

BETWEEN: **IT. GLOVEBOX PTY LTD ACN 103 339 304**

"IT. Glovebox"

AND: **THE PARTY LISTED IN ITEM 3 OF THE SCHEDULE**

the **"Customer"**

RECITALS:

- A. IT. Glovebox owns the Software.
- B. The Customer desires to purchase from IT. Glovebox the right to use the Software.
- C. The parties have entered this Agreement to record the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context indicates the contrary:

"Agreement" means this agreement, including the Schedule

"Commencement Date" means the date so specified in of the Schedule;

"Confidential Information" means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement, and
- (b) information developed independently by a party;

"Documentation" means any and all proprietary documentation made available to the Customer by IT. Glovebox for use with the Licensed Software, including any documentation available online;

"Force Majeure Event" means any event beyond the control of the relevant party, except for any obligation by the Customer to pay money to IT. Glovebox;

"GST" has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth), or any other similar tax;

"Hardware" means the hand-held computer device, host or server component or any other computer device on which the Licensed Software is installed by IT. Glovebox;

"Intellectual Property Rights" means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application;

"Licensed Software" means the software owned by IT. Glovebox so specified in the Schedule and delivered to the Customer by IT. Glovebox pursuant to this Agreement;

"Moral Rights" has the meaning given under the *Copyright Act 1968* (Cth) and includes any similar rights existing in other countries; and

"Schedule" means the schedule to this Agreement.

1.2 Interpretation

Unless the context requires otherwise:

- (a) a reference to a person includes a corporation or any other legal entity;

- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;
- (d) the term "includes" (or any similar term) means "includes without limitation"; and
- (e) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it.

2. GRANT OF LICENCE

- (a) Subject to clause 6, IT. Glovebox grants to the Customer a non-exclusive, world-wide, non-transferable licence to use the Licensed Software and the Documentation, solely for the purpose of using the Hardware, subject to and in accordance with the terms and conditions set out in this Agreement.
- (b) The Customer must not:
 - (i) resell the Licensed Software;
 - (ii) use the Licensed Software for any purpose or in any manner other than as set out in clause 2(a);
 - (iii) use the Licensed Software in any way that could damage the reputation of IT. Glovebox or the goodwill or other rights associated with the Licensed Software;
 - (iv) permit any third party to use the Licensed Software other than as set out in this clause;
 - (v) except as expressly permitted by this Agreement, and except to the extent that applicable laws, including the *Copyright Act 1968* (Cth), prevent IT. Glovebox restraining the Customer from doing so:
 - A. reproduce, make error corrections to or otherwise modify or adapt the Licensed Software or the Documentation or create any derivative works based upon the Software or the Documentation;
 - B. de-compile, disassemble or otherwise reverse engineer the Licensed Software or permit any third party to do so; or
 - (vi) modify or remove any copyright or proprietary notices on the Licensed Software or the Documentation.

3. INTELLECTUAL PROPERTY RIGHTS

- (a) Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights.
- (b) The Customer:
 - (i) acknowledges that IT. Glovebox owns all Intellectual Property Rights in the Licensed Software; and
 - (ii) will not directly or indirectly do anything that would or might invalidate or put in dispute IT. Glovebox's title in the Licensed Software.
- (c) If any person makes any claim alleging that any of the Licensed Software (or use of the Licensed Software) infringes any Intellectual Property Rights or Moral Rights of any person, the Customer must:
 - (i) promptly notify IT. Glovebox in writing;
 - (ii) not make any admissions or take any action in relation to the claim without IT. Glovebox's written consent;
 - (iii) permit IT. Glovebox control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and

- (iv) cooperate with, assist and act at all times in accordance with the reasonable instructions of IT. Glovebox, in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

4. WARRANTIES

- (a) IT. Glovebox warrants to the Customer that it has the right to grant the licence of the Licensed Software contemplated by clause 2.
- (b) Each party warrants to the other that it has the right and ability to enter into this Agreement and that this Agreement will be legally binding on it.

5. LIABILITY

- (a) To the full extent permitted by law, IT. Glovebox excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.
- (b) To the full extent permitted by law, IT. Glovebox excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
- (c) Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.
- (d) This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations. If such legislation applies, to the extent possible, IT. Glovebox limits its liability in respect of any claim to, at IT. Glovebox's option:
 - (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 of acquiring equivalent goods; or
 - D. the payment 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.

6. TERMINATION

- (a) IT. Glovebox may terminate this Agreement without notice to the Customer if the Customer:
 - (i) commits a material breach of this Agreement which is not remediable or if capable of remedy, where the other party fails to remedy within 14 days of written notice;
 - (ii) has a receiver, manager, receiver and manager, liquidator, provisional liquidator, administrator appointed to it, enters into scheme of arrangement with its creditors or becomes, in the reasonable opinion of IT. Glovebox, incapable of paying its debts as and when those debts become due and payable.
- (b) IT. Glovebox may otherwise terminate this Agreement by providing the Customer with 7 days' written notice.
- (c) If this Agreement is terminated or expires for any reason, then, in

addition and without prejudice to any other rights or remedies available:

- (i) the parties are immediately released from their obligations under the Agreement except those obligations in clauses 3, 4, 5 and 7 and any other obligations that, by their nature, survive termination;
- (ii) each party retains the claims it has against the other;
- (iii) the Customer's right to use the Licensed Software immediately ceases and the licences granted under this Agreement terminates; and
- (iv) the Customer must immediately remove all Licensed Software from the Hardware.

7. CONFIDENTIALITY

- (a) A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- (b) A party may:
 - (i) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
 - (ii) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- (c) Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- (d) Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of IT. Glovebox's request or on termination of this Agreement for any reason.

8. GENERAL

- (a) The Customer shall pay all legal and other costs incurred by IT. Glovebox as a result of or in connection with any breach of this Agreement by the Customer or the termination of this Agreement by IT. Glovebox.
- (b) Each party shall pay and bear its own costs of and incidental to the preparation, negotiation and execution of this agreement, but the Customer shall pay all stamp duty on this Agreement and on documents contemplated by it.
- (c) The Customer is not entitled to assign its Rights or Obligations under this Agreement without the prior written consent of the IT. Glovebox, which consent may be given or withheld, or given on conditions, in the absolute discretion of IT. Glovebox.
- (d) This Agreement is governed by and construed in accordance with the laws of Queensland. Actions, suits or proceedings relating in any way to this Agreement or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in Queensland.
- (e) A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
- (f) Each party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.
- (g) Each person signing this Agreement:
 - (i) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not

received notice or information of the revocation of the power of attorney appointing that person; and

- (ii) as an authorised representative, agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Agreement on behalf of that party.
- (h) A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- (i) Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a party's performance under this Agreement for more than thirty (30) consecutive days, the other party may immediately terminate this Agreement by written notice
- (j) If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- (k) Any written notices to be given under this Agreement shall be:
 - (i) in writing;
 - (ii) signed by the party giving the notice or its authorised representative; and
 - (iii) addressed to the address of the person to whom it is to be given as that address is specified in the Schedule.
- (l) For the purpose of giving a written notice under this Agreement, it is sufficient if the written notice is sent to the address so specified in the Schedule, whether or not the intended recipient receives the notice or not.
- (m) Subject to express provisions in this Agreement to the contrary, each party by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed, with the intention of being immediately legally bound by this Agreement.

SIGNED AS A DEED by)
THE CUSTOMER)
 pursuant to Section) _____
 127(1) of the) Director(s)
Corporations Act 2001)
 (Cth) signed by the) _____
 director(s) and secretary) Director/Secretary

SCHEDULE

- ITEM 1 COMMENCEMENT DATE
- ITEM 2 IT. GLOVEBOX
- Address:
- Telephone:
- Facsimile:
- ITEM 3 THE CUSTOMER

Name:
 Address:
 Telephone:
 Facsimile:
 ITEM 4 LICENSED SOFTWARE
 [INSERT]