

# TERMS AND CONDITIONS

These terms and conditions govern the supply of products and services to you by either Console Australia Pty Ltd ACN 011 056 796, Portplus Pty Ltd ACN 091 112 999, RPO Software Pty Ltd ACN 615 243 475, Console New Zealand Limited (Company Number 1559517) or Portplus (NZ) Limited (Company Number 1170730) ("**we**", "**us**" or "**our**") and your use of those products and services.

## Part A – General Terms

### 1 Structure of this Agreement

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- 1.1 **Structure:** Your agreement with us is made up of:
- (a) your Application Form;
  - (b) Part A – General Terms; and
  - (c) Part B – Modules for Specific Types of Services.
- (together, the "**Agreement**").
- 1.2 **Order of precedence:** The document lower in the list prevails to the extent of any inconsistency.

### 2 Term

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- 2.1 **Agreement Term:** This Agreement commences on the date specified in your first Application Form or on the date you otherwise agree to be bound by the terms of this Agreement (as applicable), and continues until it is terminated by a party in accordance with the terms of this Agreement ("**Term**").
- 2.2 **Service Term:** For each Service:
- (a) the Initial Term for that Service will be set out in the Application Form for that Service; and
  - (b) on expiry of the Initial Term or any Subsequent Term for that Service, that Service will automatically renew for a further Subsequent Term until the Service or this Agreement is cancelled or terminated,
- ("Service Term").

### 3 Supply of Services

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- 3.1 **Services:** Subject to your paying the Fees in accordance with clause 5 and complying with the provisions of this Agreement, we will provide the Services to you in accordance with this Agreement.
- 3.2 **Additional Services:** If you request that we provide any additional Services, we may, but are not obliged to, provide the additional Services at our then current rates. This Agreement will apply to our supply of the additional Product and Services to you (and you may need to execute an additional Application Form or other documentation to confirm your order).
- 3.3 **Your obligations:** You must:
- (a) provide us with any Data and other information that we request in a form acceptable to us to allow us to provide you with the Services;
  - (b) notify us as soon as practicable if there is any change to your business name, contact details or any Personnel authorised to access and use the Services (including Authorised Users under Module 2 – Software as a Service and Module 3 – Applications for Mobile Devices);
  - (c) where required by us, provide us with access to your premises, systems and computer networks as required to provide the Services to you;
  - (d) have all resources necessary to receive and use the Services, including adequate hardware, software, telecommunications resources and internet access;
  - (e) in connection with the Services, act reasonably, follow our directions, cooperate with us and provide any assistance reasonably necessary;

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- (f) if your Personnel are attending our premises for any reasons, you must ensure that your Personnel comply with our directions, our internal policies relating to our premises and all applicable health and safety laws;
- (g) comply, and ensure that your Personnel comply, with all applicable laws (including applicable industry codes) in connection with the use of the Services, including but not limited to the Privacy Act and the Spam Act; and
- (h) only use the Services for internal business purposes. You must not resupply, resell or grant access to the Services to any third party.

### 3.4 **General prohibitions:** You must not, and must ensure that your Personnel do not, use the Services (or any part of the Services):

- (a) to engage in any fraudulent or unlawful behaviour, or to defame, menace or harass any third party;
- (b) in any manner that is likely to result in our systems, or that of any other person, being affected by any virus, worm, Trojan or similar computer program;
- (c) in a way that infringes the Intellectual Property Rights or any other rights of any person;
- (d) in a way that disrupts, misuses or excessively uses our hardware, bandwidth access, storage space or other resources, or that of our other customers;
- (e) use any data mine, scrape, crawl, email harvest or any other process that send automated queries in connection with the Services; or
- (f) in any other manner that is otherwise unacceptable to us.

### 3.5 **Training:** If notified by us, you must ensure that all your Personnel using any Services complete any required training, at the time, place and in any format nominated by us (acting reasonably). You acknowledge and agree that certain parts of the Services may not be accessible to any of your Personnel who have not completed the relevant training. In the event that you or any of your Personnel cancel any scheduled training (other than any Training Services under Module 4 – Training Services), a Training Cancellation Fee may apply.

### 3.6 **General acknowledgements:** You acknowledge and agree that:

- (a) any timeframes that we notify to you in relation to the Services are estimates only and are not binding on us;
- (b) there may be delays or failures in respect of any electronic notifications or communications (including emails, SMS, push notifications and other forms of electronic communication) sent through the use of the Services. We are not liable to you for any loss or damage you suffer as a result of any delays in the sending of any electronic communications or a failure to terminate any electronic communications;
- (c) subject to applicable law and clause 8.3:
  - (i) we do not guarantee that the Services will be compliant with, or make you or allow you to be compliant with, any specific obligation you may have under any applicable law;
  - (ii) you are responsible for ensuring that you comply with your own obligations under all applicable laws;
  - (iii) the Services may not be error free, and we make no warranty that the Services will be free from defects, errors or faults, fit for any particular purpose or will function in accordance with the Documentation; and
  - (iv) we do not warrant that the Documentation is complete, accurate or sufficient to explain the operation of the Services;
- (d) if we refer a third party service provider to you, we make no representation and give no warranty in relation to the suitability or performance of that third party service provider; and
- (e) the Services may be unavailable from time to time, and we make no representation or warranty in relation to the availability of the Services.

### 3.7 **Electronic Messages:** If any feature of any Service allows you to send, publish or dispatch any Electronic Message, you must not, and must ensure that your Personnel do not, use that feature or the relevant Service:

- (a) to impersonate any other person or brand;

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- (b) in any way that is likely to suggest or represent that we have created or endorse in any way any content that you transmit or communicate using the Service; or
- (c) to send any Marketing Message to any person unless:
  - (i) the recipient has first consented to receiving the Marketing Message; and
  - (ii) the recipient is provided with a means to opt-out of receiving such a Marketing Message; and
  - (iii) the Marketing Message includes a clear identification within the Marketing Message of the source or originating entity of the Marketing Message to enable the recipient to determine who sent the Marketing Message.

### 4 Support

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- 4.1 **Support provided:** Subject to clause 4.2 and Part B – Modules for Specific Types of Services, we will use reasonable endeavours to provide the following technical support in connection with the Products and the Services:
- (a) support and assistance (by telephone, through our website or by any other means, at our option) during Support Hours only;
  - (b) corrections or modifications to the Services as they are made generally available; and
  - (c) patches and new releases as they become generally available, including updates to the Documentation.
- 4.2 **Support not provided:** You acknowledge and agree that we are not required to provide any support services:
- (a) at your premises;
  - (b) outside of Support Hours;
  - (c) in excess of the support services that we consider reasonable having regard to the relevant issue;
  - (d) in respect of errors caused by you or your Personnel;
  - (e) in respect of any hardware, or any power or network failures or inaccurate or incomplete data caused by your erroneous action or inaction or that of any third party;
  - (f) to any of your Personnel that has not completed any training required under clause 3.5.

### 5 Fees, payment and taxes

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- 5.1 **Fees:** You must pay the Fees to us.
- 5.2 **We may change the Fees:** Subject to clause 10, we may change the Fees at any time by giving written notice to you, which may be provided on our website, by electronic mail or other electronic means.
- 5.3 **Invoices and payment:** We will invoice you for the Fees, and you must pay any invoice issued by us in accordance with the timeframe specified on that invoice or, if no time frame is specified, within 7 days of the date of that invoice.
- 5.4 **Interest on late payment:** You must pay Interest on any amount that is overdue by you to us.
- 5.5 **Fee dispute:** If there is a dispute about whether a Fee or other amount contemplated in this Agreement is payable or available, you must not withhold the amount in dispute.
- 5.6 **Deferral of performance:** If you fail to pay the Fees in accordance with this clause 4, without limiting any other remedies available to us, we may suspend your access and right to use any Services or defer performance of all Services until the outstanding Fees are paid.
- 5.7 **Expenses:** You agree to reimburse us for all reasonable out of pocket expenses (including travel and accommodation expenses) that we may incur in providing any Services to you ("**Expenses**").
- 5.8 **Taxes:** The Fees are exclusive of all applicable Taxes and you agree to pay any applicable Tax in addition to the Fees. We may invoice you for the amount of any applicable Taxes and you must pay that amount to us in accordance with the relevant invoice. In the event that withholding Tax is payable in relation to any supply of Services, you must increase the amount of any payment to us so that the amount actually received by us is no less than the Fees.

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- 5.9 **Manner of payment:** You may pay the Fees to us:
- (a) if you entered into an Agreement with us prior to 15 February 2018:
    - (i) by direct debit, either from a debit account or credit card, in which case you must complete the Direct Debit Authority; or
    - (ii) upon receipt of an invoice from us, in which case you must also pay the Administration Fee; or
  - (b) if you entered into an Agreement with us on or after 15 February 2018, by direct debit, either from a debit account or credit card, in which case you must complete the Direct Debit Authority.
- 5.10 **CPI increase:** You acknowledge and agree that all Fees under this Agreement (including the amount set out in paragraph (a) of the definition of Cancellation Fee in clause 13.1), will be increased on each anniversary of the date of this Agreement to an amount calculated by multiplication of the then current amount by a fraction, the denominator of which is the CPI current one year previously and the numerator of which is the then current CPI.

## 6 Intellectual Property

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- 6.1 **Ownership of Background IP:** Unless expressly specified otherwise in this Agreement, each party (or its licensors, as applicable) will retain ownership of all Intellectual Property Rights subsisting in any Material it provides or makes available to the other party under or in connection with this agreement ("**Background IP**"). All modifications and enhancements to a party's Background IP are also to be treated as that party's Background IP. If a party modifies or enhances the Background IP of the other party, then the first party assigns to the owner of such Background IP all Intellectual Property Rights in those modifications or enhancements immediately from creation.
- 6.2 **Licence to Background IP:** Subject to and without limiting clauses 6.5 and 6.6, you grant us for the Term a non-exclusive, irrevocable, sub-licensable global licence to reproduce, use and modify your Background IP for the purpose of providing the Services to you.
- 6.3 **Developed IP:** Ownership of all Intellectual Property Rights in all Materials created or developed:
- (a) by us or on our behalf in the course of providing the Services; or
  - (b) by or on behalf of either party in connection with this Agreement,
- vests in us immediately from creation (**Developed IP**). You assign all of its right, title and interest in the Developed IP to us.
- 6.4 **Licence to Developed IP:** Subject to the terms of this Agreement, we grant you for the Term a non-exclusive, revocable, limited licence to use any Developed IP we provide to you, but solely to the extent required by you to receive and use the Services. For clarity, you must not, and you must ensure that your Personnel do not, sublicense, resell or otherwise allow any third party to use, reproduce or modify the Developed IP.
- 6.5 **Licence to Data:** You grant us a non-exclusive, irrevocable, sub-licensable global licence to store, reproduce, use, modify, disclose and otherwise exploit the Data.
- 6.6 **Use of names and marks:** You agree that we may use your name and trade marks on advertising or promotional material, and may disclose to third parties that you are one of our customers.
- 6.7 **Intellectual property warranty:** You represent and warrant that your provision and our use of any Data, Material or Intellectual Property Rights that you provide to use in connection with this Agreement does not and will not infringe the Intellectual Property Rights or any other rights of any person.

## 7 Confidentiality and Privacy

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- 7.1 **Confidentiality obligations:** Subject to clause 6.3, each party must:
- (a) keep the other party's Confidential Information secret and confidential;
  - (b) only access, use, disclose or reproduce the other party's Confidential Information for the purpose of this Agreement or otherwise as permitted under any other provision of this Agreement; and
  - (c) take all steps reasonably necessary to safeguard the other party's Confidential Information from unauthorised access, use or disclosure.

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- 7.2 **Permitted uses and disclosures:** Subject to clause 6.3, a party must not disclose the other party's Confidential Information to any person except:
- (a) as permitted or authorised by any other provision of this Agreement;
  - (b) to its Personnel on a "need to know" basis provided those persons are bound by confidentiality obligations similar to those set out in this agreement; or
  - (c) with the other party's written consent; or
  - (d) if required by law.
- 7.3 **Privacy:** You must:
- (a) comply with the Privacy Act in relation to any Personal Information that forms part of your Data;
  - (b) obtain all required consents, and make all required disclosure and notifications, to ensure that:
    - (i) you have the right to provide and disclose to us all Personal Information that forms part of the Data;
    - (ii) we have the right to use all Personal Information that forms part of your Data for our internal business purposes or in connection with the conduct of our business (including disclosing such Personal Information to our Related Bodies Corporate);
    - (iii) we have the right to use any Personal Information in your Data for direct marketing purposes (including by sending commercial electronic messages), and to provide such Personal Information to third parties that may use it for that purpose.

## 8 Liability and indemnities

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- 8.1 **Liability cap:** Subject to clauses 8.2 and 8.3, our liability to you for any loss or damage however caused (including by our negligence), that you suffer or incur in connection with this Agreement is limited to:
- (a) the total Fees that you have paid to us in the 12 months preceding the date on which you first suffer the loss or damage; or
  - (b) if this Agreement has not been in force for at least 12 months on the date on which you first suffer the loss or damage, the total Fees payable in the first 12 months of this Agreement calculated as the sum of:
    - (i) the Fees actually paid by you to us; plus
    - (ii) the Fees payable by you to us in the current month (that is, the month during which you first suffer the loss or damage) multiplied by the remaining number of months in the initial 12-month period.
- 8.2 **Consequential Loss:** Subject to clause 8.3, we are not liable for any Consequential Loss however caused (including by our negligence), that you suffer or incur in connection with this Agreement.
- 8.3 **Australian Consumer Law (applies where you are located in Australia only):** If the Competition and Consumer Act 2010 (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by us in connection with this Agreement and our liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 8.1 and 8.2 do not apply to that liability and instead our liability for such failure is limited to (at our election) in the case of a supply of goods, our replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, our supplying the services again or paying the cost of having the services supplied again.
- 8.4 **New Zealand Consumer Law (applies where you are located in New Zealand only):** The parties acknowledge that they are both in trade, and that the Services are both supplied and acquired in trade. Accordingly, the parties agree (to the fullest extent permitted by law):
- (a) that the *Consumer Guarantees Act 1993* ("CGA") does not apply, and that this clause contracts out of the provisions of the CGA;
  - (b) to contract out of sections 9, 12A, 13, and 14(1) of the *Fair Trading Act 1986*; and
  - (c) that it is fair and reasonable that they are bound by this clause.
- 8.5 **Indemnity:** You are liable for, and indemnify us from and against, all loss or damage (including legal costs) that we incur or suffer in connection with:

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- (a) any breach of clauses 3.3(g), 3.3(h), 3.4, 6.7 and 7 by you or your Personnel;
- (b) any wilful misconduct, or fraudulent or illegal act or omission by you or your Personnel;
- (c) any claim by a third party arising in connection with any content, Background IP, Data or Material you provide to us in connection with this Agreement.

### 9 Termination

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#### 9.1 **Our right to terminate for breach:** If:

- (a) you fail to pay the Fees in accordance with clause 5;
- (b) we believe that you or your Personnel have committed a breach of clauses 3.3, 3.4, 3.5, 6.7 or 7; or
- (c) we receive a request or notice from a third party, and we determine that such request has merit and is not vexatious, or from a regulatory body requiring us to cease providing any Service(s) to you or remove any content you are making available through use of the Services,

then we may terminate or suspend (at our option) this Agreement in whole or in part by written notice to you, in which case this Agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.

#### 9.2 **Mutual termination for breach:** If:

- (a) a party commits a material breach of this Agreement that is not remedied within 14 days of receiving written notice of that breach from the other party; or
- (b) an Insolvency Event occurs in relation to a party,

then the relevant other affected party may terminate this Agreement by written notice to the other party, in which case this Agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.

#### 9.3 **Termination for Convenience:** Upon expiration of the Initial Term, either party may terminate this Agreement upon giving 30 days' written notice to the other party.

#### 9.4 **Cancellation Fee:** If, during the Initial Term or any Subsequent Term, we terminate this Agreement under clause 9.1 or 9.2 or you wish to terminate this Agreement, you must pay us the applicable Cancellation Fee.

#### 9.5 **Waiver and acknowledgment:** You:

- (a) expressly waive any rights you may have to terminate this Agreement other than as contemplated in this clause 9; and
- (b) acknowledge that we may terminate this Agreement under this clause 9 without considering the impact such termination may have on you.

#### 9.6 **After termination:** On termination or expiry of this Agreement:

- (a) accrued rights or remedies of a party are not affected;
- (b) any licence granted to you under this Agreement ceases immediately, and you must stop using the Services; and
- (c) you must deliver to us any of our Confidential Information, and any other property and materials (including any part of the Services) in your care, custody or control.

#### 9.7 **Survival:** Termination or expiry of this Agreement will not affect clauses 1, 6, 7, 8, 9.4 and 9.6, and any provision of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination or expiry.

### 10 Changes to this Agreement or to the Services

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#### 10.1 **We can vary this Agreement:** Subject to clause 10.2, we may amend or vary this Agreement (including any applicable Fees) at any time by giving you written notice, which may be by notice on our website, by electronic mail or by other electronic means (such as electronic notification at the time of any new product releases or updates).

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- 10.2 **Variation procedure:** If any proposed amendment or variation to this Agreement under clause 10.1 is likely to have a detrimental impact on you or on your business ("**Variation**"), then:
- (a) we will notify you directly in writing before implementing such Variation;
  - (b) if you do not agree with the Variation, you may terminate this Agreement by written notice to us within 30 days of the notice contemplated in clause 10.2(a). If, within 30 days of the notice contemplated in clause 10.2(a), you do not notify us that you do not agree with the Variation and wish to terminate this Agreement, then you will be deemed to have accepted the proposed Variation to this Agreement; and
  - (c) we will ensure that you are presented with an updated version of this Agreement the next time you use the Service(s). You will have to accept the updated version of this Agreement to continue using the relevant Service(s). If you do not accept the updated version of this Agreement, this Agreement will automatically be terminated with respect to the affected Service(s).
- 10.3 **Changes to the Services:** Subject to clause 10.4:
- (a) we may change or refine any feature or functionality of any Service(s), or substitute an alternative for any part of any Service(s), provided that the relevant Service(s) retain at least the basic function specified in the Documentation, and that the overall performance of the relevant Service(s) is not detrimentally affected; and
  - (b) the inclusions and functionality for each aspect of the Service(s) are otherwise determined by us from time to time.
- 10.4 **Detrimental changes to the Services:** If we make any change to a Service that is likely to:
- (a) have a material detrimental impact on you or your business;
  - (b) detract from a core function of the Service specified in the Documentation; or
  - (c) detrimentally affect the overall performance of the Service in a material way,
- then:
- (d) we will notify of such change; and
- 11 you may terminate this Agreement with respect to that Service by written notice to us within 30 days of the notice contemplated in clause 10.4(d). If, within 30 days of the notice contemplated in clause 10.4(d), you fail to notify us that you do not agree with the change and wish to terminate this Agreement, then you will be deemed to have accepted the proposed change to the Services.FORCE majeure**
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We will not be:

- (a) in breach of this Agreement as a result of; or
- (b) liable for,

any failure or delay in the performance of our obligations under this Agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or by any of your acts or omissions or that of your Personnel.

## 12 General

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- 12.1 **Governing law:** If you are located:
- (a) in Australia, the laws of Queensland Australia govern this Agreement; or
  - (b) in New Zealand, the laws of New Zealand govern this Agreement,
- and each party irrevocably submits to the jurisdiction of the courts of that place and courts competent to hear appeals from those courts.
- 12.2 **Assignment and novation:** You must not assign, in whole or in part, or novate your rights and obligations under this Agreement without our prior written consent. You agree that we may assign (in whole or in part) our rights or novate our rights and obligations (in whole or in part) under this Agreement at any time without your consent.

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- 12.3 **Time is not of the essence:** Unless otherwise specified in this Agreement, you acknowledge and agree that time is not of the essence in the performance of obligations under this Agreement, except in relation to performance of payment obligations.
- 12.4 **Relationship of the parties:** Unless expressly stated otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 12.5 **Severability:** Each provision of this Agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- 12.6 **Subcontracting:** You acknowledge and agree that we may subcontract the performance of all or any part of our obligations under this Agreement.
- 12.7 **No waiver:** A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

### 13 Definitions and interpretation

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- 13.1 **Definitions:** In this Agreement, the terms set out below have the following meaning:

**Access Fee** has the meaning given to it in Module 1 – Locally Installed Software.

**Administration Fee** means our administration fee in the initial amount of \$23.

**Application Form** means any application form and/or other document entered into between you and us that sets out details relevant to our supply of the Services to you.

**Authorised User** means any of your employees or other person whom you authorise to access and use any of the Services.

**Business Day** means:

- (a) where you are located in Australia, any day on which banks are open for business in Brisbane, Queensland; or
- (b) where you are located in New Zealand, any day on which banks are open for business in Auckland, NZ.

**Cancellation Fee** means an amount equal to:

- (a) 100 % of the monthly fee applicable for each of your Services multiplied by the number of whole months remaining in the Initial Term, or the then-current Subsequent Term (as applicable), for the relevant Services; and
- (b) an amount equal to any implementation discounts that we may have offered in relation to the relevant Services pro-rated on a straight line basis to the number of whole months remaining in the Initial Term for the relevant Services.

**Confidential Information** of a party means:

- (a) information of a confidential nature relating to or developed in connection with the business or affairs of the party which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the other party; or
- (b) information designated by that party as confidential; or
- (c) information regarding clients, customers, employees, contractors of or other persons doing business with that party,

but does not include information that:

- (d) is or becomes generally available in the public domain, other than through any breach of confidence;
- (e) is rightfully received by the other party from a third person other than as a result of a breach of confidence; or
- (f) has been independently developed by the other party without using any other Confidential Information of the first party.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CPI** means:



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- (a) where you are located in Australia, the All Groups Consumer Price Index for the Weighted Average of Eight Capital Cities of Australia or if the Australian Statistician ceases to publish whichever of this index, the index published by the Australian Bureau of Statistics (or any successor of or replacement for it) which most closely approximates to the applicable index; or
- (b) where you are located in New Zealand, the Consumers Price Index published by Statistics New Zealand.

**Data** means any data or information that you provide to us or give us access to in connection with this Agreement or the Services, and specifically includes property, landlord and tenant data and information.

**Direct Debit Authority** means the direct debit authority form as provided by us to you from time to time.

**Documentation** means any documentation that we provide to you in connection with the Services.

**Fees** includes:

- (a) the fees that are payable by you to us for the provision of the Services, as specified in your Application Form or as otherwise agreed in writing between you and us;
- (b) any applicable installation or training fees specified in your Application Form or as otherwise notified by us to you from time to time;
- (c) any applicable Expenses;
- (d) any applicable Cancellation Fees;
- (e) any applicable Access Fees;
- (f) any applicable Administration Fees; and
- (g) any applicable Training Cancellation Fees.

**Force Majeure Event** means any occurrence, event or omission outside a party's control and, and includes any of the following: a physical natural disaster including fire, flood, lightning or earthquake; war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; epidemic or quarantine restriction; ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; law taking effect after the date of this Agreement; disruption or unavailability of the internet; strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and failure of any of our third party service provider to provide services, including hosting services.

**Consequential Loss** means any indirect, special or consequential loss (being a loss that does not arise naturally, that is, according to the ordinary course of things, whether or not the parties were aware of the possibility of such loss), or any loss of revenues, loss of reputation, loss of profits, loss of bargain, loss of actual or anticipated savings, loss or corruption of data or lost opportunities (including opportunities to enter into arrangements with third parties).

**Initial Term** means the period of time specified as such in your Application Form commencing on the date specified in your Application Form.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, trade or business or company name, or right of registration of such rights.

**Interest** means interest on any payment owing under this Agreement calculated:

- (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant interest.

**Insolvency Event** in the context of a person means any of the following: a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person; the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) (or, where you are located in New Zealand, an equivalent arrangement under the *Insolvency Act 2006* (NZ)) or a debt Agreement under part IX *Bankruptcy Act 1966* (Cth) (or, where you are

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located in New Zealand, an equivalent agreement under the *Insolvency Act 2006* (NZ)); the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts (including within the meaning of the Corporations Act) or is presumed to be insolvent under applicable laws (including the Corporations Act); the person ceases to carry on business; or an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

**Material** includes software, firmware, tools, documentation, reports, data, diagrams, procedures, plans and other materials.

**Electronic Message** means any electronic message or notification of any kind (including but not limited to emails, SMS and pop-up notifications).

**Marketing Message** means an Electronic Message that is designed to promote the sale of or demand for goods, services, land, an interest in land, or a business or investment opportunity.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Personnel** means a party's employees, directors, officers, contractors, professional advisers and agents.

**Privacy Act** means:

- (a) where you are located in Australia, the *Privacy Act 1988* (Cth), including the Australian Privacy Principles; or
- (b) where you are located in New Zealand, the *Privacy Act 1993*, including the Information Privacy Principles, and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instrument made or issued under those Acts or those ancillary rules, guidelines, orders, directions, directives or codes of conduct, as amended from time to time.

**Related Bodies Corporate:**

- (a) where you are located in Australia, has the meaning given to that term by section 9 Corporations Act; or
- (b) where you are located in New Zealand, has the meaning given to the term "related company" by section 2(3) of the *Companies Act 1993*.

**Services** means the products and/or services you have selected in your Application Form or that you have otherwise subscribed to or ordered from us and that we have agreed to supply to you, and includes any additional Services that we have agreed to provide to you in accordance with clause 3.2.

**Service Term** has the meaning given to it in clause 2.2.

**Spam Act** means:

- (a) where you are located in Australia, the *Spam Act 2003* (Cth); or
- (b) where you are located in New Zealand, the *Unsolicited Electronic Messages Act 2007*.

**Subsequent Term** means a period of time equal to the Initial Term.

**Support Hours** means the hours during which we provide support to you under clause 4, as set out on our website (at [www.console.com.au/contact-us](http://www.console.com.au/contact-us)) and as amended or notified to you from time to time.

**Tax** means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a government authority (local, State, Federal or otherwise) from time to time, including any stamp, value added, goods and services or transaction tax, duty or charge, excluding taxes on profit or capital gains.

### 13.2 Interpretation: In this Agreement:

- (a) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) references to a person includes an individual, partnership, joint venture, association, firm or a body, whether incorporated or unincorporated;
- (c) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;

## PART A – GENERAL TERMS

- (d) headings are for convenience only and will not affect interpretation of this Agreement;
- (e) where a word or phrase is given a particular definition, other parts of speech and grammatical forms of that word or phrase in this agreement will have a corresponding meaning;
- (f) a reference to dollars or \$ is a reference to Australian dollars (where you are located in Australia) or New Zealand dollars (where you are located in New Zealand);
- (g) the singular includes the plural, and vice versa; and
- (h) “includes”, “including”, “for example”, “such as” and similar terms are not words of limitation.

# Part B – Modules for Specific Types of Services

## Module 1 – Locally Installed Software

### 1 Application of this Module 1

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This Module 1 only applies to our supply and your use of the Services if we are supplying you with any software to be installed on your premises as part of the Services (including but not limited to Gateway, ClientManager Trust, RPO) ("**Software**").

### 2 Software

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- 2.1 **Licence:** Subject to your paying the relevant Fees in accordance with clause 5 of Part A – General Terms and complying with the terms of this Agreement, we grant you a non-exclusive, non-transferable, licence for the applicable Service Term to:
- (a) install and run the Software at your Office;
  - (b) use the Software in accordance with the Documentation; and
  - (c) make copies of the Software for backup purposes.
- 2.2 **Authorised Users:** If specified in your Application Form, your number of Authorised Users for the Software will be limited to the number of Authorised Users set out in your Application Form.
- 2.3 **No obligation to update or upgrade the Software:** You acknowledge and agree that we may but are not obliged to provide you with any update or upgrade to, or any new version of, the Software.
- 2.4 **Software versions:** You must:
- (a) use the latest version of the Software, as provided by us to you; and
  - (b) ensure that all updates or upgrades to the Software are installed in the order in which we release such updates or upgrades; and
  - (c) not install any update or upgrade to the Software that has not been provided by us.
- 2.5 **Login Details:** Each Authorised User will be entitled to have a single login and password (which may change from time to time) to access and use the Software ("**User Credentials**"). You must:
- (a) not allow any set of User Credentials to be used by more than one individual Authorised User;
  - (b) ensure that all User Credentials are kept secure and confidential, and take all steps necessary to ensure that User Credentials are not disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User;
  - (c) ensure that you block, disable or change the relevant User Credentials where an Authorised User ceases to be an Authorised User, including where they cease to work for you; and
  - (d) notify us immediately after you become aware that any User Credentials have been disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User.

### 3 Restrictions and prohibitions

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- 3.1 **Restrictions on use:** You must not, and must ensure that your Personnel do not, use the Software:
- (a) to gain unauthorised access to or interfere with any online resources or systems of any third party, including by any form of hacking;

## PART B – MODULES FOR SPECIFIC PRODUCTS AND SERVICES

- (b) to distribute unsolicited emails to third parties, including bulk unsolicited emails; or
- (c) to distribute a higher volume of outgoing emails or other automated messages than is acceptable to us.

3.2 **Prohibitions:** You must not, and must ensure that your Personnel do not:

- (a) decompile, disassemble, reverse compile or otherwise reverse engineer all or any portion of the Software, including any source code, object code, algorithms, methods or techniques used or embodied therein;
- (b) provide access to the Software to any third party or any person who has not completed the required training in accordance with clause 3.5 of Part A – General Terms.

### 4 Installation

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4.1 **System requirements:** You warrant that you have read, understood and will comply with the relevant system requirements for the Software, as notified by us to you from time to time ("**System Requirements**").

4.2 **Installation:** We will install the Software at your premises in conjunction with your preferred technical service provider (if possible). You acknowledge and agree that installation fees may apply.

4.3 **Additional work:** If your network, hardware, systems or software configuration does not comply with the System Requirements at the date or time we install the Software, additional fees may apply if further work is required for the installation of the Software.

### 5 Liability and indemnities

---

5.1 **Use of the Software:** We are not responsible or liable to you or your Personnel, and you are responsible for any use of the Software by you or your Personnel.

5.2 **Liability:** Despite anything in this Agreement, you acknowledge and agree that we will not be liable to you for any error or defect in the Software, or any delay, to the extent that such error, defect or delay occurs as a result of:

- (a) any breach of this Agreement by you or your Personnel;
- (b) your network, hardware, systems or software configuration not complying with the System Requirements;
- (c) any act or omission of any of your Personnel who has not undergone any required training in accordance with clause 3.5 of Part A – General Terms; and
- (d) any failure caused or contributed to by any hardware, service or software provided to you by a third party.

5.3 **Indemnity:** You are liable for, and indemnify us from and against, all loss or damage (including legal costs) that we incur or suffer in connection with any breach by you or your Personnel of clause 3 of this Module 1.

### 6 Termination and suspension

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6.1 **Termination and suspension:** We may suspend or terminate this Agreement in whole or in part immediately if we suspect that you or your Personnel have breached clause 3 of this Module 1.

6.2 **Survival:** Clause 5 of this Module 1 survives termination or expiry of this Agreement.

6.3 **Post-termination use:** If you need to use the Software temporarily after termination or expiry of the applicable Service Term ("**Termination Date**"):

- (a) you must notify us in writing, and such notice must include the purpose for which you wish to access and use the Software; and

## PART B – MODULES FOR SPECIFIC PRODUCTS AND SERVICES

- (b) we may (at our discretion) allow you to use the Software for a specific period of time, a limited purpose and for a fee notified by us to you from time to time ("**Access Fee**").

### 7 Definitions

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7.1 The terms set out below have the following meaning in this Module 1:

**Access Fee** has the meaning given in clause 6.3 of this Module 1.

**Gateway** means the Gateway software (also known as Console Classic and GatewayLive), which is generally used to administer Real Estate Trust Accounts and automate business processes.

**Module 1** means this Module 1 – Locally Installed Software.

**Office** means the office or other location specified in the Application Form, or any other location agreed in writing between the parties.

**Software** has the meaning given in clause 1 of this Module 1.

**System Requirements** has the meaning given in clause 4.1 of this Module 1.

**User Credentials** has the meaning given to it in clause 2.5 of this Module 1.

### Module 2 – Software as a Service

#### 1 Application of this Module 2

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Unless otherwise specified in this Agreement, this Module 2 only applies to our supply and your use of the Services if we are supplying you with any software, platform or service that you access and use through the Internet (including but not limited to Console Cloud, ClientManager and WebChoice)(“**Software as a Service**” or “**SaaS**”).

#### 2 Licence

---

2.1 **Licence to the SaaS:** Subject to your paying the relevant Fees in accordance with clause 5 of Part A – General Terms and complying with the terms of this Agreement, we grant you a non-exclusive, non-transferable licence for the applicable Service Term to:

- (a) access and use the SaaS and the Documentation; and
- (b) allow your Authorised Users to access and use the SaaS and the Documentation.

2.2 **No obligation to update or upgrade the SaaS:** You acknowledge and agree that we may but are not obliged to provide you with any update or upgrade to, or any new version of, the SaaS.

2.1 **Authorised Users:** You acknowledge and agree that:

- (a) if specified in your Application Form, your number of Authorised Users for the SaaS will be limited to the number of Authorised Users set out in your Application Form; and
- (b) only your Authorised Users with applicable User Credentials will be able to use the SaaS.

#### 3 Access and use

---

3.1 **Requirements:** You are solely responsible for:

- (a) ensuring that your network and systems comply with any Systems Requirements; and
- (b) procuring and maintaining compatible internet accesses and connections that comply with any applicable Systems Requirements and that are suitable so that you and your Authorised Users are able to access and use the SaaS in accordance with this Agreement.

3.2 **Login Details:** Each Authorised User will be entitled to have a single set of login and password (which may change from time to time) to access and use the SaaS (“**User Credentials**”). You must:

- (a) not allow any set of User Credentials to be used by more than one individual Authorised User;
- (b) ensure that all User Credentials are kept secure and confidential, and take all steps necessary to ensure that User Credentials are not disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User;
- (c) ensure that you block, disable or change the relevant User Credentials where an Authorised User ceases to be an Authorised User, including where they cease to work for you; and
- (d) notify us immediately after you become aware that any User Credentials have been disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User.

3.3 **Restrictions:** You must:

- (a) use all reasonable endeavours to prevent any unauthorised access to, or use of, the SaaS, and notify us immediately after you become aware of any unauthorised access to or use of the SaaS;
- (b) not, and ensure that your Authorised Users do not:

## PART B – MODULES FOR SPECIFIC PRODUCTS AND SERVICES

- (i) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SaaS, or attempt or allow any third party to do any of the foregoing;
- (ii) use the SaaS for the purpose of accessing or deleting any data or information of our other customers or of any person;
- (iii) use the SaaS for the purposes of accessing, storing, distributing or otherwise transmitting any Material or content that:
  - (A) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (B) promotes unlawful violence;
  - (C) depicts sexually explicit images; or
  - (D) is discriminatory or promotes discrimination based on race, gender, colour, religious belief, sexual orientation, disability.

3.4 **Content Management:** We reserve the right to remove from the SaaS any of your Materials or content that we consider to be inappropriate or otherwise in breach of clause 3.3(b)(iii) of this Module 2.

### 4 Liability and indemnities

---

4.1 **Use of your User Credentials:** We are not responsible or liable to you or your Authorised Users, and you are responsible for any access to or use of the SaaS through any of your User Credentials.

4.2 **Liability:** Despite anything in this Agreement, you acknowledge and agree that we will not be liable to you for any error or defect in the SaaS, or any delay, to the extent that such error, defect or delay occurs as a result of:

- (a) any breach of this Agreement by you or your Personnel;
- (b) your network, hardware, systems, internet connection, network or software configuration not complying with the System Requirements;
- (c) any act or omission of any of your Personnel who has not undergone any required training in accordance with clause 3.5 of Part A – General Terms; and
- (d) any failure caused or contributed to by any hardware, service or software provided to you by a third party.

4.3 **Indemnity:** You are liable for, and indemnify us from and against, all loss or damage (including legal costs) that we incur or suffer in connection with any breach by you or your Personnel of clause 3 of this Module 2.

### 5 Termination and suspension

---

5.1 **Termination and suspension:** We may suspend or terminate this Agreement in whole or in part immediately if we suspect that you or your Personnel have breached clause 3 of this Module 2.

5.2 **Survival:** Clause 4 of this Module 2 survives termination or expiry of this Agreement.

5.3 **Post-termination access and use:** If you need to access or use the SaaS temporarily after termination or expiry of the applicable Service Term ("**Termination Date**"):

- (a) you must notify us in writing, and such notice must include the purpose for which you wish to access and use the SaaS; and
- (b) we may (at our discretion) allow you to access and use the SaaS for a specific period of time, a limited purpose and for a fee notified by us to you from time to time ("**Access Fee**").



### 6 Definitions

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6.1 The terms set out below have the following meaning in this Module 2:

**Access Fee** has the meaning given in clause 5.3 of this Module 2

**Module 2** means this Module 2 – Software as a Service.

**Software as a Service** or **SaaS** has the meaning given in clause 1 of this Module 2.

**Systems Requirements** means all system, network and internet requirements for the SaaS, as notified by us to you from time to time.

**User Credential** has the meaning given to it in clause 3.2 of this Module 2.

### Module 3 – Apps for Mobile Devices

#### 1 Application of this Module 3

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Unless otherwise specified in this Agreement, this Module 3 only applies to our supply and your use (and that of your Authorised Users) of the Services if we are supplying you and your Authorised Users with any app for mobile devices (including but not limited to LiveAgent and MobileAgent)("App").

#### 2 Licence, use and restrictions

---

2.1 **Application of Module 1 and Module 2:** To the extent that your Authorised Users:

- (a) are required to install the App on their mobile device, then the terms and conditions set out in Module 1 – Locally Installed Software (other than clause 4 of that Module) will apply (and any reference to "Software" is taken to be a reference to "App", and the reference to installing and running the App "at your Office" is taken to be a reference to "on your mobile device"); and
- (b) are accessing or using any data, platform, software or service via the Internet using the App installed on their mobile device, then the terms and conditions set out in Module 2 – Software as a Service will apply (and any reference to "SaaS" is taken to be a reference to "App").

2.2 **No obligation to update or upgrade the App:** You acknowledge and agree that we may but are not obliged to provide you with any update or upgrade to, or any new version of, the App.

#### 3 Authorised Users and requirements

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3.1 **Compatibility:** You acknowledge and agree that:

- (a) the App may not be compatible with:
  - (i) all mobile devices; or
  - (ii) all operating software;
- (b) your Authorised Users may not be able to install, access or use the App if they do not have a compatible device with a compatible operating software; and
- (c) it is your responsibility to ensure that all your Authorised Users have compatible mobile devices with compatible operating software.

We can provide you with more details in relation to compatible devices and operating software (including in relation to compatible versions of the operating software) on request.

3.2 **End User Licence Agreement:** You must ensure that all your Authorised Users read, understand and agree to the End User Licence Agreement. You acknowledge and agree that:

- (a) the End User Licence Agreement may be updated or amended from time to time;
- (b) if we amend or update the End User Licence Agreement, your Authorised Users will be notified within the App and will be required to agree the updated or amended version of the End User Licence Agreement; and
- (c) your Authorised Users will not be able to use the App unless and until they agree to comply with and are bound by the End User Licence Agreement or any amendments or update notified to them.

3.3 **Authorised Users:** You acknowledge and agree that:

- (a) if specified in your Application Form, your number of Authorised Users for the App will be limited to the number of Authorised Users set out in your Application Form; and
- (b) only your Authorised Users with applicable User Credentials are permitted to use the App.

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- 3.4 **Login Details:** Each Authorised User will be entitled to have a single set of login and password (which may change from time to time) to access and use the App ("**User Credentials**"). You must:
- (a) not allow any set of User Credentials to be used by more than one individual Authorised User;
  - (b) ensure that all User Credentials are kept secure and confidential, and take all steps necessary to ensure that User Credentials are not disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User;
  - (c) ensure that you block, disable or change the relevant User Credentials where an Authorised User ceases to be an Authorised User, including where they cease to work for you; and
  - (d) notify us immediately after you become aware that any User Credentials have been disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User.

### 4 Indemnity and survival

---

- 4.1 **Indemnity:** You are liable for, and indemnify us from and against, all loss or damage (including legal costs) that we incur or suffer in connection with any breach of the End User Licence Agreement by your Authorised Users.
- 4.2 **Survival:** This clause 4 survives termination or expiry of this Agreement.

### 5 Suspension or termination

---

- 5.1 **Suspension or termination of Authorised Users:** You acknowledge and agree that we may suspend or terminate the rights of any of your Authorised Users to use the App at any time if:
- (a) that Authorised User fails to comply with the End User Licence Agreement; or
  - (b) you fail to comply with this Module 3.

### 6 Definitions

---

- 6.1 The terms set out below have the following meaning in this Module 3:

**App** has the meaning given to it in clause 1 of this Module 3.

**End User Licence Agreement** means the terms and conditions presented to your App User in the App, as updated or amended by us from time to time.

**Module 3** means this Module 3 – Apps for Mobile Devices.

**User Credentials** has the meaning given in clause 3.4 of this Module 3.

### Module 4 – Training Services

#### 1 Application of this Module 4

---

Unless otherwise specified in this Agreement, this Module 4 only applies to our supply and your use (and that of your Participants) of the Services if we are supplying you and/or your Participants with any training in relation to the Services and related business practice and processes ("**Training Services**").

#### 2 Requirements

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- 2.1 **Equipment and resources:** You must ensure that your Participants have access to adequate resources, materials and equipment (including but not limited to, a computer or mobile device with adequate access to the Internet) to allow them to attend and participate in the relevant Training Services. We can provide you on request with details of the required resources, materials and equipment for the relevant Training Services.
- 2.2 **Training Date and Time:** Where Training Services are to be provided on a specific date and/or at a specific time ("**Training Date and Time**"):
- (a) the Training Date and Time will be set out in your Application form, or as otherwise agreed between you and us;
  - (b) you must ensure that each Participant attends and participates in the relevant Training Services session.

#### 3 Cancellation, changes and refunds

---

- 3.1 **Cancellation and changes:** If you want to:
- (a) cancel any Training Service booking; or
  - (b) change any Training Date and Time in any way,
- you must notify us at least 3 Business Days before the applicable Training Date and Time, in which case we will:
- (c) cancel the relevant Training Service Booking; or
  - (d) notify a new Training Date and Time to you,
- as applicable.
- 3.2 **Refund of Fees:** We will refund you the Fees you have paid for the relevant affected Training Services if you:
- (a) have cancelled any Training Service booking in accordance with clause 3.1 of this Module 4; or
  - (b) have requested any change to a Training Date and Time in accordance with clause 3.1 of this Module 4 but we were unable to provide you with a new Training date and Time, in which case the affected Training Services will be deemed to be cancelled.
- 3.3 **No refund of Fees:** You acknowledge and agree that you will not be entitled to a refund of the Fees you have paid for any Training Services if:
- (a) you cancel any Training Services other than in accordance with clause 3.1 of this Module 4; or
  - (b) any of your Participants fails to attend or participate in the relevant Training Services session.

### 4 Definitions

---

4.1 The terms set out below have the following meaning in this Module 4:

**Participant** means any of your Personnel or any other person whom you authorise to access and use the Training Services.

**Module 4** means this Module 4 – Training Services.

**Training Date and Time** has the meaning given to it in clause 2.2 of this Module 4.

**Training Services** has the meaning given to it in clause 1 of this Module 4.

### Module 5 – Webchoice

#### 1 Application of this Module 5

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Unless otherwise specified in this Agreement, this Module 5 only applies to our supply and your receipt of any Professional Services and Website Hosting as part of our Webchoice product. You acknowledge and agree that our supply and your receipt and use of other components of the Webchoice product are governed by Module 2 – Software as a Service.

#### 2 Website

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- 2.1 **Website development:** We will provide the Professional Services to you in accordance with this Agreement, and as set out in your Application Form or as otherwise agreed between you and us.
- 2.2 **Website hosting:** Subject to clause 2.3 of this Module 5, we will provide the Hosting Services to you for the applicable Service Term.
- 2.3 **Acknowledgements:** You acknowledge and agree that:
- (a) unless otherwise set out in your Application Form or agreed between you and us in Writing, we will begin charging you the applicable recurring Fees for the Website and Hosting Services from:
    - (i) the 'Go Live' date of the Website; or
    - (ii) the date that is four weeks from the date of the relevant Application Form for WebChoice Lite (Base website product) and six weeks from the date of the relevant Application Form for WebChoice Premium (Premium website product);whichever is earlier;
  - (b) it is your responsibility to register a domain name for your Website and we cannot and are not obliged to provide the Hosting Services to you until you have validly registered a domain name for your Website;
  - (c) we may use a third party to provide the Hosting Services to you;
  - (d) the Website and the Hosting Services may be unavailable to you and all third parties from time to time, and to the extent permitted by applicable law we make no representation or warranty in relation to the availability of the Website or the Hosting Services;
  - (e) you are solely responsible for any Materials you upload or make available to third parties through the Website or the Hosted Services ("**Content**"); and
  - (f) we reserve the right to remove any Content that (in our reasonable opinion) is likely to:
    - (i) negatively impact our reputation;
    - (ii) infringe the Intellectual Property Rights of any third party; or
    - (iii) be false, illegal, fraudulent, offensive or misleading.

#### 3 Timeframes and delays

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- 3.1 **Timeframes:** We aim, but don't guarantee, to meet the scheduled timeframes and delivery dates agreed between you and us. Except where expressly agreed otherwise, the scheduled timeframes are estimates only and may change.
- 3.2 **Delays:** To the extent any delay is not caused by us:
- (a) we will not be responsible for a delay in delivering the Website which depends on another

## PART B – MODULES FOR SPECIFIC PRODUCTS AND SERVICES

Deliverable;

- (b) the delivery date or due date for impacted Deliverables will automatically be extended by a period equal to the period of delay; and
- (c) despite any other provisions in this Agreement, you must pay us:
  - (i) additional fees for any additional work performed by us at our then-current rates; and
  - (ii) all additional out-of-pocket expenses incurred by us, as a consequence of the delay.

### 4 Intellectual Property

---

- 4.1 **Content ownership:** You retain ownership of all Intellectual Property Rights in any Content.
- 4.2 **Content Licence:** Subject to and without limiting clause 6.5 of Part A – General Terms, you grant us for the applicable Service Term a non-exclusive, irrevocable, sub-licensable global licence to reproduce, use and modify your Content for the purpose of providing the Services to you.

### 5 Indemnity

---

- 5.1 **Indemnity:** You are liable for, and indemnify us from and against, all loss or damage (including legal costs) that we incur or suffer in connection with any claim by a third party that:
  - (a) any Content; or
  - (b) any other Material of any nature that you provide to or procure for us in connection with the Professional Services, the Hosting Services or the Website,

infringes the Intellectual Property Rights of any third party or is otherwise false, illegal, fraudulent, offensive or misleading. This clause 5.1 survives termination or expiry of this Agreement.

### 6 Definitions

---

- 6.1 The terms set out below have the following meaning in this Module 5:

**Content** has the meaning given to it in clause 2.3(e) of this Module 5

**Deliverable** means any new Material that we design and create specifically for you (including the Website or any part of the Website) as part of the Professional Services.

**Hosting Services** means the supply of the technologies and services needed for the Website and its content to be accessible and viewed on the Internet.

**Professional Services** means:

- (a) the design, development and creation of a website; and
- (b) the maintenance (including modification, enhancement and repair) of that website,

as contemplated and detailed in your Application Form or as otherwise agreed between you and us in writing.

**Module 5** means this Module 5 – Webchoice.

**Webchoice** means our Webchoice products, which includes website design and hosting.

**Website** means the website that we design, develop and create as part of the Professional Services.

## Module 6 – Third party software, apps or services

### 1 Application of this Module 6

---

- 1.1 This Module 6 only applies to our supply and your use of the Services to the extent that we allow you and you are able to access any third party software, app or service in connection with or through the Services, other than where such third party software, app or service is resold or resupplied to you by us ("**Third Party Products**").

### 2 Third Party Terms

---

- 2.1 **Third Party Terms may apply:** We may supply you with, grant you access to or direct or allow you to use Third Party Products in connection with or as part of the Services. You acknowledge and agree that your use of any Third Party Product that you use as part of or in connection with our Services may be subject to separate terms and conditions, whether imposed by us or by the relevant third party ("**Third Party Terms**").
- 2.2 **Compliance with Third Party Terms:** You agree to be bound by, and must comply and ensure that your Personnel complies with, any applicable Third Party Terms.

### 3 Liability and indemnity

---

- 3.1 **Liability:** Despite anything in this Agreement, you acknowledge and agree that we will not be liable to you for any loss, damage or claim you may suffer or incur in connection with any Third Party products or Third Party Terms.
- 3.2 **Indemnity:** You are liable for, and indemnify us from and against, all loss or damage (including legal costs) that we incur or suffer in connection with any breach by you or your Personnel of clause 2.2 of this Module 6.

### 4 Termination

---

- 4.1 **Termination and suspension:** We may suspend or terminate this Agreement in whole or in part immediately if we suspect that you or your Personnel have breached clause 2.2 of this Module 6.
- 4.2 **Survival:** Clause 3 of this Module 6 survives termination or expiry of this Agreement.

### 5 Definitions

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- 5.1 The terms set out below have the following meaning:
- Module 6 means this Module 6 – Third party software, apps or services.
- Third Party Products** has the meaning given in clause 1 of this Module 6.
- Third Party Terms** has the meaning given in clause 2 of this Module 6.



## Module 7 – Data feed services

### 1 Application of this Module 7

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This Module 7 only applies to our supply and your receipt of the Services if we are supplying you with Data Feed Services.

### 2 Licence

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2.1 **Licence:** Subject to your payment of the relevant Fees in accordance with clause 5 of the General Terms, and complying with the terms of this Agreement, we grant you a non-exclusive, non-transferable, non-sub-licensable licence for the applicable Service Term to:

- (a) use and display the Data and all Property Listings on the Portal; and
- (b) allow your Authorised Users to use and display the Data and all Property Listings on the Portal.

### 3 Data Feed Service

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3.1 **Data Feed Service:** You acknowledge and agree that:

- (a) unless otherwise agreed by the parties in writing, Data will be provided in the format we determine from time to time;
- (b) the Data will be aggregated in a single file ("**File**"), and we may provide you one or more Files per day; and
- (c) if specified in a relevant Application Form, or if we otherwise request, you must at your cost make available one FTP Account into which we will upload all Files.

3.2 **No verification of Data:** The Data provided in connection with the Data Feed Services is provided to us by third parties and subject to clause 8.3 of the General Terms:

- (a) we are not obliged to verify the accuracy, adequacy, quality, fitness for purpose, or lawfulness of any Data provided to you in connection with the Data Feed Services;
- (b) we make no representation and provide no warranty in relation to the Data Feed, including in relation to the accuracy, adequacy, quality, fitness for purpose, or lawfulness of any Data provided to you in connection with the Data Feed Services, except as expressly set out in this Agreement; and
- (c) we make no representation and provide no warranty in relation to the frequency of the Data Feed Services.

### 4 Restrictions on use

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4.1 **Restrictions:** You must not:

- (a) data mine or conduct automated searches on the Data or any Property Listing, whether through the use of additional software or otherwise, and must not authorise any third party to do so;
- (b) knowingly permit or allow any Property Listing to be:

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- (i) provided to, displayed on or otherwise communicated to third parties through any website, search engine, platform, app, software or portal other than the Portal without our prior written consent and the prior written consent of the relevant Agent; or
- (ii) incorporated into any other material, including advertising or promotional material without the prior written consent of the relevant Agent;
- (c) retain, aggregate, store or otherwise deal in any way with any Property Listing following notification by us or an Agent under clause 4.2;
- (d) tamper with or make unauthorised modifications to the Data or any Property Listing;
- (e) use the information contained in any Property Listing to send commercial, unsolicited or bulk electronic messages to anyone or in any other way which would constitute an infringement of the *Spam Act 2003* (Cth);
- (f) use or permit any person to use the Data Feed Service, the Data or any Property Listing in any manner which:
  - (i) breaches this Agreement, or any laws or regulations (including the *Spam Act 2003* (Cth) and the *Privacy Act 1988* (Cth));
  - (ii) infringes a third party's rights (including Intellectual Property Rights, rights of privacy or their trade secrets); or
  - (iii) is false or misleading; or
- (g) modify, adapt, translate, derive, decompile, reverse engineer, disassemble or derive source code from any part of the Data Feed Service without our prior written consent;
- (h) remove or obscure any copyright notice, trademark, logo or any proprietary rights or Intellectual Property Rights notice that is on or contained in the Data or any Property Listing; or
- (i) permit or allow any other person (including the Client's personnel and contractors) to do anything described in clause 4.1(a) - (h) of this Module 7.

4.2 **Management of Property Listings:** We or the relevant Agent may require you to immediately remove any Property Listing from the Portal at any time by notice to you if the Property Listing is not current or accurate or if you have in our reasonable opinion breached this Agreement in relation to that Property Listing.

## 5 Liability and indemnity

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5.1 **Limitation of liability:** Nothing in this Agreement is intended to exclude any right you may have under the *Competition and Consumer Act 2010* (Cth) and that cannot be excluded. Subject to clause 8.3 of the General Terms, we are not liable to you for any loss or damage you may suffer or incur in connection with:

- (a) the content of any Data;
- (b) any claim by a third party that the provision of the Data under this agreement or your enjoyment or use of the Data in accordance with this agreement infringes the rights (including Intellectual Property Rights) of any person or the Data is misleading, inaccurate, harmful, offensive, defamatory or otherwise unlawful.

5.2 **Indemnity:** You are liable for and indemnify us from and against, all loss or damage (including reasonable legal costs) that we incur or suffer in connection with any breach by you or your Authorised Users or Personnel of clauses 2, 3, and 4 of this Module 7.

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### 6 Definitions

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6.1 The terms set out below have the following meanings in this Module 7:

**Authorised User** means any of your employees or any other person whom you authorise to access and use the Portal under the licence granted in clause 2.1 of this Module 7. For the avoidance of doubt, where your Portal is a customer facing website, an Authorised User includes the end users of that website.

**Agent** means a real estate agent or other person that holds a real estate license within Australia and New Zealand and provides Property Listings to us.

**Data** means one or more Property Listing in a format that allows it to be fed to the Portal in accordance with this Agreement.

**Data Feed Service** means the feeding of Data to the Portal from time to time in accordance with this Agreement.

**FTP Account** means a valid, current account registered to you for a service that can process transfers in file transfer protocol.

**Property Listing** means a record or listing of a property for lease or sale, which is provided to us by an Agent.

**Portal** means the website, portal, or platform (as the case may be) identified in the relevant Application Form.