

Elevate Computer Solutions Pty Ltd

Master Terms

PARTIES

This agreement is between the Client (the **Client**) and **Elevate Computer Solutions Pty Ltd** (ABN 31 150 083 104), its successors and assignees (referred to as **Elevate**) and collectively the **Parties**. This agreement is available at www.elevatetech.com.au/terms (**Site**).

This agreement forms the agreement under which Elevate provides the Client with the Elevate Services. Please read this agreement carefully.

BACKGROUND

- A. Elevate is a supplier of information technology services.
- B. Elevate wishes to supply the Elevate Services to the Client.
- C. Elevate agrees to supply the Services to the Client in accordance with the terms of this Agreement.

1 Services

1.1 Service Agreement

The Client may, from time to time, request Elevate to provide a Service Agreement in relation to any Elevate Services. If the Client requests Elevate to provide a draft Service Agreement, Elevate may, in Elevate's sole discretion, provide a draft Service Agreement in response to the request.

1.2 Execution of a Service Agreement

- (a) If the Parties agree on the terms of a Service Agreement, the Parties will execute the Service Agreement.
- (b) If the parties execute a Service Agreement:
 - (i) the Parties will have entered into an agreement for Elevate to supply to the Client the Elevate Services set out in that Service Agreement; and
 - (ii) the terms of this agreement will be incorporated into that Service Agreement.
- (c) Elevate will supply the Elevate Services in accordance with each Service Agreement.

2 Service Delivery

We will provide the service;

- (a) during Business Hours, unless otherwise specified in writing;
- (b) at the location(s) specified in the Proposal and/or Service Agreement or, if no location is specified, at the location we determine to be most appropriate; and
- (c) with professional skill and care, using appropriately qualified personnel.

'Business Hours' means between 9:00 am and 5:00 pm, Monday to Friday excluding public holidays at the place in which the service is to be provided.

3 Variations

3.1 Variation process

If the Client wishes to request a Variation, the process in this **clause 3.1** (*Variation process*) will apply.

3.2 Short form Variation:

If agreed between the Parties, the agreement may be varied in writing via email.

3.3 Long form Variation:

- (a) The Client will complete and provide to Elevate a Variation Form.
- (b) Elevate will, within 14 days of receipt of a Variation Form, provide to the Client a Variation Cost Proposal to effect the requested Variation.
- (c) The Client will, within 14 days of receipt of a Variation Cost Proposal, either accept or reject the Variation Cost Proposal or otherwise, the Client will be deemed to have accepted the Variation Cost Proposal.
- (d) If a Variation Cost Proposal is accepted or is deemed to have been accepted by the Client, the relevant Service Agreement will be amended to incorporate the Variation as set out in the Variation Form and the Variation Cost Proposal.
- (e) If Elevate wishes to propose a Variation, the following process will apply:
 - (i) Elevate will complete and provide to the Client a Variation Form (including but not limited to details of any additional costs and any other impacts);
 - (ii) the Client will, within 14 days of receipt of a Variation Form from Elevate, either accept or reject the proposed Variation or the Client will otherwise be deemed to have accepted the Variation; and
 - (iii) if the Variation is accepted or deemed to have been accepted by the Client, the relevant Service Agreement will be varied to incorporate the Variation as set out in the Variation Form.

4 Client's Responsibilities

4.1 Responsibilities

The Client must, at the Client's own expense:

- (a) provide all reasonable assistance and cooperation to Elevate in order to enable Elevate to supply the Elevate Services in an efficient and timely manner;
- (b) permit all members of Elevate's Personnel to have reasonable access to the Client's premises and facilities for the purposes of supplying the Elevate Services;
- (c) ensure that Elevate has full and unhindered access to any items of equipment relevant to the Elevate Services during business hours or at such other times as agreed between the Parties;
- (d) permit all members of Elevate's Personnel to have access to any reasonable computing, office productivity software tools, email and internet facilities necessary for the purposes of supplying the Elevate Services;
- (e) make any changes to the Client's current systems, software and hardware that may be required to

support the delivery and operation of any Elevate Services;

- (f) populate and maintain any databases associated with or for the purpose of the Elevate Services;
- (g) not cause or permit any items of the Elevate Services to be altered, repaired, serviced or moved except by persons approved by Elevate;
- (h) if applicable, ensure that the Elevate Services are protected from power surges and are located in a suitable physical environment for the operation of the Elevate Services;
- (i) ensure that the Client has all equipment and software necessary to protect from external attack the security and integrity of the Client's communications or computer systems and/or network and of the configuration of the Elevate Services; and
- (j) ensure that any equipment the Client uses in connection with the Elevate Services has all necessary Approvals and complies with all Laws.

4.2 Authorised representative

The Client must provide to Elevate details of an individual for each Service Agreement who has the authority to represent the Client in all matters concerning such Elevate Services which are the subject of the Service Agreement.

4.3 Security

The Client must:

- (a) prevent the unauthorised access to any Elevate Services; and
- (b) maintain the confidentiality and security of any account details or passwords.

4.4 Laws

The Client is responsible for all use of the Elevate Services and must ensure that no person uses the Elevate Services:

- (a) to break any Law or infringe any person's rights;
- (b) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
- (c) in any way that damages, interferes with or interrupts the supply of the Elevate Services.

5 Relationship manager

Each Party will appoint and maintain at all times a relationship manager who will be responsible for the day to day management of this agreement. The parties' respective relationship managers will meet from time to time to ensure the appropriate and efficient management of this agreement.

6 Acknowledgements

6.1 Outside Elevate's control

The Client acknowledges:

- (a) Elevate will not be responsible or liable for any Liability or Claim if Elevate is delayed in the provision of the Elevate Services as a direct or indirect result of the acts or omissions of the Client, any member of the Client's Personnel or any third party;
- (b) If Elevate is delayed in the provision of the Elevate Services as a direct or indirect result of the acts or omissions of the Client, or any member of the Client's Personnel or any third party, the Client will pay to

Elevate all costs associated with cancelling, postponing or rescheduling the relevant aspect of the Elevate Services; and

- (c) Elevate will not be liable to the Client if Elevate's failure to achieve a service level is caused directly or indirectly by any act or omission of the Client, any member of the Client's Personnel, or any third party.

6.2 Provision of Elevate Services

The Client acknowledges that:

- (a) Elevate may provide the Elevate Services using a combination of Elevate's own facilities and the facilities and services of other suppliers;
- (b) Elevate does not make any warranty or representation as to the ability of the facilities or services of any other suppliers; and
- (c) Elevate is not liable for any failure in, fault with or degradation of the Elevate Services if that failure, fault or degradation is attributable to or caused by any failure of the facilities or services of any other suppliers.

6.3 Acknowledgement

The Client acknowledges:

- (a) Elevate will not be liable for any Liability or Claim in connection with any delay in the delivery of any Elevate Services; and
- (b) to the extent relevant, risk in any Elevate Services will transfer to the Client when the Elevate Services are delivered to the Client or the Client's carrier and title to any Elevate Services will transfer to the Client on payment for the Elevate Services.

7 Relationship

7.1 Independent

Each Party acknowledges and agrees that Elevate will provide the Elevate Services to the Client as an independent contractor.

7.2 No partnership

This agreement does not create any partnership, joint venture, agency or relationship of employment between the Parties.

8 Invoices and Payment

8.1 Fees

Elevate will, from time to time or in accordance with any agreed payment milestones, invoice the Client for the Fees and all reasonable accommodation, travel and other expenses incurred in supplying the Elevate Services. If possible, Elevate will take advantage of any Client negotiated rates for local accommodation where such rates are better than those available to Elevate directly.

8.2 Set-off

The Client will pay each invoice without set-off or delay in accordance with the payment terms set out in the invoice.

8.3 Costs

The Client acknowledges that if any other supplier on which Elevate relies on to supply the Elevate Services increases the cost of such Elevate Services to Elevate, then Elevate may increase the Fees by an amount reasonably determined by Elevate to recover such increase. If the Client does not accept the increase in Fees, the Client may terminate the agreement on 30 days written Notice to Elevate.

8.4 Invoices

If the Client does not dispute any invoice prior to the date for payment of that invoice, the Client will be deemed to have accepted the invoice. If the Client wishes to dispute any portion of an invoice, the Client must pay the undisputed portion of the invoice in accordance with the payment terms set out in the invoice.

8.5 Credit limit

Elevate may impose a credit limit for the Client and, if the Client exceeds such credit limit, Elevate may:

- (a) require the Client to pay in advance for any Elevate Services; or
- (b) suspend the supply of the Elevate Services or any part of the Elevate Services until the Client's account is brought within such credit limit.

8.6 Interest on late payments

Elevate may charge monthly compound interest on any overdue amounts owed by the Client at a rate of 5% per annum above the Reserve Bank of Australia's cash rate target.

8.7 Quote validity period

All quotes provided by Elevate will expire and no longer be valid 30 days from the date of issue.

8.8 Payment terms

Elevate will invoice the Client for the Fees monthly in advance on the 1st of each month.

All invoices must be paid within 7 days of the invoice date.

Payment must be made to Elevate's nominated account (as specified in the invoice) using direct debit only.

9 Loan Equipment

9.1 Acceptable use

We may install on your premises, loan or otherwise provide you with equipment ("Loan Equipment"). All Loan Equipment:

- (a) remains our property;
- (b) must only be used by you for the purposes of receiving services from us; and
- (c) must be kept secured from loss or damage

9.2 Equipment recovery

If Loan Equipment in your possession or control is lost, stolen or damaged:

- (a) you must notify us without unreasonably delay; and
- (b) you must pay us the replacement cost of the Loan Equipment calculated as the recommended retail price at the date the Loan Equipment was lost, stolen or damaged minus any amount we recover under an insurance policy.

10 Confidentiality

10.1 Information

Each Party will ensure that the Party, and each member of that Party's Personnel, will not use the other Party's Confidential Information for any purpose other than strictly for the purposes of the Elevate Services, a Service Agreement or this agreement.

10.2 Disclosure

Each Party will ensure that that Party, and each member of that Party's Personnel, will not disclose or permit the

disclosure of the other Party's Confidential Information to any person other than to the extent:

- (a) the disclosure is to a member of that Party's Personnel who requires the other Party's Confidential Information for the performance of that Party's obligations, or the exercise of that Party's rights, under this agreement;
- (b) the disclosure is in accordance with the other Party's specific and prior written consent;
- (c) the information is in or comes into the public domain other than as a result of a breach of this **clause 10 (Confidentiality)**;
- (d) the information was previously in that Party's possession, or is provided to that Party by a third party, without being subject to any confidentiality obligations; or
- (e) the disclosure is required by Law.

10.3 Required disclosure

If a Party or any member of that Party's Personnel is required to disclose any of the other Party's Confidential Information in accordance with **clause 10.2(e)**, that Party will:

- (a) immediately, and to the extent possible prior to the disclosure of the other Party's Confidential Information, inform the other Party of the requirement of the applicable Law; and
- (b) disclose only the minimum amount of the other Party's Confidential Information required to comply with the applicable Law.

10.4 Security of information

Each Party will ensure that that Party, and each member of that Party's Personnel, will take all reasonable steps to keep the other Party's Confidential Information secure including but not limited to by using the security measures and degree of care no less than that Party applies to that Party's own confidential or proprietary information.

11 Intellectual Property Rights

11.1 Ownership

All Intellectual Property in the Elevate Services and all Intellectual Property developed, adapted, modified or created by Elevate or Elevate's Personnel (including without limitation in connection with this agreement and any machine learning algorithms output from the foregoing) is and will remain owned exclusively by Elevate or Elevate's third party service providers.

11.2 Licence to Elevate

The Client grants to Elevate a licence to use any Intellectual Property Rights of the Client for the purposes of Elevate providing the Elevate Services to the Client.

11.3 Software licence

The Client must strictly comply with any software licence entered into between the Parties and any breach of such software licence by the Client will be deemed to be a material breach of this agreement.

11.4 Licence to the Client

Subject to the Client complying with the terms of this agreement at all times, Elevate grants to the Client an irrevocable, perpetual, non-exclusive, non-transferrable, licence, without the right to sublicense, to use the Elevate

Services for the purposes of the Client's business provided that the Client must not:

- (a) copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile the Elevate Services or any part of the Elevate Services or otherwise attempt to discover any part of the source code of the Elevate Services;
- (b) use any unauthorised, modified version of the Elevate Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the Elevate Services;
- (c) use the Elevate Services in a manner that is contrary to any Laws or in violation of any Intellectual Property Rights or privacy rights;
- (d) publish, post, upload or otherwise transmit data that contains any viruses, trojan horses, worms, time bombs, malware, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with information or property of any person;
- (e) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Elevate Services;
- (f) unless authorised under this agreement, use the Elevate Services in a web-enabled form for the purposes of third party analysis or view via the internet or other external network access method;
- (g) rent the use of the Elevate Services to any third parties;
- (h) gain revenue, profit or benefit from the use of any trial Elevate Services;
- (i) take any action that may compromise or jeopardise Elevate's Intellectual Property Rights in the Elevate Services or otherwise;
- (j) remove or deface any confidentiality, copyright or other proprietary Notice placed on the Elevate Services;
- (k) make any representations or warranties to any third parties that could be construed as being representations or warranties from Elevate in relation to the Elevate Services or any other matter;
- (l) use the Elevate Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing of the Elevate Services; or
- (m) do any other thing in relation to the Elevate Services specifically prohibited by Elevate in the Documentation or otherwise communicated by Elevate to the Client in writing as being prohibited.

11.5 No grant otherwise

Subject to **clause 11.4** (*Licence to the Client*), nothing in this agreement grants to the Client, or any member of the Client's Personnel, any Intellectual Property Rights.

11.6 IPR Claims

The Client will provide immediate written Notice to Elevate if the Client becomes aware of any actual or threatened infringement of any Intellectual Property Rights of Elevate's.

11.7 Assistance

The Client will provide all reasonable assistance to Elevate in relation to preventing any actual or threatened infringement of any Intellectual Property Rights of Elevate's.

11.8 Acknowledgement

The Client acknowledges:

- (a) the value of the Intellectual Property Rights is such that an award of damages or an account of profits might not be an adequate remedy for a breach of this **clause 11** (*Intellectual Property Rights*); and
- (b) Elevate may, without having to prove any actual damage, take any action or seek any remedy including but not limited to seeking an injunction in relation to any actual or threatened breach of this **clause 11** (*Intellectual Property Rights*).

11.9 Analytics

- (a) Despite anything to the contrary in this agreement or elsewhere, Elevate may monitor, analyse and compile statistical and performance information based on and/or related to the Client's use of the Elevate Services, in an aggregated and anonymised format (**Analytics**). The Client agrees that Elevate may make such Analytics publicly available, provided that it:
 - (i) does not contain identifying information;
 - (ii) is not compiled using a sample size small enough to make the underlying customer data identifiable.
- (b) Elevate and Elevate's licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property rights in the foregoing.

12 Privacy

Each Party will comply with all obligations under the Privacy Act 1988 (Cth) at all times.

13 Force Majeure

If performance of this agreement or any obligation under this agreement is prevented, restricted, or interfered with by causes beyond either Party's reasonable control (**Force Majeure**), and if the Party unable to carry out its obligations gives the other Party prompt written Notice of such event, then the obligations of the Party invoking this provision will be suspended to the extent necessary by such event. The term **Force Majeure** includes without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders of acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused Party must use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and must proceed to perform with reasonable speed whenever such causes are removed or ceased. An act or omission will be deemed within the reasonable control of a Party if committed, omitted, or caused by such Party, or its employees, officers, agents, or affiliates.

14 Warranties

14.1 Elevate's warranty

Elevate warrants that:

- (a) Elevate and each member of Elevate's Personnel has the requisite skill, ability and expertise to provide the Elevate Services;

- (b) the Elevate Services will be provided with due care and skill; and
- (c) the provision of the Elevate Services will not infringe any Intellectual Property Rights of, or constitute a breach of any agreement with, any other person.

14.2 Power to enter into this agreement

Each Party warrants that the Party has the right, power, authority and entitlement to execute this agreement and perform that Party's obligations under this agreement.

14.3 No other warranties

To the extent permitted by Law, Elevate excludes all express and implied conditions and warranties in relation to any goods and/or services except those conditions or warranties that cannot be excluded by Law and Elevate's liability under any such conditions or warranties is limited to, at Elevate's option:

- (a) refunding the cost of the goods and/or services;
- (b) resupplying the goods and/or services; or
- (c) arranging to replace or repair the goods and/or the outcome of the services.

14.4 ACL

Certain legislation including the Australian Consumer Law (ACL) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer the Client with rights, warranties, guarantees and remedies relating to the provision of goods and services by Elevate to the Client which cannot be excluded, restricted or modified (**Statutory Rights**). If the Client is a consumer as defined in the ACL, the following Notice applies to the Client from Elevate: "We guarantee that the goods and services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the goods and services for or for a result which you have told us you wish the goods and services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our goods and services is limited to us re-supplying the goods and services to you, or, at our option, us refunding to you the amount you have paid us for the goods and services to which your claim relates." Nothing in this agreement excludes the Client's Statutory Rights as a consumer under the ACL. The Client agrees that Elevate's liability for goods and services provided to consumers is governed solely by the ACL and this agreement. Elevate excludes all conditions and warranties implied by custom, Law or statute except for the Client's Statutory Rights. Except for the Client's Statutory Rights, all material and work is provided to the Client without warranties of any kind, either express or implied and Elevate expressly disclaims all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

15 Liability

15.1 Indirect damages

Either Party will not be liable to the other Party for any Liability or Claim arising (whether under statute, contract, negligence or other tort, indemnity, or otherwise) in relation to any Consequential Loss.

15.2 Limitation

To the extent permitted by Law, Elevate's liability for any Liability or Claim in relation to any Elevate Services, Service Agreement or this agreement (whether under statute, contract, negligence or other tort, indemnity, or otherwise) will be limited to, and must not exceed in the aggregate for all claims, to the amount of the Fees you paid to us in the 12-month period prior to the Liability arising for the Elevate Services in the relevant Service Agreement affected by the circumstances giving rise to the relevant Liability or Claim.

15.3 Excluded Liability

Elevate will not be liable to the Client for any Liability or Claim caused or contributed to by:

- (a) a fault or defect in any item of the Client's equipment;
- (b) hardware and software procured by the Client that is not approved by Elevate in advance;
- (c) external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge, problems with electrical power, electrical spike or any Force Majeure Event;
- (d) the use of any Elevate Services other than for its intended purpose;
- (e) the use with or connection of any Elevate Services to items not approved by Elevate ;
- (f) the performance of maintenance or attempted repair of any Elevate Services by persons other than Elevate or as authorised by Elevate ;
- (g) the relocation of any Elevate Services by the Client;
- (h) any configuration or reconfiguration of any Elevate Services by the Client;
- (i) Elevate Services required as a result of the Client altering their environment without Elevate's prior approval, such that it causes Elevate to perform additional Elevate Services;
- (j) any negligence or breach of this agreement by the Client or the Client's Personnel; or
- (k) the use of Elevate Services not in accordance with their instructions, normal wear and tear, and problems caused by use of parts and components not supplied by Elevate .

16 Disputes

16.1 Process

In the event of any dispute arising between the Parties as to any matter or thing arising under or in connection with this agreement or a Service Agreement, then either Party may give written Notice to the other Party identifying the matters the subject of the dispute and requiring the dispute to be referred to mediation as follows:

- (a) the mediator will be chosen by the President of the Law Society of Queensland;
- (b) the mediator will be jointly instructed by the Parties;
- (c) the Parties will share the costs of mediation equally; and
- (d) if the parties fail to resolve the dispute within 60 days of the Notice of the dispute, either Party may terminate the mediation by written Notice to the other Party and seek to resolve the dispute by litigation.

16.2 Continue obligations and urgent relief

- (a) The Parties will, as far as reasonably practicable, continue to perform and comply with their respective obligations under this agreement notwithstanding the fact a dispute has been referred to the dispute resolution procedure in this **clause 16 (Disputes)**.
- (b) Nothing in this **clause 16 (Disputes)** prevents a Party seeking urgent injunctive or similar interim relief from a court at any time.

17 Suspension & Termination

17.1 Suspension

Elevate may provide written Notice to the Client to suspend the supply of any Elevate Services, without any liability to the Client, if:

- (a) the Client is in default of any payment or other obligation under this agreement or a Service Agreement;
- (b) the Client or any other supplier performs any emergency or maintenance or other service work in connection with the Client's network or systems; or
- (c) Elevate is required to do so by Law or by any Authority.

17.2 Termination after suspension

If Elevate suspends the supply of Elevate Services under **clause 17.1 (Suspension)** for a period of 30 days or more, Elevate may provide written Notice to the Client to terminate the Service Agreement that relates to such Elevate Services.

17.3 Breach Notice

If the Client is in breach of this agreement or a Service Agreement, Elevate may provide a written Notice to the Client specifying the breach and requiring the Client to remedy the breach within 10 Business Days and if the Client does not remedy the breach within 10 Business Days after receiving such Notice, Elevate may provide written Notice to the Client to immediately terminate the relevant Service Agreement and/or this agreement.

17.4 Insolvency Event and Change of Control

- (a) The Client will provide immediate written Notice to Elevate if the Client becomes subject to an Insolvency Event or a Change of Control.
- (b) Elevate may immediately terminate this agreement if the Client becomes subject to an Insolvency Event or a Change of Control.

17.5 Termination of for convenience

Either Party may terminate this agreement on 30 days written Notice to the other Party. In the case of the Client, if the Client terminates pursuant to this **clause 17.5 (Termination of for convenience)**, the Client must pay the Early Termination Fee.

17.6 Events Following Termination

The expiry or termination of this agreement for any reason will be without prejudice to any rights or liabilities which have accrued prior to the date of expiry or termination.

17.7 Non-Solicitation

The Client will not solicit or entice Elevate's employees or contractors to work for the Client or any business which competes with Elevate during the Term or for a period of 12 months after the date of expiry or termination of this agreement or a Service Agreement (unless the Client obtains

Elevate's express prior written consent). If the Client solicits or entices Elevate's employees or contractors of as set out above, the Client must pay to Elevate upon demand, an amount as advised by Elevate (plus GST) per employee or contractor.

18 Taxes

A reference in this **clause 18 (Taxes)** to a term defined or used in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act. If GST is imposed on a supply made under or in connection with this agreement, the consideration provided for that supply will be increased by the rate at which the GST is imposed and the additional consideration will be payable at the same time as the consideration to which the additional consideration relates. The supplier will issue a tax invoice to the recipient of the supply at the time of payment of the GST inclusive consideration or at another time agreed by the Parties. If one of the Parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this agreement, the amount of the reimbursement will be net of any input tax credit which may be claimed by the Party being reimbursed in relation to that expense or outgoing. The Client will, at the Client's cost, pay any Taxes in relation to the Elevate Services.

19 Notices

Any Notice must be in legible writing and in English and to the Party's contact details set out in a Service Agreement or other contact details notified by a Party to the other Party in accordance with this **clause 19 (Notices)**. Any Notice will be regarded as being given by the sender and received by the addressee:

- (a) if delivered in person, when delivered to the addressee;
- (b) if posted from within Australia, 3 Business Days from and including the date of postage;
- (c) if posted from overseas, 10 Business Days from and including the date of postage; or
- (d) if sent by facsimile transmission, when received by the addressee unless delivery is not on a Business Day or is after 5:00pm in which case the Notice will be regarded as received at 9:00am on the following Business Day.

20 Assignment

Neither Party may assign any rights or benefits under this agreement without the other Party's prior written consent which must not be unreasonably delayed or withheld.

21 Severability

If any provision, or the application of any provision, of this agreement is prohibited, invalid, void, illegal or unenforceable in any jurisdiction:

- (a) this will not affect the validity and enforceability of the provision or part in other jurisdictions;
- (b) the provision or part will only be ineffective to the extent of the prohibition, invalidity, voidness or illegality; and
- (c) the provision or part will be severed and will not affect the validity or enforceability of the remaining provisions or parts of this agreement.

22 Precedence

If there is any conflict or inconsistency between any terms in the documents that comprise this agreement, the conflict or inconsistency will be resolved in the following order of priority:

- (a) any Service Agreement; and
- (b) **clauses** Error! Reference source not found. (**Error! Reference source not found.**) to **32** (*Definitions and Interpretation*) of this document.

23 Entire Agreement

This agreement supersedes all prior undertakings, arrangements and agreements and constitutes the entire agreement between the parties in relation to the subject matter of this agreement and there are no conditions, warranties or other terms affecting the agreement between the parties other than those set out in this agreement. Any standard terms and conditions of the Client in any form (e.g. a Client's purchase order) will not apply to the supply of the Elevate Services or form part of this agreement unless specifically referring to this **clause 23** (*Entire Agreement*) and with the written approval of Elevate's Managing Director or CEO.

24 Waiver

Any waiver of a right under this agreement must be in writing and signed by the Party granting the waiver and will not operate as a waiver in relation to any subsequent matter. Any failure, delay, forbearance or indulgence by a Party in an exercise, or partial exercise, of a right arising under this agreement will not result in a waiver of that right or prejudice or restrict the rights of the Party.

25 Further Assurances

Each Party must do all things and execute all further documents necessary to give full effect to this agreement.

26 Variations

Any variation of, or amendments to, any terms of this agreement must be in writing and signed by both parties.

27 Advice

Each Party acknowledges that the Party has received legal advice or has had the opportunity of obtaining legal advice in relation to this agreement.

28 Counterparts

This agreement may be executed in any number of counterparts.

29 Cumulative Rights

The rights arising out of this agreement do not exclude any other rights of either Party. Each indemnity in this agreement is a continuing obligation that is separate and independent from the other obligations under this agreement. A Party is not obliged to take any action, or incur any expense, before enforcing any indemnity under this agreement.

30 Advice and Liability for Expenses

Each Party must obtain its own independent legal advice and pay its own expenses incurred in negotiating, executing and stamping this agreement.

31 Governing Law

This agreement will be governed by the Laws of, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of, Queensland.

32 Definitions and Interpretation

32.1 Definitions

In this agreement:

Agreement means this document and any Service Agreements.

Agreement Term means the term for the **agreement** as set out in this agreement.

Authority means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity.

Business Day means a day which is not a Saturday, Sunday or public holiday in the location of Elevate's address set out in a Service Agreement.

Change of Control means a change in:

- (a) control of the composition of the board of directors of a corporation;
- (b) control of more than half the voting rights attaching to shares in a corporation;
- (c) control of more than half the issued shares of a corporation (excluding any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital); or
- (d) control as defined in the *Corporations Act 2001* (Cth);

Claim means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

Confidential Information means any information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to a Party including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

Consequential Loss means any consequential loss, indirect loss, loss of actual or anticipated profits, loss of revenue, loss of savings, loss of production, loss of business, loss of opportunity, loss of goodwill, loss of reputation, loss of publicity, loss of data, or loss of use.

Documentation means the technical manuals, user manuals, operating manuals, and any other documentation (including any revisions, replacements, amendments or additions), as set out in a Service Agreement;

Elevate Services means the Products and Services Elevate will provide to the Client as agreed in a Service Agreement;

Fees means the fees and charges as set out in a Service Agreement;

Early Termination Fee means any early termination fee as set out in a Service Agreement.

Equipment means any equipment used or supplied by Elevate or Elevate's Personnel for the purposes of supply the Elevate Services;

Hardware means any computer hardware, equipment and any other similar items supplied by Elevate to the Client as part of or incidental to the Elevate Services (whether virtual or otherwise);

Insolvency Event means any of the following events or any analogous event:

- (a) the Client disposes of the whole or any part of the Client's assets, operations or business other than in the ordinary course of business;
- (b) the Client ceases, or threatens to cease, carrying on business;
- (c) the Client is unable to pay the Client's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Client's assets, operations or business;
- (e) any step is taken for the Client to enter into any arrangement or compromise with, or assignment for the benefit of, the Client's creditors or any class of the Client's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Client's assets, operations or business;

Intellectual Property Rights mean all present and future rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights;

Laws means acts, ordinances, regulations, rules, codes and by-laws of the Commonwealth or any state or territory;

Liability means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

Notice means any Notice or other communication by one Party to the other Party under the terms of this agreement including but not limited to any request, demand, consent, waiver or approval;

Notice Details means the contact details for Notices to each Party under this agreement as set out in a Service Agreement;

Personnel means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a Party;

Services means the services (if any) set out in a Service Agreement;

Service Agreement refers to a Service Agreement to this agreement;

Taxes means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any Authority including but not limited to any tax in relation to sales, use, property, value added, goods

and services, turnover, stamp duty, interest equalisation, business, occupation, excise, income, profits or receipts;

Variation means a variation to a Service Agreement (including but not limited to a variation to the Elevate Services, timing, or any other part of a Service Agreement).

Variation Cost Proposal means the costs proposed by Elevate and details any other impacts, to affect a Variation.

Variation Form means the form as described in clause 3 (Variations) and as agreed between the Parties.

32.2 In this agreement:

- (a) the headings will not affect the interpretation of this agreement;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) any other grammatical form of a word or expression defined in this agreement has a corresponding meaning;
- (d) the Schedules to this agreement form part of and are incorporated in this agreement;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to "A\$", "\$A", "dollar" or "\$" is to Australian currency;
- (g) a reference to time is to time in the location of Elevate's address set out in a Service Agreement;
- (h) a reference to a Party to a document includes the Party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, body corporate, partnership, trust, association or any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or any other entity;
- (j) a reference to a statute, ordinance, code or other Law includes regulations, rules and other instruments under the statute, ordinance, code or other Law and any consolidations, amendments, re-enactments or replacements;
- (k) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the *Corporations Act 2001* (Cth);
- (l) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (m) a reference to anything (including but not limited to any right) includes part of that thing;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds those parties jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of those parties jointly and severally;
- (p) any undertaking by a Party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;

- (q) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this agreement or any part of this agreement; and
- (r) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.