



Head Agreement

(For Hardware, Software & Services)

Between

IT Networks Pty Ltd

And

Head Agreement Number:

- 2.14 a party that is a trustee is bound both personally and in its capacity as a trustee; and
- 2.15 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 3 Definitions**
- 3.1 Except where the context otherwise requires:
- 3.2 **"Annex"** means each annex to this Head Agreement and any additional annexes inserted by agreement of the parties. For information purposes only, it is the intention that each annex will set out the specific terms applicable to the supply of the type and nature of Goods and Services as are described in such annex.
- 3.3 **"Assumptions"** means the assumptions made by IT Networks and circumstances contemplated by the parties in respect of each engagement as at each Individual Contract's Effective Date and as set out in each Commercial Engagement Document.
- 3.4 **"Business Day"** means a day that is not a Saturday, Sunday or any other day that is a gazetted public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made, as the context admits.
- 3.5 **"Business Hours"** means 8:30 am to 5:00 pm of each Business Day.
- 3.6 **"Change Order"** means a document signed by both parties recording any mutually agreeable changes to an Individual Contract from time to time.
- 3.7 **"Change Order Request"** has the meaning set out in clause 9.2.
- 3.8 **"Confidential Information"** means (i) any trade secrets embodied in any information relating to, but not limited to, the commercial activities, product pricing, technologies, business processes, client relationships, strategic information and any other information related to the conduct of each parties businesses; (ii) any information designated in writing by either party, by appropriate legend, as confidential; (iii) any information which if first disclosed orally is identified as confidential at the time of disclosure and is thereafter reduced to writing for confirmation and sent to the other party within thirty (30) days after its oral disclosure and designated, by appropriate legend, as confidential; and (iv) the terms and conditions of this Head Agreement and each Individual Contract.
- 3.9 **"Commercial Engagement Document"** means a written document agreed to by the parties that sets out the specific details pertaining to the supply of certain Hardware, Software and Services, in particular, quantities, price, product descriptions, due dates, IPR matters, project scope documents and any associated functional specifications. For information purposes only, it is expected that a Commercial Engagement Document may take the form of an accepted IT Networks quotation or sales proposal, Customer purchase order expressly accepted by IT Networks, IT Networks tender response accepted by Customer or an agreed statement of work or scope of services setting out the nature, scope and parameters of work to be performed.
- 3.10 **"Customer"** means (i) with respect to each Individual Contract formed pursuant to this Head Agreement, the specific Customer Group Company that enters into such Individual Contract; and (ii) where used in this Head Agreement, the company referred to on the header page of this Head Agreement.
- 3.11 **"Customer Group Company"** means each Customer and each Related Body Corporate of the Customer, as the context admits.
- 3.12 **"IT Networks"** means IT Networks Proprietary Limited and any Related Bodies Corporate of IT Networks Proprietary Limited.
- 3.13 **"Developed Software"** means Software created by or on behalf of IT Networks for the Customer pursuant to this Head Agreement, as further particularised in the Commercial Engagement Document.
- 3.14 **"EULA" or "End User Licence Agreement"** means the licence agreement governing the use of certain Software as negotiated and agreed directly between the Customer and the owner of that Software.
- 3.15 **"GST"** is defined in the A New Tax System (Goods and Services Tax) Act 1999.
- 3.16 **"Incidental Costs"** means delivery costs, Tax, installation, support or maintenance of Goods (after the expiry of any applicable manufacturer's or licensor's warranty period), any preparation of the site, or any audit of or work on the Customer's physical environments, any overtime rates, any miscellaneous costs or expenses including associated travel or accommodation.
- 3.17 **"Goods"** means either Hardware or Software procured or supplied pursuant to this Head Agreement as the context admits.
- 3.18 **"Hardware"** means any physical product manufactured by a third party, including any associated third party maintenance service contracts, as specified in a Commercial Engagement Document and includes each individual item, unit or component of such product.
- 3.19 **"Individual Contract"** means a separate and distinct legally binding contract formed between the Parties in accordance with the provisions of clause 1.3.
- 3.20 **"Individual Contract's Effective Date"** means the commencement date of an Individual Contract.
- 3.21 **"Intellectual Property Rights" or "IPR"** includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, any right to have confidential information kept confidential or other proprietary rights or any rights to registration of those rights whether created before or after the date of this Head Agreement or the relevant Individual Contract as the context admits and whether existing in Australia or otherwise.
- 3.22 **"Key Personnel"** means the key personnel of IT Networks nominated in a Commercial Engagement Document as the personnel initially required to undertake the Services or part of the work constituting the Services.
- 3.23 **"Material"** means literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IT Networks may deliver to the Customer as part of a Service. The term "Material" does not include licensed software products which are provided in accordance with their EULA.
- 3.24 **"Parties"** means IT Networks and the Customer.
- 3.25 **"Personal Information"** has the same meaning as in the Privacy Act 1988 (cth) (as amended).
- 3.26 **"Price"** in relation to Goods and Services means the price payable for those Goods and Services as detailed in a Commercial Engagement Document.
- 3.27 **"Related Body Corporate"** has the meaning given to that term as in the Corporations Act 2001.
- 3.28 **"Restraint Period"** means from an Individual Contract's Effective Date until 6 months after expiration or sooner termination of that Individual Contract.
- 3.29 **"Services"** means the services supplied by IT Networks to the Customer pursuant to an Individual Contract, including any pre-contractual advice provided relating to the Customer's choice to purchase certain Goods.
- 3.30 **"Software"** means any licensed, packaged, developed or supported software, such as Third Party Software or Developed Software as the context admits, as specified in a Commercial Engagement Document, ownership of which does not pass to the Customer unless agreed and which use is subject to its applicable EULA.
- 3.31 **"System"** means (i) any combination of Hardware or Software intended to be integrated or installed as a system as specified in a Commercial Engagement Document; or (ii) any existing Customer combination of Hardware or Software defined as a system, which is the subject of this Head Agreement, as the context admits.
- 3.32 **"Tax Invoice"** has the meaning as defined in the A New Tax System (Goods and Services Tax) Act 1999.
- 3.33 **"Tax"** includes any tax, GST, withholding tax, charge, rate, duty or impost imposed by any authority, but does not include any income or capital gains tax.
- 3.34 **"Third Party Software"** means software that is manufactured, licensed or owned by a third party (other than IT Networks or the Customer) ("**Third Party**") and procured on behalf of IT Networks for the Customer, the use of which is subject to that Third Party's EULA, and where applicable, includes its associated third party support and maintenance contract.

4 Customer's General Obligations

- 4.1 The Customer will cooperate fully and act reasonably and in good faith to assist in the timely progress and fulfilment of IT Networks obligations pursuant to this Head Agreement and under each Individual Contract including, but not limited to:
 - (1) not unreasonably withholding or delaying the provision of any agreement, acceptance, information, assistance or other resource required by IT Networks;
 - (2) providing IT Networks, in a timely manner, with all Customer information, data, documentation and co-operation by its personnel reasonably required by IT Networks to deliver the Goods and Services;
 - (3) operating and performing these obligations in accordance with any applicable laws;
 - (4) providing IT Networks with all necessary access to the Customer's premises and Systems; and
 - (5) assigning specific managerial, technical and user personnel as reasonably requested by IT Networks to participate in essential activities. The Customer will ensure that all such personnel have the appropriate skills and experience to perform their functions.
- 4.2 Where required, Customer will perform its own obligations and responsibilities in accordance with an Individual Contract.
- 4.3 The Customer will be responsible for all site preparation as required to enable efficient delivery and implementation of the Goods and Services, as the context admits.
- 4.4 The Customer agrees to ensure that all IT Networks personnel, agents or sub-contractors are sufficiently trained in and aware of the Customer's specific policies and procedures (including workplace health and safety requirements) to the extent necessary and applicable prior to them commencing work at a Customer site. The Customer shall promptly advise IT Networks where such personnel have not been provided with such training.

5 IT Networks General Obligations

- 5.1 IT Networks will cooperate fully and act reasonably and in good faith to ensure the timely progress and fulfilment of IT Networks obligations pursuant to an Individual Contract.
- 5.2 IT Networks will ensure that it maintains current insurance policies for public and product liability and professional indemnity insurance in the amount of \$5 million for each claim and in the annual aggregate.
- 5.3 IT Networks agrees to comply with any mandatory obligations arising out of any relevant Federal or State legislation as applicable to the performance of each Individual Contract.
- 5.4 IT Networks agrees to operate and perform its obligations in accordance with any applicable laws.

6 Customer Requirements and Specification Information

- 6.1 The Customer warrants that all information pertaining to its hardware, software or service requirements, its site and specifications is complete, accurate and has been provided to IT Networks prior to formal agreement on an Individual Contract and that all such information is specified in writing in a Commercial Engagement Document and in sufficient detail to satisfy the Customer's and IT Networks requirements of interpretation to enable the successful supply of the relevant Goods and Services to the Customer.
- 6.2 To the extent that any ambiguity becomes apparent in relation to a Commercial Engagement Document, IT Networks will seek clarification from the Customer where reasonable.
- 6.3 IT Networks shall not accept any liability whatsoever for supply of any Goods or Services contrary to Customer's intention due to insufficient or inadequate provision or timely provision of information or detail by the Customer.

7 Delay

- 7.1 If IT Networks is delayed in the performance of its obligations specified in an Individual Contract, IT Networks must:
 - (1) promptly notify the Customer of that delay;
 - (2) cooperate with the Customer to establish and implement (to the extent commercially possible) a work-around plan to overcome or minimise the effect of the delay; and
 - (3) if necessary, submit a Change Order Request.
- 7.2 To the extent that any delay is caused or contributed to by an act or omission of the Customer; or a Customer related event that is not within the sole control of IT Networks; or a force majeure event as described in clause 19, the Customer must

grant an appropriate extension of time to IT Networks to perform its obligations under an Individual Contract.

- 7.3 If the Customer does not comply with clause 7.2, it acknowledges that IT Networks may terminate the relevant Individual Contract upon giving ten (10) Business Days prior written notice to the Customer.
- 7.4 To the extent that a delay is caused solely by factors other than those set out in clause 7.2 above, the Customer must either:
 - (1) grant an appropriate extension of time to IT Networks to perform those obligations; or
 - (2) provided such delay is a material delay, exercise its rights to terminate the relevant Individual Contract in accordance with the provisions of clause 16.
- 7.5 IT Networks will have no liability to the Customer in respect of a delay or series of related delays to the extent it is caused by the factors set out in clause 7.2 above.

8 Change Control

- 8.1 Either party may request an amendment to an Individual Contract by Change Order.
- 8.2 The Customer may request a Change Order by submitting a request for a Change Order ("**Change Order Request**") to IT Networks. A Change Order Request must be submitted in writing to IT Networks. IT Networks shall review any Change Order Request in good faith and report to Customer in writing in the form of a draft Change Order: (i) whether such change is technically feasible and if technically feasible; (ii) the reasonable impact on any IT Networks or Customer milestones contained in such Individual Contract; and (iii) any necessary revision to the Services and Price, as appropriate. IT Networks shall be under no obligation to accept the terms of any Change Order Request and the Customer shall be under no obligation to accept the terms of any draft Change Order. If the terms of a Change Order Request are agreed by IT Networks and the terms of a respective draft Change Order are agreed by the Customer the draft Change Order shall be signed by both parties. The Customer shall bear all costs and expenses associated with any variation requested by the Customer to an Individual Contract including the cost of any feasibility study connected with the analysis of such variation. IT Networks shall be entitled to suspend the delivery of the Goods and Services, without liability, to the Customer, until such time as the issues raised by such Change Order Request have been settled by mutual agreement of the parties.
- 8.3 IT Networks may request a Change Order by submitting a draft Change Order to the Customer. Within ten (10) Business Days of receiving a draft Change Order from IT Networks, Customer shall review the draft Change Order in good faith and report to IT Networks in writing whether the terms of such draft Change Order are acceptable. Customer shall be under no obligation to accept the terms of any draft Change Order. If the terms of a draft Change Order are accepted by Customer the draft Change Order shall be signed by both parties. IT Networks shall be entitled to suspend the delivery of the Goods and Services, without liability, to the Customer, until such time as the issues raised by such Change Order Request have been settled by mutual agreement of the parties.
- 8.4 Any Change Order shall be attached to the relevant Individual Contract. After execution of a Change Order by both parties the amendments detailed therein shall be incorporated into the relevant Individual Contract and Price as appropriate and shall form part of the Individual Contract to which it relates.

9 Prices and Payment

- 9.1 Prices for Goods and Services will be set out in each Commercial Engagement Document and are exclusive of GST and do not include any Incidental Costs.
- 9.2 Unless otherwise agreed, quoted Prices are subject to change without notice and are in Australian dollars.
- 9.3 The Customer must pay the Price due to IT Networks in accordance with the payment terms set out in the Individual Contract or its signed Credit Application. If a Commercial Engagement Document is silent with respect to payment terms, or a Credit Application has not been signed, then the default terms shall be fourteen (14) days from the date of IT Networks invoice ("**Due Date**").
- 9.4 If any sum due under an Individual Contract is not paid by the Due Date, then (without prejudice to IT Networks other rights and remedies in addition to the invoice amount), IT Networks reserves the right to charge interest on such sum on a day to day basis (as well as before any judgment) from the Due Date

- to the date of payment at the rate of 2% per annum above the prime lending rate of IT Networks principal banker.
- 9.5 IT Networks will provide the Customer with a correctly rendered Tax Invoice that clearly identifies the Goods and Services.
- 9.6 All sums properly due to IT Networks under an Individual Contract shall be paid in full and the Customer shall not be entitled to assert against IT Networks any credit, set-off or counterclaim in order to justify withholding payment of any sum properly due. Obligations under an Individual Contract shall be construed as divisible from obligations under any other Individual Contract for the purposes of interpreting this clause.
- 10 Confidentiality**
- 10.1 Except as expressly provided elsewhere under this Head Agreement, each party shall maintain in confidence the Confidential Information disclosed by the other party and apply security measures no less stringent than the measures which that party applies to protect its own like information (but in any event not less than a reasonable degree of care) to prevent unauthorised disclosure and use of the Confidential Information.
- 10.2 The parties agree that information shall not be regarded as Confidential Information and that the recipient shall have no obligation with respect to any information which the recipient can demonstrate: (i) is already known to or in the possession of the recipient without obligations of confidentiality prior to its receipt from the disclosing party or which is publicly available at the time of disclosure; or (ii) is or becomes known to the public through no wrongful act of the recipient; or (iii) is received from a third party who is not in breach of any obligation of confidentiality in respect thereof; or (iv) is disclosed to a third party by the disclosing party without a restriction of confidentiality; or (v) is disclosed with the prior written permission of the owner; or (vi) is disclosed by the recipient in compliance with a legal requirement of a governmental agency or court of law; or (vii) is independently conceived of by the recipient without reference to the Confidential Information.
- 11 Intellectual Property Ownership and Licensing**
- 11.1 The ownership and licensing of any Intellectual Property Rights in the Goods and Services, as the context admits, shall be regulated by the terms set out in each relevant Annex to this Head Agreement.
- 12 Exclusion of Warranties**
- 12.1 To the extent permitted by law, and except as expressly set out in an Annex to this Head Agreement or as otherwise specifically agreed in an Individual Contract, IT Networks:
- (1) provides the Goods and Services to the Customer on an "AS IS" basis;
 - (2) excludes all warranties and conditions, express, implied or statutory (including all implied warranties of merchantability, fitness for a particular purpose, lack of viruses, uninterrupted or error free operation, accuracy or completeness of responses or results, lack of workmanlike effort or non-infringement) regarding the Goods and Services provided to the Customer; and
 - (3) limits the remedies available for a breach of any warranty given to the Customer to the lesser of and to the extent that such breach of warranty is capable of remedy by employing commercially reasonable efforts (as determined by IT Networks acting reasonably and in good faith):
 - (a) for Goods, the cost of repairing or replacing those Goods; or paying the cost of having those Goods repaired or replaced; and
 - (b) for Services, the cost of resupplying the Services; or paying the cost of having the Services resupplied.
- 12.2 The Customer acknowledges that changes to any of the Assumptions set out by the parties in the relevant Commercial Engagement Document may affect the ability of IT Networks to deliver the Goods and Services in accordance with any agreed milestones and in such event the parties shall work together in good faith to minimise the impact of the change. Any change to a Commercial Engagement Document resulting from any changes to any of the Assumptions shall be managed by Change Order in accordance with the provisions of Clause 9. IT Networks shall have no liability for any delays or increased costs in the delivery of the Goods and Services which result directly from changes to any of the Assumptions.
- 13 Limitation of Liability**
- 13.1 IT Networks accepts no liability whatsoever for any resultant loss or damage arising directly or indirectly from any connectivity or integration with any existing Customer process, product, materials, environment or System that is not adequately accounted for in a Commercial Engagement Document.
- 13.2 EXCEPT IN RESPECT OF A BREACH OF CLAUSE 11 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHETHER SUCH DAMAGES ARE ALLEGED AS A RESULT OF TORTIOUS CONDUCT (INCLUDING NEGLIGENCE) OR BREACH OF CONTRACT OR OTHERWISE EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY HEREIN SHALL HAVE PROVEN INEFFECTIVE. NOTHING IN THIS CLAUSE SHALL OPERATE TO EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM EITHER PARTY'S NEGLIGENCE.
- 13.3 Notwithstanding anything to the contrary contained in this Head Agreement or an Individual Contract, the maximum liability of IT Networks to the Customer in aggregate for all claims made against IT Networks in contract, tort or for any other common law or statutory cause of action under or in connection with the subject matter of this Head Agreement or an Individual Contract shall be limited to:
- (1) In respect of Goods, the component of the Price paid by the Customer to IT Networks for such Goods under the relevant Individual Contract;
 - (2) In respect of Services, the component of the Price paid by the Customer to IT Networks for such Services under the relevant Individual Contract;
 - (3) Where such claim(s) is not attributable to the Goods or Services, 50% of the Price paid by the Customer to IT Networks under the relevant Individual Contract.
- 13.4 Where a claim(s) relates to both Goods and Services, the limits on IT Networks liability set out in clause 13.3 shall operate separately and independently of each other in respect of such Goods and Services. Any Price paid shall be applied in priority of the longest outstanding invoices first. Where an Individual Contract does not clearly differentiate its Price between the relevant Goods and Services supplied, IT Networks shall determine such differentiation in its sole discretion (acting reasonably and in good faith) having regard to the nature of the Goods and Services supplied under such Individual Contract and the respective market values of similar offerings of Goods and Services.
- 13.5 In respect of any Goods and Services provided for the benefit of any Customer Group Company, IT Networks will have the benefit of the limitations and exclusions of liability available to it under this Head Agreement as if IT Networks was supplying those Goods and Services to the Customer and the Customer agrees to indemnify IT Networks in respect of any liability to each Customer Group Company to the extent the liability would not have arisen had those Goods and Services been provided to the Customer.
- 13.6 The Customer's exclusive remedy for any and all damages under this Head Agreement or an Individual Contract is against IT Networks and not any of its subcontractors.
- 13.7 Subject to the limitations and exclusions of liability in this clause, if a party ('**Claimant**') makes a claim or commences proceedings against the other party ('**Recipient**') seeking compensation for or recovery of any liabilities, losses, damages, costs or expenses suffered or incurred by the Claimant in connection with this Head Agreement or an Individual Contract, the Recipient's liability for that claim or those proceedings will be reduced proportionately to the extent that any act or omission of the Claimant or any of its officers, agents, employees or contractors causes or contributed to those liabilities, losses, damages, cost or expenses.
- 13.8 If compliance by IT Networks with the Customer's designs, specifications or instructions, or use by IT Networks of Intellectual Property Rights received from the Customer or the Customer's agent, results in IT Networks being subject to a claim for infringement of any Intellectual Property Right of a third party, the Customer agrees to indemnify IT Networks against any claims, demands, damages, costs and expenses made against or suffered by IT Networks as a result of any such claim or action.

14 Term

- 14.1 This Head Agreement commences on the Head Agreement Effective Date and subject to earlier termination in accordance with clause 16, continues in force for a period of three (3) years (the "Initial Term"). On expiry of the Initial Term, this Head Agreement will automatically renew for successive periods of one (1) year, unless either party gives written notice of its intention not to renew at least thirty (30) days prior to the expiry of the then current renewed annual term.
- 14.2 Each Individual Contract is an independent contract that will commence on the Individual Contract Effective Date and continue in force for the term set out therein or until each party has fulfilled its obligations under that Individual Contract (or it is terminated in accordance with its terms). Accordingly, various Individual Contracts and this Head Agreement may run concurrently and Individual Contracts may continue after termination or expiry of this Head Agreement.

15 Termination

- 15.1 Either party may terminate this Head Agreement for convenience on sixty (60) days written notice to the other party. In no event shall a party be entitled to any compensation as a result of the other party's election to terminate this Head Agreement pursuant to this clause. Termination of this Head Agreement pursuant to this clause does not affect the operation of any Individual Contracts.
- 15.2 Either party may terminate this Head Agreement or each Individual Contract immediately where the other party:
- (1) commits a material breach of this Head Agreement or an Individual Contract which is not capable of being remedied;
 - (2) fails to remedy a material breach of this Head Agreement or an Individual Contract which is capable of remedy within 60 days of receipt of a written notice specifying such breach; or
 - (3) commits an act of insolvency, comes under any form of insolvency administration or assigns its rights otherwise than in accordance with this Head Agreement.
- 15.3 On termination of this Head Agreement or an Individual Contract:
- (1) the accrued rights and remedies of each Party remain unaffected.
 - (2) the Customer shall pay, to IT Networks, within thirty (30) days of the date of a Tax Invoice:
 - (a) any sums due to IT Networks by Customer, but not invoiced at the date of termination, for any delivered Goods or completed Services as set out in each terminated Individual Contract; and
 - (b) in respect of Services, an amount representing the actual work performed, as at the date of termination, by IT Networks (calculated at IT Networks then prevailing consulting rate) towards completion of the next open milestone for each terminated Individual Contract, provided that the aggregate of any sums payable to IT Networks by Customer in accordance with the provisions of Clauses 16.3(2)(a) and 16.3(2)(b) shall not exceed the Price set out in the relevant terminated Individual Contract.
 - (3) Each party shall at the other party's option, either destroy or return to the other party any of its Confidential Information, including any copies thereof in its possession or control.
 - (4) In respect of a breach by the Customer of clause 16.2, any licenses in respect of any Developed Software granted under an Individual Contract shall cease and the Customer shall, at IT Networks option, either destroy or return to IT Networks any copies of such Developed Software in the Customer's possession or control.
- 15.4 The following provisions will survive termination of this Head Agreement or an Individual Contract: clause 1 Head Agreement Structure and forming Individual Contracts, clause 2 Interpretation, clause 3 Definitions, clause 10 Prices and Payment (to the extent that any obligation under this clause remains outstanding), clause 11 Confidentiality, clause 13 Exclusion of Warranties, clause 14 Limitation of Liability, clause 16.3, clause 17 Restraint, clause 22 General, clause 5 of the Hardware and Third Party Software Annex, clause 4 of the Services Annex.

16 Restraint

- 16.1 During the Restraint Period, neither party, its employees, sub-contractors or agents may solicit for employment to or accept any approach for employment from, either directly or indirectly, any person who is employed or contracted by the other party.
- 16.2 Either party must immediately advise the other party if a person who is employed or contracted by the other party seeks to be employed or contracted by the first mentioned party before the end of the Restraint Period.
- 16.3 In the event that a situation arises where both parties agree that it is in the interests of a IT Networks employee to transfer their employment to the Customer, the parties may agree a fee to be paid by the Customer to IT Networks in consideration of the transfer. This fee shall be based on IT Networks Recruitment Solution's (IT Networks internal recruitment business) standard schedule of recruitment fees.

17 Sub-Contracts

- 17.1 IT Networks may sub-contract for the performance of an Individual Contract or any part of an Individual Contract subject to clause 17.3, on obtaining the Customer's prior written consent.
- 17.2 The Customer must not unreasonably withhold consent for the engagement of a sub-contractor pursuant to clause 17.1.
- 17.3 IT Networks may, without the Customer's consent, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of services pursuant to an Individual Contract.

18 Force Majeure

- 18.1 IT Networks is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason), including but not limited to acts of God, natural disasters, acts of war, riots and strikes.

19 Privacy

- 19.1 Each party must ensure that any collection, use, disclosure or transfer of Personal Information complies with all applicable laws, rules and regulations in Australia, including without limitation the Privacy Act 1988 (cth) and the National Privacy Principles contained in Schedule 3 to that Act.

20 Disputes

- 20.1 In the event of a dispute arising, the parties will establish a dispute committee consisting of representatives from both parties and any approved sub-contractors within five (5) Business Days of the date of the dispute arising.
- 20.2 A party shall raise a dispute by giving written notice to the other party and stating therein that it requires a dispute committee to be established in accordance with clause 21.1 and also stating the nature and substance of the dispute.
- 20.3 If the dispute is not settled by agreement within ten (10) Business Days after the notice referred to in clause 20.2 is given, the parties may agree appoint a mediator and seek in good faith to settle the dispute through mediation. If the parties are unable to agree on a mediator within ten (10) Business Days after the expiration of the ten (10) Business Days referred to in this clause 20.3, the mediator must be a person nominated by the Australian Commercial Disputes Centre. Either party may request such nomination referred to in this clause 20.3 at any time after the expiration of the second ten (10) Business Day period.
- 20.4 In the event that a mediator is appointed, all parties to this agreement agree to accept the determination of the mediator without question and to take whatever actions or pay whatever charges the mediator decides are reasonable.

21 General

- 21.1 *Notices:* A notice, consent, approval, request or demand in connection with this Head Agreement:
- (1) must be in writing and in English;
 - (2) must be signed by the party giving it or that party's authorised representative, officer, attorney, or solicitor;
 - (3) must be either:
 - (a) sent by facsimile to the facsimile number of the address specified by the parties, or if the addressee notifies another facsimile number for receipt of documents under this clause, then to that address; and

- (b) left at or posted by prepaid post (airmail, if posted outside Australia) to the address of the addressee specified by the parties, or if the addressee notifies another address for receipt of documents under this clause, then at or to that address;
- (4) is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if posted in Australia, on the third Business Day after posting;
 - (c) if posted outside Australia, on the seventh Business Day after posting; and
 - (d) if sent by facsimile, when the sender's fax machine produces a report that the facsimile was sent in full to the addressee;
- (5) unless a later date is specified in it, takes effect on the date it is taken to be received;
- (6) unless otherwise agreed by the parties, a notice sent by means of e-mail is not a valid notice for the purposes of this Head Agreement.
- 21.2 *Assignment*: IT Networks may at any time transfer or assign any or all of its rights, obligations, benefit or interest under this Head Agreement or an Individual Contract.
- 21.3 *Public Statements*: Subject to clause 22, neither party shall make any public statement about this Head Agreement or the terms of an Individual Contract unless it has first obtained the written consent from the other party.
- 21.4 *Novation*: The Customer will not unreasonably withhold its consent to any novation but where IT Networks proposes to enter into an arrangement that will require novation of this Agreement it must consult with the Customer within a reasonable period prior to the proposed novation.
- 21.5 *Severability*: The provisions contained in each clause and sub-clause of this Head Agreement shall be enforceable independently of each of the others and if a provision of this Head Agreement is, or becomes, illegal, invalid, void or deemed unenforceable by any court or administrative body of competent jurisdiction it shall not affect the legality, validity or enforceability of any other provisions of this Head Agreement. If any of these provisions is so held to be illegal, void, invalid or unenforceable but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it legal, valid or enforceable.
- 21.6 *Independent Parties*: IT Networks and the Customer are independent parties. Neither company nor their employees, consultants, contractors or agents are agents, employees or joint venturers of the other party, nor do they have the authority to bind the other party by contract or otherwise to any obligation. Neither party will represent to the contrary, either expressly, implicitly, by appearance or otherwise.
- 21.7 *Variations*: This Head Agreement may be varied from time to time providing that both parties agree to the variations in writing. Any such variations must take into account any variations in costs and delivery timeframes that may result.
- 21.8 *Waiver*: Failure or delay by either party to enforce any provision of this Head Agreement shall not be deemed a waiver of future enforcement of that or any other provision. No amendment or waiver of any provision of this Head Agreement shall take place unless so agreed in writing by IT Networks.
- 21.9 *Entire Head Agreement*: This Head Agreement, including all Annexes, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces any prior condition, warranty, representation, statement, agreement, undertaking, indemnity (whether negligently or innocently) imposed, given or made by a party, whether written, oral or implied and may only be amended in writing and signed by both parties. Where an Individual Contract is formed pursuant to and incorporating this Head Agreement, such Individual Contract will constitute the entire agreement between the parties with respect to the subject matter contained in that Individual Contract and supersedes and replaces any prior condition, warranty, representation, statement, agreement, undertaking, indemnity (whether negligently or innocently) imposed, given or made by a party, whether written, oral or implied and may only be amended in writing and signed by both parties.
- 21.10 *Governing Law and Jurisdiction*: This Head Agreement shall be governed by and construed with reference to the laws of the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.
- 21.11 The Customer confirms its acceptance of the following Annexes contained in this Head Agreement:
- Hardware and Third Party Software Supply Annex
 - Services Annex



EXECUTED as an agreement for and on behalf of **IT Networks Limited** and the **Customer** by their duly authorised representative(s):

IT NETWORKS Pty Ltd
Authorised Representative
Name:
Title:
Signature:
Date:

Authorised Representative 1
Name:
Title:
Signature:
Date:
Authorised Representative 2 or witness (if necessary)
Name:
Title:
Signature:
Date:

HARDWARE AND THIRD PARTY SOFTWARE SUPPLY ANNEX**1 Definitions**

- 1.1 **"Delivery Date"** means IT Networks estimated delivery date of the Hardware and Third Party Software as specified in a Commercial Engagement Document.
- 1.2 **"Integration"** means the integration and installation, as the case may be, of each separate piece of Hardware and each item of Third Party Software, to comply with the requirements of a System as specified in a Commercial Engagement Document.

2 Procurement of Hardware and Third Party Software

- 2.1 IT Networks agrees to procure for and supply to the Customer the Hardware and Third Party Software in accordance with the terms of each Individual Contract.

3 Integration

- 3.1 If specified in the Commercial Engagement Document, IT Networks agrees to integrate the Hardware and Third Party Software.

4 Delivery

- 4.1 Estimated Delivery Dates are based on information available to IT Networks from suppliers and are subject to change at any time, without prior notice. IT Networks is not responsible for delays in delivery caused by a supplier or for other reasons beyond the reasonable control of IT Networks. The Customer acknowledges that IT Networks is not responsible for an inability to supply certain products as a result of changes related to the supply of certain third party products by the manufacturer.

5 Risk and Title

- 5.1 Risk of loss or damage to Goods will pass to the Customer when the Goods are delivered to the Customer or to the Customer's authorised representative.
- 5.2 Notwithstanding the passing of risk:
- (1) All Goods delivered by IT Networks to the Customer remain the property of IT Networks until all monies owing to IT Networks have been paid in full. Until that time and in the case of Third Party Software, subject to the manufacturers consent and license conditions, the Customer may sell the Goods in the ordinary course of business as agent for IT Networks, and the proceeds shall be held in trust for and on behalf of IT Networks.
 - (2) Prior to any sale by the Customer, the Customer shall hold the Goods as bailee for IT Networks and shall return the Goods to IT Networks on demand.
 - (3) Until payment has been received in full, IT Networks will be entitled to enter the premises of the Customer at any reasonable time to inspect all records in relation to all Goods supplied by IT Networks and all records in respect of the sale of those Goods by the Customer.
 - (4) IT Networks will be entitled to enter the premises of the Customer at any reasonable time to recover possession of those Goods for which payment in full has not been made.
 - (5) It is agreed between IT Networks and the Customer that where IT Networks enters the premises of the Customer to take possession of the Goods and it is not possible to otherwise identify the ownership of the Goods in the possession of the Customer, the Goods will be treated as though they were sold by the Customer in the same sequence as the Customer has taken delivery of the Goods. If the quantity of Goods exceeds the amount owing, IT Networks will be entitled to determine the Goods in which it claims ownership.
 - (6) The Customer must insure the Goods against loss or damage of any kind for their full value until full payment of the purchase price has been made.

6 Hardware Warranty

- 6.1 The Customer accepts the Hardware manufacturer's warranty in relation to the Hardware. IT Networks cannot provide any warranty in relation to the Hardware. IT Networks will provide information to the Customer relating to the applicable Hardware manufacturer's warranty.

7 Third Party Software EULA and Warranty

- 7.1 The Customer's use, rights and obligations in respect of Third Party Software is governed by its applicable EULA, unless it is varied by agreement between the parties to that EULA.
- 7.2 The Customer agrees to execute and be bound by the terms of the Third Party Software owner's EULA. IT Networks is able to provide the Customer with a copy of the relevant EULA for its review prior to submitting a purchase order to IT Networks.
- 7.3 The Customer accepts the Third Party Software owner's warranty in relation to the Third Party Software. IT Networks cannot provide any warranty in relation to the Third Party Software.

8 Integration Warranty

- 8.1 The Customer accepts the relevant Hardware manufacturer's or Software owner's warranties in relation to the integration or interoperability of those products with other Hardware and Software. IT Networks cannot provide any warranty in relation to the integration or interoperability of Hardware from different third parties, or the integration of Software from different owners with any such Hardware.

9 IT Networks Assistance with Hardware and Third Party Software Functionality Issues

- 9.1 Any issues or problems with any Hardware or Third Party Software functionality including, but not limited to, warranty claims, are to be resolved between the Customer and the relevant owner or manufacturer directly, subject to the terms of the Hardware manufacturer's warranty or Third Party Software manufacturer's warranty and its EULA, as the case may be. IT Networks will, where possible, provide incidental and reasonable assistance to the Customer during this process. Where the Customer requests assistance by IT Networks in the resolution of such issues or problems, IT Networks reserves the right (and the Customer agrees to accept this reservation) to charge the Customer directly for such intervention on a time and materials basis. The Customer agrees that its right to pursue recovery of such charges is a matter to be pursued directly with the Third Party Software owner. A Commercial Engagement Document may otherwise contemplate IT Networks assuming a first-line warranty claims assistance support role for the Price set out therein.

10 Returns

- 10.1 Each claim by the Customer for return of Goods shall be dealt with pursuant to IT Networks Goods returns procedure (provided with such Goods on delivery). The Customer agrees to return any Goods (that comply with IT Networks Goods returns procedure) to IT Networks within 7 days of receipt of the Goods by the Customer or in such time as permits IT Networks to exercise its right of return and refund to its relevant supplier or distributor, whichever is the lesser.
- 10.2 If the Goods can be returned to the supplier or will be subsequently accepted back by IT Networks, the Customer will be issued with a "Goods Return Authorisation Number" (GRAN) as part of the returns process. The Customer agrees to label the Goods being returned with the GRAN and comply with the returns process as per the instructions of the IT Networks account manager.
- 10.3 The Customer agrees to pay all transportation costs and related charges for returning such Goods to IT Networks and from IT Networks to its supplier(s) if Customer cancels any Goods orders.

SERVICES ANNEX**1 Performance of Services**

- 1.1 Unless otherwise agreed, the Services will be performed by IT Networks during Business Hours of each Business Day. If work outside of Australia is performed by IT Networks, then it will be conducted within the normal working hours applicable to that location, excluding the public holidays in that location, unless otherwise agreed.
- 1.2 Where the Customer provides IT Networks with at least two (2) Business Day's notice, the Services may be provided by IT Networks at times other than those set out in clause 1.1 above at a rate agreed between the parties. Where the Customer is unable to provide two (2) Business Day's notice, IT Networks will use commercially reasonable endeavours to meet the Customer's requirements, however will not accept any liability whatsoever if unable to do so.
- 1.3 IT Networks agrees to perform the Services in accordance with the terms of each Individual Contract.
- 1.4 IT Networks will perform the Services utilising such resources, employees and subcontractors as IT Networks in its sole discretion deems appropriate.
- 1.5 If an Individual Contract specifies certain Key Personnel, then IT Networks must directly engage such Key Personnel in the performance of the Services in the roles nominated. If required, IT Networks may substitute alternative personnel for the Key Personnel with the prior written consent of the Customer, which shall not be unreasonably withheld.
- 1.6 Out-of-pocket expenses will be charged as an additional cost to the Customer provided the Customer has approved the expenses in writing in advance. The Customer will not unreasonably withhold such approval.
- 1.7 IT Networks will maintain a record of all Services provided and the Customer will be given a copy of that record on request.

2 Services Warranty

- 2.1 IT Networks warrants that:
 - (1) it will use commercially reasonable efforts to perform the Services (including the provision of any associated Materials) in accordance with a Commercial Engagement Document and any milestones set out therein; and
 - (2) all Services will be provided with due care and skill.
- 2.2 The Customer acknowledges that changes to any of the Assumptions may affect the ability of IT Networks to perform the Services in accordance with a Commercial Engagement Document and in such an event the parties shall work together in good faith to minimise the impact of the change. Any change to a Commercial Engagement Document resulting from any changes to any of the Assumptions shall be managed by Change Order in accordance with the provisions of the General Terms section of this Head Agreement. IT Networks shall have no liability for any delays or increased costs in the provision of the Services which result directly from changes to any of the Assumptions.
- 2.3 IT Networks services warranty is valid for a period of 30 days following delivery of the Services.

3 Alterations to Services

- 3.1 The Customer may request alterations to the scope of the Services in accordance with the Change Control provisions contained in the General Terms section of this Head Agreement.

4 Materials Ownership and Licence

- 4.1 Except in respect of certain specified Materials expressly identified in a Commercial Engagement Document, IT Networks has all right, title and interest (including ownership of copyright) in all Materials created during the Service performance period or otherwise (such as those that pre-exist an Individual Contract's Effective Date). IT Networks will deliver one (1) copy of the specified Materials to the Customer. IT Networks grants the Customer an irrevocable, non-exclusive, worldwide, paid-up licence to use, execute, reproduce, display, perform, and distribute, within the Customer Group Companies only, copies of these Materials.
- 4.2 Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licence granted in clause 4.1.
- 4.3 Any idea, concept, know-how or technique which relates to the subject matter of a Service and is developed or provided by either of the Parties, or jointly by both, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either of the Parties.