

Software as a Service Agreement

This Software as a Service Agreement (**Agreement**) is a legally binding contract between you (**you** and **your**) and [Devedesk Pty Ltd ABN 14 604 266 319 (Devedesk, **we, us** and **our**).

If you are agreeing to this Agreement not as an individual but on behalf of an entity or organisation, then “you” means that entity or organisation, and you acknowledge that you are binding that entity or organisation to this Agreement. You represent and warrant that you have the full authority as at the time of entering into this Agreement to bind that entity or organisation to the terms of this Agreement. You will provide evidence of such authority on request by Devedesk.

Please read this Agreement carefully before continuing registration. By clicking the "I Accept" button, signing this Agreement or otherwise accepting this Agreement by using or accessing the Software, you acknowledge that you have read, understand and agree to follow and be bound by the terms and conditions of this Agreement. We recommend that you print and keep a copy of this agreement for future reference.

Devedesk may modify this Agreement from time to time, subject to the terms in clause 11. If you do not agree to any change to the Agreement, you may terminate this Agreement.

1 Services

- (a) Subject to the remainder of this clause 1, Devedesk provides Users with access to the Software in order to enable them to:
 - (i) access the Software via a web browser;
 - (ii) install and run Software on desktop machines for the sole purpose of capturing data related to the Software itself; and
 - (iii) perform such other functions as may be notified by Devedesk to Users from time to time.
- (b) Any new features or tools which are added to the Software from time to time (including under clause 6) will also be subject to this Agreement.
- (c) You acknowledge and agree that Devedesk is a technology services provider and is not responsible for the data provided by you or accessed through the use of the Software.

2 Using the Software

- (a) Subject to your compliance with the remainder of this clause 2 and your payment of the Licence Fee, Devedesk grants you a non-exclusive, limited, non-sublicensable, non-transferable licence to access and use the Software during the Term.
- (b) You must not (and you must procure that the Authorised Individuals must not), without Devedesk's prior written approval:
 - (i) access or use the whole or any part of the Software, except as expressly authorised by this Agreement or otherwise with the prior written consent of Devedesk;
 - (ii) use the Software to assist in the conduct of the business of any third party, if that third party would

otherwise require a licence to use the Software for that conduct;

- (iii) modify, adapt or amend the Software, or permit any third party to modify, adapt or amend the Software;
- (iv) copy or replicate, or directly or indirectly allow or cause a third party to copy or replicate, the whole or part of any of the Software except and strictly only to the extent such copying is necessary for the normal use of the Software;
- (v) at any time do or cause to be done any act or thing contesting or in any way impairing any of Devedesk's Intellectual Property Rights, including removing or obscuring any proprietary notice (including any copyright, trade mark, service mark, tagline) or other notices contained in the Software;
- (vi) modify Devedesk's intellectual property or merge all or any part of Devedesk's intellectual property with any other intellectual property, other than for the purpose of this Agreement or as directed by Devedesk;
- (vii) circumvent any mechanisms in the Software intended to limit an Authorised Individual's or your use of or access to areas within or components of the Software;
- (viii) vary, alter, modify, interfere with, reverse disassemble, decompile or reverse engineer, or otherwise seek to obtain or derive the source code from, or directly or indirectly allow or cause a third party to vary, alter, modify, interfere with, reverse disassemble, decompile or reverse engineer or obtain or derive the source code from, the whole or any part of the Software or otherwise attempt or allow any other party to attempt to obtain the algorithms by which the Software performs functions, except as permitted by Law;
- (ix) publicly disseminate information regarding the performance of the Software;
- (x) use any data mining, gathering or extraction tools in connection with the Software, without Devedesk's prior written consent; or
- (xi) sub-licence, rent, sell, lease, distribute or otherwise transfer the Software or any part of it (in whole or in part) except as expressly permitted under this Agreement.
- (c) You must not make or permit any use of the Software (and you must procure that the Authorised Individuals must not make or permit any use of the Software) in a way which:
 - (i) involves anything which is false, defamatory, harassing or obscene;
 - (ii) involves the sending of unsolicited electronic messages;
 - (iii) would involve the contravention of any person's rights (including Intellectual Property Rights);
 - (iv) may offend any Laws;

- (v) may otherwise be regarded by Devicedesk, on reasonable grounds to be unacceptable (Devicedesk may from time to time notify you of the circumstances which it regards as unacceptable);
- (vi) involves any fraudulent activity; or
- (vii) involves the sale or promotion of any illegal business activities or prohibited products or services.

3 Your Software Account

- (a) In order to access and use the Software, you must have a Software account (Software **Account**).
- (b) When you create a Software Account, you must:
 - (i) input certain Details; and
 - (ii) create login credentials which will allow you to access the Software.
- (c) You must not permit anyone other than an Authorised Individual to access and/or administer your Software Account.
- (d) You are responsible for maintaining control over and access to your Software Account. You must keep accurate, up-to-date records of any Authorised Individuals who access the Software.
- (e) You must, and must procure that the Authorised Individuals must, keep secure and maintain the confidentiality of your and their login credentials (as applicable) and must not allow or authorise any other person to use those login credentials. Devicedesk will not be liable for any Loss arising out of or in connection with any failure to maintain the security of your login credentials or those of any Authorised Individuals. You must immediately notify Devicedesk of any suspected or actual unauthorised use of your login credentials or those of any Authorised Individuals or your Software Account.
- (f) You are responsible for any and all activities that occur under your Software Account or using your login credentials or the login credentials of any Authorised Individuals, whether or not authorised by you.

4 Obligations

You must obtain and maintain all Consents necessary to enable Devicedesk to perform its obligations under this Agreement, without infringing any Law or the rights of any person.

5 Third Party Material

You acknowledge and agree that:

- (a) the Software may contain content and information drawn from a variety of third party sources and that Devicedesk does not endorse, is not liable for and makes no representation or warranty in respect of any such content, information, products or services (**Third Party Material**), including in respect of the accuracy, completeness, timeliness or continued availability of such Third Party Material;
- (b) Devicedesk disclaims all liability for such Third Party Material; and
- (c) the links to third party websites or other information sources that are contained in the Software may not remain current or be maintained.

6 Upgrades and Enhancements

From time to time Devicedesk may introduce adaptations, developments or enhancements to the Software, or may make changes to the tools and features of any part of the Software including the availability of tools and features; how much or how often any given tool or feature may be used; and features dependent upon other services or software. Devicedesk will provide you with at least 7 days prior notice before removing any material feature of the Software unless security, legal, system performance or Third Party Licence considerations or obligations require an expedited modification or removal.

7 Financial Terms

7.1 Payment to Devicedesk

- (a) In consideration for the rights granted under this Agreement, you must pay Devicedesk the Licence Fees on receipt of any invoice provided to you in accordance with clause 7.1(b).
- (b) Devicedesk will invoice you before the commencement of each Month during the Term.
- (c) You must pay each invoice on the date nominated on the invoice, or if there is no such date strictly within seven (7) days of the receipt of the invoice, by way of electronic funds transfer into Devicedesk's nominated bank account, without deduction or set-off.
- (d) Any portion of the invoice not paid on or before the date that it is due, and that is not disputed in good faith in accordance with clause 21, shall accrue interest at a rate equal to LIBOR plus five percent (5%) per annum, from the date such amount is due until payment is received in full by Devicedesk.

7.2 GST

- (a) If GST is payable on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply.
- (b) Unless otherwise stated, all amounts referred to in this Agreement, including the Fees, are stated on a GST exclusive basis.
- (c) If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- (d) In providing an invoice in accordance, a party shall provide proper tax invoices if GST is applicable to the Licence Fees.
- (e) Terms which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* shall have that meaning in this Agreement.

8 Confidential Information

- (a) Subject to clause 8(b), a party must not disclose, or use for a purpose other than as contemplated by this Agreement, the existence of and terms of this Agreement or any other Confidential Information of the other party.
- (b) A party may disclose any Confidential Information of the other party:
 - (i) to the other party to this Agreement;
 - (ii) under corresponding obligations of confidence as imposed by this clause, to persons which control or

are controlled by the party within the meaning of the *Corporations Act 2001* (Cth), and the employees, legal advisors or consultants of such persons;

- (iii) which is at the time lawfully in the possession of the proposed recipient of the Confidential Information through sources other than the other party, or a Related Body Corporate of the other party, to this Agreement;
- (iv) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement;
- (v) if required under a binding order of a Government Agency or under a procedure for discovery in any proceedings;
- (vi) if required under any Law or any administrative guideline, directive, request or policy whether or not having the force of law;
- (vii) as required or expressly permitted by this Agreement;
- (viii) to its legal advisers, its insurers and its consultants; or
- (ix) with the prior written consent of the other party to this Agreement.

9 Privacy

- (a) You must:
 - (i) comply with the Privacy Act (as though you are subject to the Privacy Act) and any additional Privacy Law by which you are bound;
 - (ii) both during and after the Term:
 - A. take all reasonable steps to ensure that Personal Information is protected against misuse and loss, or unauthorised use, access or disclosure;
 - B. not do anything which may cause Devicedesk to breach any Privacy Law; and
 - C. if requested by Devicedesk, co-operate with us to resolve any complaint or investigation under any Privacy Law, and provide other reasonable assistance to enable us to comply with any applicable Privacy Law.
- (b) You:
 - (i) acknowledge that Devicedesk may provide the services under this Agreement, namely access to the Software and such other services identified in clause 1, updates and support services, and any other services offered in this Agreement, from any location, and/or through the use of contractors, worldwide; and
 - (ii) agree to provide any information, and to obtain any Consents, relevant to your use of the Software, including any collection, use, disclosure and storage of Personal Information of any individual whose Personal Information may be included in the Data.
- (c) This clause 9 will survive the termination of this Agreement.

10 Intellectual Property

10.1 Ownership

- (a) You acknowledge that Devicedesk owns or licenses all rights, title and interest (including Intellectual Property Rights) in the Devicedesk Marks, the Devicedesk Materials and the Software and any improvements to them, and that this Agreement does not transfer ownership of any such right, title or interest of Devicedesk or any third party.
- (b) Without limiting clauses 10.1(c) and 10.2, Devicedesk acknowledges that you own or license all rights, title and interest in the Data (including any Intellectual Property Rights and any improvements to it), and that this Agreement does not transfer ownership of any such right, title or interest of you or any third party.
- (c) You may from time to time provide to Devicedesk feedback (including suggestions, ideas, information, comments, process descriptions or other information) in relation to the Software and/or Devicedesk's other (current or future) products and services (**Feedback**). You absolutely and unconditionally assign to Devicedesk all rights, title and interests (including all Intellectual Property Rights) in and to any Feedback immediately upon creation, free of all encumbrances and third party rights and you must at your own cost do all things necessary to give effect to such assignment, including executing any required documents or effecting any required registration.

10.2 Data and Derivative Materials

You acknowledge and agree that:

- (a) Devicedesk may access, use, adapt, modify, reproduce, reformat, transform, and process the Data, to the extent necessary to provide the Software and to otherwise carry out our obligations under this Agreement;
- (b) without limiting clauses 10.2(c) or (d), Devicedesk may create Derivative Materials from the Data, including by combining the Data with other information collected or otherwise obtained by Devicedesk, but only provided that the Derivative Materials do not incorporate the Data or your Confidential Information in a form that could reasonably identify you or any individual;
- (c) Devicedesk may use information about you, or information about your use of Software, for the purposes of improving the Software, detecting and addressing threats to the functionality, security, integrity and availability of the Software, detecting and addressing breaches of this Agreement or any of our other policies and to help us to resolve your service requests;
- (d) any existing or future Intellectual Property Rights in any Derivative Materials vest in Devicedesk absolutely. You agree to assign, and procure the assignment of, such Intellectual Property Rights in any Derivative Materials to Devicedesk immediately on their creation; and
- (e) this clause 10 survives termination of the Agreement for whatever reason.

11 Amendment to this Agreement

We may update or modify this Agreement from time to time. Devicedesk will notify you of any amendment to this Agreement in writing. Your subsequent or continued use of the Software will constitute acceptance of any changes. If you do not agree to any

change to the Agreement, you may terminate this Agreement in accordance with clause 13(c) and must immediately stop using the Software.

12 Term

- (a) This Agreement commences on the Commencement Date and continues for a period of 12 months (**Initial Term**), unless terminated earlier in accordance with this Agreement.
- (b) On expiry of the Initial Term, this Agreement will automatically renew for further terms each of one (1) year (each a **Further Term**), otherwise on the same terms and conditions as in force at the expiry of the Initial Term or Further Term (as applicable), unless terminated by either party in writing at least ninety (90) days prior to the end of the Initial Term or any Further Term, or otherwise terminated in accordance with this Agreement.

13 Termination

- (a) **(for cause)** Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if the other party:
 - (i) breaches any warranty in this Agreement or any other provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied, fails to remedy the breach within fourteen (14) days after receiving written notice from the terminating party requiring it to do so; or
 - (ii) experiences an Insolvency Event.
- (b) **(termination for failure to comply with requirements)** Without limiting clause 13(a)(i), Devicedesk may (at its absolute discretion) suspend your access to the Software or terminate this Agreement with immediate effect if you breach clause 2 or any Consent requirements in this Agreement, or if you attempt to assign, or assign, any right under this Agreement otherwise than in accordance with this Agreement.
- (c) **(termination for refusal of new terms)** If you elect not to accept variations to this Agreement made pursuant to clause 11, you will be deemed to have terminated this Agreement with immediate effect.
- (d) **(termination for convenience)** Either party may terminate this Agreement for convenience and without incurring liability to the other party at any time by giving at least 90 days' written notice to the other party.

14 Consequences of termination

- (a) On expiration or termination of this Agreement for any reason:
 - (i) the rights granted to you in respect of the Software terminate and you must immediately stop using the Software, and ensure that all of your Personnel stop using the Software;
 - (ii) your account will be deactivated and your Data may be deleted in accordance with clause 14(c);
 - (iii) you must, within 30 days of termination, pay to Devicedesk all amounts incurred and/or owing to Devicedesk under this Agreement up to and including the date of termination;

- (iv) where Devicedesk terminates this Agreement in accordance with clause 13(d), Devicedesk will reimburse you for any Licence Fees paid in respect of the period from the date of termination until the end of the Term on a pro rated basis; and
- (v) without limiting clause 14(a)(iii), where you terminate this Agreement in accordance with clause 13(d), you will not be entitled to any reimbursement for any Licence Fees already paid or payable under this Agreement.

- (b) You acknowledge that Devicedesk will have no liability to you or any other person arising out of the termination of this Agreement for any reason.
- (c) You acknowledge and agree that Devicedesk has no obligation to retain any information relating to you (including Data) and that all such information may be irretrievably deleted by Devicedesk after one (1) month from the date of any suspension, termination or expiry of this Agreement, unless:
 - (i) all outstanding Licence Fees and other amounts owing to Devicedesk have been paid by the date of suspension, termination or expiry of this Agreement; and
 - (ii) you have obtained written agreement from Devicedesk that Devicedesk will extract and migrate information relating to you (including Data) and return it to you.

15 Warranties

Each party represents and warrants that:

- (a) it has the legal power and authority to enter into this Agreement;
- (b) execution and performance of this Agreement will not result in a breach of any terms or conditions of any instrument or agreement to which it is a party; and
- (c) if you are an entity, this Agreement is entered into by an employee or agent with all necessary authority to bind such party to the terms and conditions of this Agreement.

16 Disclaimer

- (a) You acknowledge and agree that, to the extent permitted by Law (including the Australian Consumer Law if applicable), Devicedesk makes no representations, warranties or guarantees about the Software (including about any information that is input into the Software by any User), including that it will be accurate, current, reliable, timely, available, secure, complete, up-to-date or of a certain quality, or that it will operate in combination with any other hardware, software, system, or data, or that it is free from defects, bugs, viruses, errors or other harmful components, or that any stored Data will not be lost or corrupted.
- (b) The Software and all other products and services made available to you in connection with this Agreement are provided "as is" and to the extent permitted by Law (including the Australian Consumer Law if applicable), Devicedesk disclaims any and all warranties and representations of any kind, including any warranty or non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express, implied or statutory.

- (c) Devicedesk shall not be liable for delays, interruptions, service failures and other problems inherent in use of the internet and electronic communications or other systems outside the reasonable control of Devicedesk.
- (d) You represent and warrant that any and all Data that is input into the Software by you or any Authorised Individual will be accurate, complete and up-to-date and you acknowledge and agree that Devicedesk is not responsible for any Data.

17 Indemnities

17.1 Indemnity by Devicedesk

Devicedesk shall defend, hold harmless and indemnify you from and against any Loss suffered or incurred by you arising out of or in connection with any Claim that the Software infringes any Intellectual Property Right or other right of any third party, except to the extent that such Loss is caused or contributed to by you.

17.2 Indemnity by You

- (a) You shall defend, hold harmless and indemnify Devicedesk and its Related Bodies Corporate and Personnel (the Devicedesk **Indemnified Parties**) from and against any Loss suffered or incurred by the Devicedesk Indemnified Parties arising out of or in connection with:
 - (i) any breach by you of clauses 2, 4, 8 or 9;
 - (ii) any fraud (including intentional and/or fraudulent misrepresentation), criminal activity, negligence or wilful misconduct by you or your Personnel;
 - (iii) any Claim by any person (including you or your Personnel) in connection with any Feedback or Data (including Personal Information) used or disclosed by you in connection with this Agreement;
 - (iv) any Claim by any person that the Data infringes any Intellectual Property Right or other right of any third party;
 - (v) the use of the Software by you or your Personnel in breach of this Agreement; or
 - (vi) any loss or damage to property arising out of or otherwise in connection with any act or omission by you or your Personnel,

except to the extent that such Loss is caused or contributed to by Devicedesk.

- (b) The parties acknowledge and agree that Devicedesk has been irrevocably appointed to act as sole and exclusive agent of the Devicedesk Indemnified Parties for the purpose of recovering (whether through court proceedings or otherwise) the Losses of the Devicedesk Indemnified Parties and enforcing the indemnities.

18 Limitation of Liability

- (a) To the extent permitted by Law, (including the Australian Consumer Law if applicable), and subject to clause 18(e), the aggregate liability of Devicedesk for any Loss, direct or otherwise, regardless of the cause or form of action, is limited to the lesser of:
 - (i) the Fees paid by you to Devicedesk in the 12 months prior to a Claim; and
 - (ii) \$100,000.
- (b) For the avoidance of doubt, the limitation of liability under clause 18(a) is cumulative and not per incident or Claim.

- (c) To the extent permitted by Law, (including the Australian Consumer Law if applicable), under no circumstances will Devicedesk be liable for any Consequential Loss.
- (d) The limitations and exclusions in this clause 18 shall apply whether the action, claim or demand arises from breach of contract, tort (including negligence) or under any other theory of liability.
- (e) Clause 18(a) does not apply to, and shall not limit, any party's liability:
 - (i) for death or personal injury caused by that Party or its Personnel;
 - (ii) for fraud (including fraudulent misrepresentation); or
 - (iii) under any indemnity given in this Agreement.

19 Publicity

- (a) Subject to clause 19(c), you grant to Devicedesk a royalty-free, non-exclusive licence to use and display your logo on the Devicedesk Website and in Devicedesk marketing materials, for the purpose of Devicedesk listing or publicising its clients and/or subscribers.
- (b) You acknowledge and agree that, notwithstanding clause 8 and subject to clause 19(c), Devicedesk may disclose to third parties the fact that you have entered into this Agreement with Devicedesk, in any marketing material or other material used by Devicedesk, including case studies regarding your involvement with Devicedesk and in white papers.
- (c) You may elect not to grant Devicedesk the licence provided under clause 19(a), by providing Devicedesk with notice in writing.
- (d) The licences and agreements granted in this clause 19 survive termination of the Agreement for whatever reason.

20 Notices

- (a) Subject to clause 20(b), a party giving notice or notifying under this Agreement must do so in English and in writing:
 - (i) In the case of Devicedesk, addressed to the Chief Executive Officer, Devicedesk, Level 5, 180 Flinder St, Melbourne, 3000, or, in your case, to the person and address supplied upon registration of your Software Account or as altered by amending the details in your Software Account; and
 - (ii) hand delivered or sent by prepaid post to that address.
- (b) For the purposes of service messages and notices about the Software, including notices under clauses 4, 6 and 11, Devicedesk may send an email from Devicedesk to an email address associated with your Software Account, or may provide a notice on your Software Account, even if Devicedesk has other contact information. You acknowledge and agree that Devicedesk shall have no liability associated with or arising from your failure to maintain accurate contact or other information, including, but not limited to, your failure to receive critical information about the Software.
- (c) A notice given in accordance with this clause is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, three (3) days after the date of posting;

- (iii) if sent by email under clause 20(b), at the time of sending the email;
- (iv) if posted on your Software Account under clause 20(b), at the time of posting.

written prior agreement, representation or understanding relating to this Agreement.

21 Dispute Resolution

- (a) If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case a nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. In the event that the parties are unable to resolve the dispute within seven (7) days of the written notification referred to in this clause, each party must promptly refer the dispute for resolution to one of the Managing Director, Chief Executive or Chief Operating Officer (**Senior Executive**) of that party.
- (b) If the parties are unable to resolve the dispute within fourteen (14) days following referral to the Senior Executive of the relevant parties, then either party may use such lawful dispute resolution procedures or seek such legal and equitable remedies as it considers necessary or appropriate in its sole discretion.
- (c) Nothing in this clause 21, shall prevent a party from seeking urgent injunctive relief before an appropriate court.

22 Force Majeure

- (a) Subject to the requirement to give notice under this clause, if the performance by any party (**Affected Party**) of all or any of its obligations under this Agreement is prevented or delayed in whole or in part due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations.
- (b) The Affected Party must promptly after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.

23 General

- (a) You must not sub-licence, assign, or attempt to sub-licence or assign, any right arising out of this Agreement, or this Agreement, without Devicedesk's prior written approval which may be withheld at its complete discretion. Devicedesk may assign or subcontract all or part of this Agreement to any other party.
- (b) Nothing in this Agreement gives a party any right to bind the other party in contract or otherwise at law, or hold itself out as a representative of the other party.
- (c) Each party must take all steps as may be reasonably required by the other party to give effect to the terms of this Agreement and transactions contemplated by this Agreement.
- (d) This Agreement as may be updated from time to time, contains the entire agreement between the parties with respect to its subject matter and supersedes any oral or

- (e) This Agreement may be executed in multiple counterparts and by electronic means.
- (f) You acknowledge that in entering into this Agreement you have not relied on any representation or warranties about its subject matter except as provided in this Agreement.
- (g) No delay, neglect or forbearance on the part of any party in enforcing against any other party any obligation under this Agreement will operate as a waiver or in any way prejudice any right under this Agreement.
- (h) If any provision of this Agreement is held to be invalid, illegal or unenforceable, this Agreement will continue otherwise in full force and effect apart from such provision which will be taken to be deleted.
- (i) This Agreement is governed by the laws of New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in that state.

24 Definitions and Interpretation

24.1 Definitions

The following definitions apply unless the context requires otherwise:

Agreement means this agreement and includes any Details.

Authorised Individual means an individual that has created login credentials and that has been linked to your Software Account in accordance with clause 3(c).

Commencement Date means the date on which you enter into this Agreement by accepting its terms and paying the Licence Fee.

Confidential Information of a party means all confidential data and information (including trade secrets and confidential know how, as well as business, technical and financial information if identified as confidential) relating to that party, to its suppliers or customers, or to a Related Body Corporate, or otherwise to that party from time to time, of which the other party becomes aware, either before or after the Commencement Date. Devicedesk's Confidential Information includes the design, specification and content of the Software including its source code, Devicedesk's Personnel information, operational and other policies, project documentation, proposals, or other development documentation including any specifications, or business strategies, and the terms of this Agreement.

Consents means any licences, clearances, permissions, certificates, permits, authorities, declarations, exemptions, waivers, approvals or consents.

Consequential Loss means any:

- (a) loss of profits, loss of income or revenue, loss of data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business; and
- (b) any loss, not arising naturally (that is according to the usual course of things), from the relevant breach, whether or not such loss is reasonably supposed to have been in the contemplation of both parties, at the time they made the Agreement, as the probable result of the relevant breach.

CPI means the average annual consumer price index from 1 July of the previous year to 30 June of the current year, applicable to Sydney, New South Wales and published by the Australian Bureau of Statistics.

Data means any and all data or other material input, entered or added to the Software by or on behalf of you, or at your request.

Details means your entity details, contact details and such other details to be completed in advance of executing this Agreement and creating a Software Account.

Derivative Materials means materials, data and insights derived or created by or on behalf of Devicedesk in accordance with clause 10.2, which are based on, or created or derived from, the Data.

Force Majeure Event affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, or power, water and other utility shortage.

Government Agency means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

GST means any goods and services tax imposed by the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time, and any associated legislation and regulations to the extent they relate to GST.

Insolvency Event means where:

- (a) a party ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its assets;
- (b) a party becomes unable to pay its debts when they fall due, or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) a party becomes or is (including under legislation) deemed or presumed to be insolvent;
- (d) a party has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of it or the whole or any part of its assets or business;
- (e) any composition or arrangement is made with any one or more classes of its creditors;
- (f) except for the purpose of solvent amalgamation or reconstruction, an order, application or resolution is made, proposed or passed for its winding up, dissolution, administration or liquidation;
- (g) a party enters into liquidation whether compulsorily or voluntarily; or
- (h) any analogous or comparable event takes place in any jurisdiction.

Intellectual Property Rights means any and all intellectual property rights including patent, copyright, trademark (registered and unregistered), designs and any other rights of a like nature subsisting or conferred by law in force in any part of the world.

Laws means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments.

Licence Fees means the fees, payable by you to Devicedesk for access to and use of the Software during the Term, as set out at Schedule 1.

Loss means any claim, loss, liability, cost or expense (including legal expenses on a full indemnity basis).

Personal Information means "personal information" as defined in the Privacy Act and any other information relating to individuals that is subject to the operation of the Privacy Laws that either party has collected, received or otherwise has access to in connection with this Agreement.

Personnel means in respect of a person any employee, contractor, servant, agent, or other person under the person's direct or indirect control and includes any sub-contractors.

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

Privacy Policy means Devicedesk's privacy policy available at <https://www.devedesk.com/privacy/>, as amended by Devicedesk from time to time.

Privacy Law means:

- (a) the Privacy Act;
- (b) the *Spam Act 2003* (Cth);
- (c) any legislation from time to time in force in any:
 - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and/or
 - (ii) non-Australian jurisdiction (to the extent that either party is subject to the laws of that jurisdiction),
 affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data; and
- (d) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued by a Government Agency under an instrument identified in paragraphs (a), (b) or (c) (in each case which are binding),

as amended from time to time.

Devicedesk **Marks** means the brands, trademarks, designs, logos or names of Devicedesk.

Devicedesk **Materials** means any documentation, guides and other materials provided or made available by Devicedesk to a User from time to time.

Devicedesk **Website** means www.devedesk.com

Quarter means that consecutive three (3) month period beginning on any of 1 July, 1 October, 1 January or 1 April.

Related Body Corporate has the meaning given to that term in section 9 of the *Australian Corporations Act 2001* (Cth).

Software means all software, functionality, methodologies, services and capability associated with the CatalogIQ and Insightcentr system that is developed, operated and/or maintained by Devicedesk, and is made available to you in accordance with this Agreement.

Software Account has the meaning given to that term in clause 3(a).

Term means the Initial Term and any Further Term under clause 12.

Third Party Licence means any licence, registration or other authorisation that is required by you to enable you to properly access and use the Software, including any licence, registration or other authorisation as notified by Devicedesk to you.

Third Party Material has the meaning given to that term in clause 5(a).

User means an entity or individual that has registered for a Software Account.

24.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) the singular includes the plural and conversely;

- (b) the gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes any body corporate, unincorporated body or other entity and conversely;
- (e) a reference to a clause is to a clause of this Agreement;
- (f) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (g) a reference to any agreement or document (including a reference to this Agreement) is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- (h) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (i) a reference to conduct includes, any omissions, statement or undertaking, whether or not in writing;
- (j) a reference to includes, means includes without limitation; and
- (k) all references to \$ are to Australian dollars, unless otherwise specified.