be performed at the Service Location, including authorised access to the Customer Systems or systems licensed to You to enable Our staff and associates to perform the Services and so that We can ensure that You are complying with the terms of this Agreement;
 - 4.15.2. provide, free of charge, appropriately qualified and experienced personnel familiar with the Customer Systems, equipment, programmes and operations who shall reasonably co-operate with Our personnel to allow Us to fulfil Our obligations under this Agreement and each Statement of Work if We request this from You;
 - 4.15.3. make available, free of charge, such documentation, information, data and computer facilities (including but not limited to data preparation facilities, storage and computer consumables) as We may reasonably require in the fulfilment of Our obligations under this Agreement and each Statement of Work;
 - 4.15.4. appoint a representative with responsibility for all matters relating to this Agreement and each Statement of Work; this representative will be identified in the Statement of Work;
 - 4.15.5. ensure that the Customer Systems comply with the agreed Specification as set out in the relevant Statement of Work; and
 - 4.15.6. remain responsible for all actions and inactions of any Third-Party Provider directly in Your control or with whom You have a contractual relationship and with whom We will be or are reliant upon to fulfil Our obligations under this Agreement or a relevant Statement of Work.
- 4.16. Our ability to deliver the Services depends on Your full and timely cooperation and collaboration, as well as the accuracy and completeness of any information that You provide. You accept that the nature of implementation may require disruption to Your staff and business processes in order to accommodate the implementation.
- 4.17. We will remain responsible for all actions and inactions of any Third-Party Provider directly in Our control or with whom We have a contractual relationship.

Table A

Your principal place of business	Access Affiliate Entity	Address for notices	Governing law	Court of jurisdiction
If Your registered office is based in Brunei, Hong Kong, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Taiwan or Thailand	Access Software Asia Pte Limited (UEN 199802054M)	Asia Square, Tower 2, 12 Marina View, #25-02/03, 018961	Singapore	Singapore
If Your registered office is based in Australia, New Zealand, Fiji, Papua New Guinea, Solomon Island, Vanuatu, or Tonga.	Access Software Australia Pty Ltd (ABN 40 071 007 326)	Level 11, The Zenith Tower B, 821 Pacific Highway, Chatswood, NSW 2067, Australia	Australian	New South Wales