

Terms of Service

1. INTRODUCTION

(a) These terms apply to the provision of Software and Services by BusinessHub under:

- (i) an Onboarding Services Agreement between BusinessHub and you that refers to these terms;
- (ii) a Plan between BusinessHub and you that refers to these terms;
- (iii) a Quote issued by BusinessHub and accepted by you that refers to these terms; and
- (iv) a Software Quote issued by BusinessHub and accepted by you that refers to these terms,

and each of the agreements listed in sub-clauses (i) to (iv) is referred to in these terms as an 'agreement'.

(b) An Onboarding Services Agreement sets out the terms on which BusinessHub will provide Onboarding Services to you for the implementation of the Software in your organisation, and may include a Software Quote.

(c) A Plan sets out the terms on which BusinessHub will provide Services to the Client after Go-Live, including:

- (i) any Plan Support that BusinessHub will provide during the Plan Term for the Plan Fee; and
- (ii) any other Services that you request and we agree to provide from time to time during the Plan Term, including Services provided under any Quote issued by BusinessHub during the Plan Term.

(d) A Software Quote sets out the terms on which BusinessHub will assist you to obtain a Software Licence from the Software Owner. BusinessHub will not be a party to the Software Licence, which will be direct between you and the Software Owner.

(e) A reference in these terms to 'Details' is a reference to (as applicable):

- (i) the part of an Onboarding Services Agreement that is titled 'Agreement Details';
- (ii) the part of a Plan that is titled 'Plan Details';
- (iii) the part of a Quote that is titled 'Quote Details'; or
- (iv) the part of a Software Quote that is titled 'Description'.

(f) In the event of a conflict between the parts of an Onboarding Services Agreement, Plan, Quote or Software Quote:

- (i) the Special Conditions (if any) prevail over all other Details and these terms; and
- (ii) the provisions of the Details prevail over these terms, to the extent of any inconsistency.

2. DEFINITIONS

In these terms, expressions defined in the Details have that meaning and:

'Accepted Services' means Services accepted pursuant to clause 8.

'ACL' means the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth), as updated, replaced or amended from time to time, whether applied as a law of the Commonwealth or any State or Territory of Australia.

'Additional Support' means any of the following Services, to the extent they are not included in your Plan Support:

- (a) administering changes in your Software Licence with the Software Owner;
- (b) escalating proven Software errors to the Software Owner;
- (c) assisting you by phone, email or remote/internet connection with: how to use Software functions, trouble-shooting the cause of Software issues and replicating/proving Software errors for escalation to the Software Owner.

'Approved Subcontractor' means Sprinterra LLC (5432962) of 1501 Broadway, 12th Floor, New York NY 10036 or such other persons as agreed by you and us in writing from time to time.

'Approved Subcontractor Fees' means any fees specified in a Quote or Onboarding Services Agreement in respect of the services to be provided by the Approved Subcontractor.

'Approved Subcontractor IP' means any Intellectual Property that the Approved Subcontractor:

- (a) owns, acquires or creates in relation to the Software prior to you accepting this agreement or owns, acquires or creates independently of providing Services to you; or
- (b) acquires, creates or develops in providing Services to you.

'Business Day' means a day on which banks are open for general business in Melbourne, Victoria, other than a Saturday, Sunday or public holiday.

'Business Hours' means between 9am and 5:30pm in Melbourne, Victoria on a Business Day.

'BusinessHub', 'we', 'us' or 'our' means BusinessHub Pty Ltd ACN 106 092 068 of Suites 224-226, 838 Collins Street, Docklands, Victoria 3008.

'BusinessHub IP' means the Intellectual Property Rights that BusinessHub: (a) owns, acquires or creates prior to the date of this agreement or owns, acquires or creates independently of providing Services to you; and (b) acquires, creates or develops in providing the Services to you, including any confidential information of BusinessHub, such as pricing information.

'Charges' means the charges payable by you to us under this agreement which comprise the Rates and Travel Charges plus GST.

'Client Confidential Information' means all non-public Client Data which is disclosed by the Client to BusinessHub or that BusinessHub has access to prior to or during the term of this agreement and in connection with the Services, excluding:

- (a) any information that enters the public domain, other than as a result of our breach of this agreement;
- (b) any information that is or becomes available to BusinessHub or our Representatives without, to our knowledge, being prohibited from disclosure by a legal or equitable obligation owed to the Client;
- (c) the fact that the Services are being provided; or
- (d) any information that was, at the time it was first disclosed by the Client, already in the lawful possession of the Software Owner, BusinessHub or BusinessHub's Representatives.

'Client Data' means all data and information (whether or not Client Confidential Information) relating to you and your operations, facilities, Representatives, customers, assets and business in any form which is disclosed by you to BusinessHub or that BusinessHub has access to during the term of this agreement, or which is otherwise entered into, stored by, generated by or processed as part of the Software or any Services, and includes any:

- (a) Import Data;
- (b) Personal Information;
- (c) accounting, financial or employee information, Intellectual Property Rights, customer lists, business plans or business strategies;
- (d) database or electronic file in which such data or information is contained;
- (e) electronic and hardcopy documentation or records related to such data or information; and
- (f) products resulting from the use or manipulation of such data or information.

'Client System Contact' means your nominated Representative for all Services related to the Software as specified in an Onboarding Services Agreement, Plan or Statement of Work or otherwise agreed in writing by the parties. You may nominate one Client System Contact for payroll-related Services and another Client System Contact for all non-payroll related Services.

'Consequential Loss' means indirect or consequential loss, loss, destruction or corruption of data, loss of profits or business, business interruption, expenses incurred for reconstructing or re-entering data, loss of revenue or loss of opportunity incurred in connection with this agreement.

'Consulting Services' means any services (including Software configuration, training, report-writing, generic inquiries, form design or any the matters set out in sub-clause 3(d) of these terms) that we specifically agree to provide to you in relation to the Software, other than Onboarding Services, Additional Support, Customisation Services or Plan Support.

'Customisation Services' means scoping, preparing, updating, testing, reviewing and/or maintaining publishable customisations or API connections to the Software.

'Defect' means any material non-conformance of the Services with the Deliverables.

'Defect Notice' a notice given by you to us that specifies in reasonable detail why certain Services fail (in your view, acting reasonably) to Satisfy the Deliverables.

'Defective Services' means any Services for which Deliverables have been specified and that you identify (acting reasonably) have failed to Satisfy the Deliverables.

'Deliverables' means the standards and specifications (if any) that the Onboarding Services, Consulting Services or Customisation Services or other Services must Satisfy that are:

- (a) within the Scope specified in the Details;
- (b) within the Software functionality in the MYOB Advanced User Guide; and
- (c) specified to be 'Deliverables' in the Onboarding Services Agreement or Quote.

'Estimated Charges' means the estimated amount of our Charges for the Services set out in a Quote or Onboarding Services Agreement, and excludes any payments due to the Software Owner pursuant to a Software Quote.

'EULA' means the end user licence agreement between you and the Software Owner.

'Force Majeure Event' means a circumstance beyond our reasonable control which directly or indirectly results in us being unable to observe or perform an obligation under this agreement on time or at all, which circumstances include any of the following:

- (a) Software bugs or defects or a breach of the Software Licence by the Software Owner;
- (b) acts of God, lightning strikes, earthquakes, floods, storms, inundation, explosions, fires, natural disasters;
- (c) quarantine, lockdown, restrictions, labour shortages or other circumstances relating to epidemic, disease or COVID-19;
- (d) acts of war, terrorism, cyberattacks, riots, civil commotion, strikes, lockouts or other industrial disturbances, malicious damage, sabotage or revolution;
- (e) power outage, disruption to internet connection or the unavailability, inaccessibility or scheduled down-time of email servers or software as a service.

'Go-Live' means that a live instance of the Software (as configured or customised by us in providing the Onboarding Services) first becomes available for you to use via the Internet.

'GST' means GST as defined in the GST Act.

'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (Cth), and in clause 5(c) of these terms, all expressions that are defined in the GST Act have the meaning given in the GST Act.

'Import Data' means all of your data that is (subject to the Scope) required to be imported into the Software as part of the Services, including any import data specifically referred to in the Details.

'including' or 'include' or 'includes' are not to be interpreted as limiting the words preceding them.

'Intellectual Property Rights' means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with any confidential information, copyright (including future copyright), moral rights, inventions (including patents), trade marks, service marks, designs and circuit layouts whether or not now existing and whether or not registered or registrable including any right to apply for the registration of such rights, and 'Intellectual Property' has a corresponding meaning.

'Loss' or 'Claim' means any loss, liability, action, proceeding, damage, cost or expense (including all reasonable legal costs and expenses), including liability in tort and consequential and economic losses.

'MYOB' means MYOB Australia Pty Ltd ACN 086 760 198 (if the Services are provided in Australia) or MYOB NZ Limited Company Number 902338 (if the Services are provided in New Zealand).

'Notice of Dispute' means a notice given by one party to the other party that sets out the details of a dispute in relation to these terms.

'Onboarding Services Agreement' means an onboarding services agreement between BusinessHub and you and to which these terms apply.

'Payment Schedule' has the meaning set out in the Details or, if not set out in the Details, within 14 days of invoice.

'Personal Information' has the meaning given in the Privacy Act.

'Privacy Act' means the Privacy Act 1988 (Cth) as updated, replaced or amended from time to time.

'Privacy Laws' means all applicable laws relating to privacy and the protection of Personal Information, including the Privacy Act, the Health Records Act 2001 (Vic), the Spam Act 2003 (Cth), and any other requirement under law or industry code relating to the handling of Personal Information.

'Privacy Policy' means an APP Privacy Policy as defined in the Privacy Act.

'Plan' means a Basic Success Plan, Standard Success Plan, Premium Success Plan, Exo ES Success Plan or PAYG Success Plan between BusinessHub and you and to which these terms apply.

'Project Plan' means (if Services include the preparation of a project plan) a working document prepared and revised from time to time by us for the purpose of co-ordinating the timing of the provision of our Services and the completion of the Client Obligations.

'Quote' means a quote (including any Statement of Work referred to in a quote) to which these terms apply, and includes but is not limited to any quote issued by BusinessHub pursuant to a Plan and approved by you during the Plan Term.

'Rates' means our hourly rates for providing the Services as set out in the Details or, where there are no hourly rates specified in the Details for providing the relevant Services, the hourly rates for the relevant Services as published on BusinessHub's website from time to time.

'Related Bodies Corporate' has the meaning set out in the Corporations Act 2001 (Cth).

'Representative' means, in relation to a party, a director, officer, employee, agent, contractor or adviser of or to that party.

'Satisfy' means that our Services meet the Deliverables for those Services in all material respects, including by us providing you with a reasonable workaround or alternative way of using the Software in a productive manner to overcome any Defects, and 'Satisfies' or 'Satisfying' have a corresponding meaning.

'Services' mean (as the context requires):

- (a) in relation to an Onboarding Services Agreement: the Onboarding Services described in the Details;
- (b) in relation to a Plan:
 - (i) Plan Support (if any); or
 - (ii) any Additional Support or Consulting Services that you request and we agree to provide during the Plan Term;
- (c) in relation to a Quote: the Consulting Services or Customisation Services that you request and we agree to provide as described in a Quote; or
- (d) in relation to a Software Quote: the assistance that you request and we agree to provide you to obtain a Software Licence from the Software Owner.

'Software' means the software referred to as MYOB Advanced or MYOB Exo Employer Services, of the edition and licensed users as more specifically described in the Details.

'Software Licence' means the agreement between you and the Software Owner that entitles you to use the Software (including as a service), as varied or replaced from time to time.

'Software Owner' means MYOB or any other owner or licensor of the Intellectual Property in the Software.

'Software Quote' means a quote or invoice that is prepared by BusinessHub and accepted or paid by you, and to which these terms apply, to assist you to obtain a Software Licence direct from the Software Owner. A Software Quote may be a standalone document or incorporated in an Onboarding Services Agreement.

'Special Conditions' means any conditions that are specified to be 'special conditions' in the Details.

'Statement of Work' means a document prepared by BusinessHub and approved by you that sets out a proposal for supply of Consulting Services or Customisation Services under a Plan or Quote.

'Third Party IP' means any Intellectual Property Rights that are not owned by BusinessHub, including all Intellectual Property Rights in the Software and associated third party documentation and training materials.

3. SERVICES

(a) Subject to you complying with your obligations under this agreement and the Software Licence, we will provide you with the following Services as reasonably requested by you:

- (i) Onboarding Services under an Onboarding Services Agreement (where applicable);
- (ii) Plan Support and Additional Support under the Plan (where applicable);
- (iii) any Customisation Services or Consulting Services as agreed in writing or set out in a Quote;

- (iv) in relation to a Software Quote, assisting you to obtain a Software Licence from the Software Owner.
 - (b) Requests for Services (including Support) may only be made by a Client System Contact.
 - (c) Our Services specifically exclude and you must not rely on us to provide:
 - (i) a licence to use any Software or Third Party IP. We will use reasonable endeavours to assist you with procuring a Software Licence from the Software Owner but we do not guarantee that the Software Owner will grant you a Software Licence;
 - (ii) updates, new releases or documentation in respect of any Software or Third Party IP;
 - (iii) award interpretation, legal, accounting, financial, taxation, employment or human resource management or industrial relations advice;
 - (iv) correction of bugs, errors or defects in the Software or any failure of the Software to perform substantially in accordance with the Software Owner's documentation or representations;
 - (v) services in relation to Third Party IP or any software other than the Software,
- and we accept no liability in connection with any of the matters set out above.

(d) Unless we specifically agree in writing to provide the following services, our Services exclude and we must not be relied on to provide:

- (i) Services at your premises (the Services are usually provided by telephone, email and/ or over the internet unless otherwise specified in the Details);
- (ii) data cleansing, data entry, data import, bookkeeping or payroll processing services;
- (iii) accessories, hardware, equipment, supplies, consumables or associated items;
- (iv) services outside Business Hours;
- (v) connections or customisations to the Software;
- (vi) services relating to issues, errors or defects caused (wholly or partially, directly or indirectly) by:
 - (A) the installation, configuration, modification, revision, variation, translation, alteration or use of the Software in a manner not authorised or recommended by the Software Owner in the Software Licence or guides, whitepapers or documentation issued by the Software Owner from time to time;
 - (B) you failing to provide suitably trained, qualified and informed staff to use the Software;
 - (C) your Import Data or instructions for the configuration of the Software being inaccurate, incomplete or failing to comply with applicable laws or accounting standards;
 - (D) your Import Data being incorrect or not provided in the format we reasonably request;
 - (E) Internet connection problems; or
 - (F) you breaching this agreement or the Software Licence.

(e) A Quote will be valid for the time stipulated in the Quote Details except that if the Quote is issued under a Plan and the Plan expires or is terminated for any reason, the Quote will be considered expired and withdrawn.

(f) A Quote incorporates any Statement of Work referred to in the Quote.

(g) If you accept a Quote under a Plan, then the Quote and Statement of Work form part of your Plan. In the event the Plan expires or terminates for any reason then so do any Quotes or Statements of Work under that Plan.

4. SOFTWARE LICENCE

- (a) We are accredited by the Software Owner to sell Software Licences and provide the Services.
- (b) You agree to enter into a Software Licence with the Software Owner for the duration of this agreement. If requested by you, we agree to use reasonable endeavours to assist you with procuring the Software Licence. Alternatively, you can obtain a Software Licence yourself.
- (c) In either case, we reserve the right to terminate this agreement immediately on notice if we have reason to believe that you are in breach of your Software Licence or your Software Licence terminates or expires for any reason.

(d) If you request our assistance to obtain a Software Licence, you warrant that all information you provide to us for the purposes of providing such assistance is true and correct.

(e) We will send you our Software Quote, which incorporates:

- (i) the MYOB EULA and (where applicable) an MYOB Advanced Quotation; and
- (ii) for MYOB Advanced, a direct debit form for you to complete to authorise the Software Owner to debit your account for the amount of the Software Owner's subscription fee for the Software Licence.

(f) A Software Quote will be valid for the time stipulated in the Details, and is subject to any price changes implemented by the Software Owner.

(g) Once you have completed the requirements set out in the Software Quote, we will submit the necessary documents to the Software Owner for processing .

(h) The Software Owner and you enter into an agreement on the terms of the EULA for the supply of the Software Licence and associated services.

(i) The Software Owner will deliver the Software and services directly to you.

(j) All the Software Owner warranties will be granted directly by the Software Owner in favour of you, to the extent permitted by law.

5. CHARGES

(a) You must pay us the following Charges (where applicable) in accordance with the Payment Schedule and without set-off or deduction:

- (i) the applicable Rates for the time we spend providing Onboarding Services, Consulting Services, Additional Support and Customisation Services; plus
- (ii) the Plan Fee for your Plan; plus
- (iii) the Approved Subcontractor Fees and any other fees specified in a Quote or Special Conditions; plus
- (iv) the Travel Charges for each occasion we provide Services at a location other than our premises at your request.

(b) Any failure by us to issue invoices in accordance with the Payment Schedule will not prejudice our right to payment.

(c) The Charges are exclusive of GST and, subject to us issuing you with a tax invoice, you must pay us an additional amount equal to GST on our Charges in accordance with the Payment Schedule.

(d) In relation to a Plan, we may:

- (i) vary the Plan Fee by giving you at least 2 Business Days' notice, if the number of your Software users (excluding executive user licences) exceeds the number of Software users in your Plan Details or if your Software edition changes, provided that you have the option to terminate this agreement on written notice to us if you do not agree with the variation; or
- (ii) vary the terms of your Plan, including our Charges, from the start of the next Extension by giving you at least 21 days' notice, provided that you have the option to cancel the Extension and terminate the agreement at the end of the current Plan Term on written notice to us if you do not agree with the variation.

(e) The Estimated Charges are the minimum amount payable by you to us pursuant to the applicable Onboarding Services Agreement or Quote, but they are non-binding and only indicative of the actual Charges payable by you for the provision of the Services within the Scope, which will be charged on a time and materials basis in accordance with the Rates.

(f) You acknowledge and agree that you must pay us additional Charges and any costs or Approved Subcontractor Fees we charge or incur as a result of:

- (i) us (at our option) providing any Services of the nature described in clause 3(d) or outside the Scope, at your request or with your agreement;
- (ii) a change in the timing or complexity the Services;
- (iii) you not complying with the Client Obligations;
- (iv) you not complying with the timeframes in the Project Plan; or
- (v) a wrongful or negligent act by you or you breaching your obligations or warranties under this agreement (including the Client Obligations).

(g) Your right to use the Accepted Services and all related BusinessHub IP are subject to you paying the Charges for the Accepted Services in full.

6. CLIENT CONFIDENTIAL INFORMATION

(a) You retain all Intellectual Property Rights in your Client Data and Client Confidential Information.

(b) You agree to comply with the Privacy Laws at all times and not to do anything that would put us or our Representatives or Related Bodies Corporate in breach of the Privacy Laws.

(c) You authorise us to use your Client Confidential Information and Client Data for the limited purpose of us providing the Services to you, which may include:

- (i) importing your Import Data into the Software;
- (ii) allowing access to or disclosing your Client Confidential Information and Client Data to the Software Owner in connection with the administration of your Software Licence or the resolution of a Software issue or error;
- (iii) subject to clause 13(d), permitting the Approved Subcontractor to access the Client Confidential Information and Client Data stored in the Software on a confidential basis in the course of performing the Services; and
- (iv) sending you direct marketing communications from time to time regarding products and services provided by us, our Representatives or the Software Owner that we believe may be of interest to you. You may opt out of these communications at any time on written notice to us.

(d) You acknowledge and agree that to the extent the Client Confidential Information or Client Data incorporates any Personal Information, you must obtain all consents and approvals from the relevant individuals that are necessary for us to lawfully deal with the Personal Information as set out in clause 6(b).

(e) You agree to indemnify and hold us, our Representatives and Related Bodies Corporate harmless from and against any third party claim threatened or brought against us alleging that our dealing with the Personal Information as set out in clause 6(b) infringes the rights of that third party or the Privacy Laws.

(f) Any Client Data entered into, stored by, generated by or processed as part of the Software or any Services is hosted by the Software Owner and not by us, and will be collected, used and disclosed by the Software Owner in accordance with the Software Owner's Privacy Policy. We are not responsible for, and make no representations as to how the Software Owner will deal with your Client Data and whether it will be transferred or disclosed overseas. You should refer to the Software Licence and Privacy Policy of the Software Owner in this regard.

(g) You and BusinessHub will agree upon and institute commercially reasonable security measures for the purpose of preventing unauthorised access to or use or disclosure of the Client Data or Client Confidential Information.

(h) You must limit our access to your Client Data and Client Confidential Information to the minimum access reasonably required for us to provide the Services, including by only granting us access to your Software to the minimum amount necessary whilst we are actively engaged in providing the Services to you.

(i) We must:

- (i) promptly notify you if we become aware of any suspected or actual unauthorised use, copying or disclosure of your Client Data or Client Confidential Information; and
- (ii) promptly take all commercially reasonable steps within our control to prevent or limit any further unauthorised use, copying or disclosure of the Client Data or Client Confidential Information by our employees or contractors.

7. BUSINESSHUB IP

(a) Nothing in these terms is intended to affect the ownership of any Third Party IP or any Intellectual Property Rights created or acquired by a party prior to, or independently of, this agreement.

(b) We retain all right, title and interest in all BusinessHub IP. To the extent we develop and make BusinessHub IP available to you in providing the Services:

- (i) you must not disclose BusinessHub IP to any third party, including any competitor of BusinessHub; and
- (ii) subject to you paying the Charges in full, we grant you a royalty-free, non-exclusive, non-transferrable licence to use BusinessHub IP for the limited purpose of you undertaking

your Client Obligations and using the Software in the ordinary course of your business (except to the extent that your business is similar to or competitive with our business).

8. CLIENT OBLIGATIONS

(a) You must ensure that all Client Obligations specified in an Onboarding Services Agreement or Quote are undertaken substantially in accordance with the timeframes in the Project Plan or as we reasonably request.

(b) If the Services are to be provided at your premises or any other site (other than our premises), you must provide safe access to your premises or that site for our employees and contractors.

(c) You acknowledge and warrant to us that:

- (i) the Import Data is true, accurate and complete and will be provided to us in accordance with our instructions and in the format we reasonably request;
- (ii) your internet connection, equipment and operating environment satisfy the minimum and recommended requirements published by the Software Owner;
- (iii) you have evaluated or been given a reasonable opportunity to evaluate the Software and you have relied on your own judgement and skill in determining that the Software and the Scope are suitable for your purposes and requirements;
- (iv) you own all Intellectual Property Rights that you authorise us to use in connection with us providing the Services to you, and such any use by us will not infringe the Intellectual Property Rights of any third party;
- (v) you have not relied on any representation, warranty or undertaking made by us which has not been stated expressly in this agreement; and
- (vi) we make no representation that our Services (including Customisation Services or BusinessHub IP) will be compatible with any future changes or upgrades to the Software.

(d) Within 5 Business Days of us notifying you that we have provided certain Onboarding Services, Consulting Services or Customisation Services to you, you must review and test whether the Deliverables for those Services are Satisfied. If you use the Software or our Services in a live instance of the Software without testing prior, you do so at your own risk.

(e) Subject to clause 9 of these terms, if you provide us with a Defect Notice, we will do one or more of the following (at our discretion) as your sole remedy:

- (i) modify and / or re-supply the Defective Services so that the Deliverables are Satisfied; or
- (ii) reduce our Charges to exclude the time taken for us to provide the Defective Services.

(f) You will be deemed to have accepted the Services if:

- (i) the Services have been provided by us and there is no Deliverable for those Services;
- (ii) we notify you that we have provided or re-supplied certain Onboarding Services, Consulting Services or Customisation Services and you do not provide us with any Defect Notice within 5 Business Days;
- (iii) the Deliverables relate to Onboarding Services provided before Go-Live and you use the Software in a live instance and do not provide us with Defect Notice within 5 Business Days of Go-Live; or
- (iv) the Deliverables relate to Onboarding Services provided after Go-Live and you subsequently enter into a Plan.

(g) BusinessHub does not own the Third Party IP or the Software, and you acknowledge and agree that:

- (i) we are not in partnership or joint venture with the Software Owner. We are not an agent for the Software Owner and do not have any authority to act on behalf of the Software Owner or enter into any contract binding or purporting to bind the Software Owner;
- (ii) we receive commissions or rebates and services from the Software Owners in connection with the Software;
- (iii) this agreement does not affect the existing ownership rights of third parties, including the Software Owner;
- (iv) to the extent permitted by law, we make no warranties or claims in relation to the Software, the Software Owner, the

performance of the Software, the compatibility, performance or configuration of the Software with any particular software, equipment or operating environment, any Third Party IP or any other third party or any claim;

- (v) we are not responsible for backing up your data. You are responsible for your own data back-up policies and procedures in relation to your data; and
 - (vi) we accept no liability in relation to any agreement (including the Software Licence) between you and a Software Owner or any other third party;
 - (vii) your Personal Information will be collected by, used by, accessed by and disclosed to the Software Owner.
- (h) You must not during the term of this agreement, and for a period of 12 months after the end of this agreement, employ or attempt to employ (including by directly or indirectly approaching, canvassing, soliciting or endeavouring to entice away from BusinessHub) any person who is or was an employee or contractor of BusinessHub during the term of this agreement. This sub-clause survives the termination or expiry of this agreement.

9. EXCLUSION AND LIMITATION OF LIABILITY

- (a) Nothing in this agreement excludes, restricts or modifies:
- (i) the application of any provision of the ACL (whether applied as a law of the Commonwealth or any State or Territory of Australia) (ACL);
 - (ii) the exercise of any right or remedy conferred by the ACL; or
 - (iii) the liability of BusinessHub for a failure to comply with an applicable consumer guarantee where to do so would:
 - (A) contravene the ACL; or
 - (B) cause any part of this agreement to be void.
- (b) The liability of BusinessHub for any non-compliance with a statutory guarantee, or Loss or Claim arising out of or in connection with the supply of goods or services under this agreement, or any breach by BusinessHub of this agreement however arising (whether for breach of this agreement tort (including negligence), statute, custom, law or on any other basis), is limited, at BusinessHub's option, to:
- (i) in the case of goods,
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services,
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (c) To the extent permitted by law, the maximum liability of BusinessHub for all loss and damage suffered or incurred by the Client in connection with this agreement, whether arising from or in connection with any breach of contract, tort (including negligence) or any other cause of action is limited in aggregate to the amount paid by the Client to BusinessHub in the 6 month period immediately prior to the date of the event giving rise to the liability.
- (d) Except in relation to personal injury or death, BusinessHub is not liable to the Client for any Consequential Loss suffered or incurred by the Client in connection with this agreement, whether arising from or in connection with any breach of contract, tort (including negligence) or any other cause of action.
- (e) The exclusions and limitations of liability in this clause 9 apply for the benefit of us, our Representatives and our Related Bodies Corporate.

10. DISPUTE RESOLUTION

- (a) If a party provides another party with a Notice of Dispute, the representatives of the parties having authority to settle the dispute must meet within 7 days of service of the Notice of Dispute to attempt to resolve the dispute. If the representatives do not do so, either party may commence court proceedings in respect of the issues outlined in the Notice of Dispute.
- (b) Nothing in this clause prevents a party from commencing proceedings to seek urgent injunctive or declaratory relief.
- (c) Despite the existence of a dispute, but subject always to clause 9(a),

the parties must continue to perform their obligations under this agreement.

11. DEFAULT AND TERMINATION

- (a) If you fail to pay the Charges as they fall due or fail to promptly undertake the Client Obligations, then in addition to any other rights we have, we may suspend or delay the provision of the Services until the Charges are paid in full and the Client Obligations are undertaken to our reasonable satisfaction. Any suspension or delay by BusinessHub under this clause will not constitute a breach of this agreement and the timeframes in the Project Plan or Quote for the provision of our Services or the Client Obligations may be adjusted by BusinessHub (acting reasonably) to allow for the period of our suspension or delay.
- (b) A party ('Terminating Party') may terminate this agreement by written notice to the other party ('Other Party') if:
- (i) the Other Party becomes, threatens or resolves to become or is in jeopardy of becoming insolvent or subject to any form of insolvency administration;
 - (ii) the Other Party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - (iii) the Other Party, being a natural person, dies; or
 - (iv) the Other Party ceases or threatens to cease conducting their business in the ordinary course.
- (c) BusinessHub may terminate this agreement without cause by providing you at least 60 days' written notice.
- (d) In addition to the reasons referred to in clause 11(b) and (c), BusinessHub may terminate this agreement with immediate effect by written notice to you if:
- (i) you are in breach of a material term of this agreement that is not capable of remedy;
 - (ii) you are in breach of a term of this agreement and that breach is not remedied within seven (7) days of receiving a notice of default from BusinessHub;
 - (iii) the Software Licence expires or is lawfully terminated;
 - (iv) any third party claims that we are in breach of that third party's Intellectual Property Rights in respect of the Services;
 - (v) the Software Owner becomes or threatens to become insolvent or cease carrying on business in the normal manner;
 - (vi) an agreement between BusinessHub and the Software Owner or the Approved Subcontractor expires or is terminated for any reason; or
 - (vii) the Approved Subcontractor becomes or threatens to become insolvent or cease carrying on business in the normal manner.
- (e) If we terminate this agreement other than for your breach of this agreement, then your sole remedy is a refund of:
- (i) in respect of the Plan Fee, the proportion of the Plan Fee that relates to the unexpired balance of the Plan Term at the time of termination; or
 - (ii) any other moneys paid by you to BusinessHub in respect of Services that have not been provided by BusinessHub to you at the time of such termination.
- (f) On termination of this agreement:
- (i) the rights and obligations of the parties that accrued prior to such termination (including your obligation to pay the Charges in accordance with the Payment Schedule) are not affected;
 - (ii) you must cease using and (if we request) return all or BusinessHub IP in your possession or control;
 - (iii) subject to clause 11(e), we may retain all moneys paid to us under the agreement;
 - (iv) we may invoice you, and you must pay within 14 days of invoice, the Charges for all Services provided by us up to the date of termination;
 - (v) subject to clause 8(h), the parties will be regarded as discharged from performing any further obligations under this agreement on and from the date of termination; and
 - (vi) we may pursue any additional or alternative remedies provided by law.
- (g) BusinessHub reserves the right to offset any amounts owed by the Client to BusinessHub against any amounts owed by BusinessHub to the

Client under any agreement.

12. CHANGES

(a) BusinessHub reserves the right to change the terms of this agreement to the extent reasonably necessary to address or reflect a change to an agreement between BusinessHub and the Software Owner.

(b) In those circumstances, BusinessHub may change the terms of this agreement immediately on written notice to you, except with respect to any change that is likely to materially affect your rights and obligations under this agreement, in which case BusinessHub must provide you with 30 days' prior written notice.

(c) If BusinessHub makes a material change to this agreement pursuant to clause 12(b) then you have the option to terminate this agreement as of the date the change is to take effect, on providing written notice to BusinessHub at least 14 days prior to the date the change is to take effect.

13. MISCELLANEOUS

(a) This agreement contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications between the parties. Any prior agreements between the parties concerning any services provided by BusinessHub or confidentiality are terminated (without prejudice to accrued rights or obligations) with effect on the date of execution of this agreement.

(b) Notices may be given by email or post to the party at the party's most recent address in the Details or on a register maintained by the Australian Securities and Investments Commission or the Australian Charities and Not-for profits Commission. Notices are taken to be given:

- (i) if sent by email during Business Hours and notice of a delivery failure is not received by the sender: on the day it was sent;
- (ii) if sent by email outside Business Hours and notice of a delivery failure is not received by the sender: on the next Business Day;
- (iii) if sent by pre-paid post: 3 Business Days after posting.

(c) To the extent that we cannot perform our obligations under this agreement as a result (directly or indirectly) of an actual or anticipated Force Majeure Event:

- (i) we will notify you of the event and the likely effect of the event and do all that we reasonably can to perform the obligation as soon as is reasonably practicable (but this does not change the way we would otherwise deal with any disruption);
- (ii) the requirement to perform our obligations will be suspended and we will not be liable to you for the failure or delay in performance; and
- (iii) if that failure or delay in performance exceeds sixty (60) days, either party may immediately terminate this agreement by providing notice in writing to the other party.

(d) We may sub-contract the performance of all or part of the Services to an Approved Subcontractor:

- (i) without consent, where the Approved Subcontractor will not have access to your Client Data or Client Confidential Information; or
- (ii) otherwise, with your consent which must not be unreasonably withheld or delayed.

(e) The relationship between you and us is that of a principal and contractor, and not a partnership, joint venture, agency or employment relationship.

(f) Nothing in these terms gives any party authority to bind any other party to any other person or otherwise act in any way as a representative of any other party unless otherwise expressly agreed to in writing and signed by the relevant parties.

(g) The benefit of this agreement must not be assigned by you without our written consent.

(h) Subject to clause 13(i), neither party may assign any their respective benefits, obligations or liabilities under or in respect of this agreement or otherwise deal with this agreement except with the prior written consent of the other party, not to be unreasonably withheld or delayed.

(i) BusinessHub may assign or novate this agreement by prior written notice to you:

- (i) to a Related Body Corporate;
- (ii) in the event of the sale of all or substantially all of its assets; or
- (iii) in the event of a merger or acquisition.

(j) Subject to clause 5(d), any other variation to this agreement must be agreed by the parties and recorded in writing.

(k) Any requirement under these terms to record or agree on a matter in writing may be done by email and any requirement for signing may be satisfied by electronic communication within the meaning of the Electronic Transactions (Victoria) Act 2000 (Vic).

(l) Any express statement of our rights under this agreement is without prejudice to any of our other rights expressly stated in this agreement or existing at law.

(m) Any provision of this agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (i) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (ii) be severed from this agreement in any other case,

without invalidating or affecting the remaining provisions of this agreement or the validity of that provision in any other jurisdiction.

(n) If this agreement consists of a number of counterparts, each is an original and all counterparts together constitute the same document.

(o) This agreement is governed by the laws in force in Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.