

Software as a Service Terms

1	Terms of Agreement	2
2	Updates to terms	2
3	Definitions.....	2
4	Interpretation.....	4
5	Services.....	4
6	Implementation and training.....	5
7	Customer support.....	5
8	Additional services.....	6
9	Fees, payments and taxes.....	6
10	Changes to the Services or Fees.....	7
11	Updates and maintenance	7
12	Use of Services and Customer responsibilities	8
13	Confidentiality	8
14	Privacy and data protection.....	9
15	Data Processing Addendum.....	9
16	Intellectual Property Rights.....	9
17	Warranties	10
18	Disclaimers.....	10
19	Indemnities	10
20	Limitation of liability.....	11
21	Assignment and novation.....	11
22	Force majeure.....	11
23	Termination.....	12
24	Effect of termination.....	12
25	Dispute resolution.....	12
26	Notices.....	13
27	Governing law and jurisdiction	13
28	Order Form	13
29	General.....	13

Software as a Service Terms

1 TERMS OF AGREEMENT

- 1.1 These terms, together with the Order Form, form the agreement between the WTG entity (**WTG**) and the customer stated on the Order Form (**Customer**) (**Agreement**).
- 1.2 To the extent of any inconsistency between these terms and the Order Form, the Order Form will prevail.

2 UPDATES TO TERMS

WTG may change these terms by providing at least 30 days' advance notice before the changes take effect. If Customer does not terminate the Agreement under clause 23.2 after receiving WTG's notice, then Customer is deemed to have accepted the changed terms.

3 DEFINITIONS

Affiliate of a party, means any person or entity controlling, controlled by, or under common control of that party.

Australian Users means any Authorised Affiliate who carries on its business, uses the Services, or receives any services of WTG provided under this Agreement, in Australia.

Authorised Affiliate means an Affiliate of Customer which Customer has provided access to the Services or has authorised WTG to provide access to the Services.

Business Hours means Monday to Friday, 9am to 5pm, in The Netherlands, excluding any day that is a public holiday.

Confidential Information means any information in whatever form disclosed or revealed by a party (**Disclosing Party**) to the other party (**Receiving Party**) under or in relation to this Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or reasonably ought to know is confidential,

but does not include information that:

- (d) is in or has become part of the public domain without a breach of this Agreement;
- (e) was lawfully communicated to the Receiving Party by a third party not bound to confidentiality obligations with respect thereto; or
- (f) was independently developed or obtained without a breach of this Agreement.

Customer Materials means data, content, information, or other materials that Customer provides to WTG to use the Services.

Customer Support has the meaning given in clause 7.

Data Processing Addendum means the written agreement between Customer, as data controller, and WTG, as data processor, available at <https://www.wisetechglobal.com/legal/privacy-and-data-protection-terms/> and updated by WTG in accordance with clause 15 from time to time.

Fees means the amounts payable for the Services as set out in the Order Form, as varied under clause 10.4.

Force Majeure Event means an event beyond the control of the relevant party, including but not limited to acts of God, natural disasters, epidemics, fire, storm, lightning, flood, earthquake, acts of the public enemy, war rebellion, insurrection, riot, invasion, strikes and lockouts.

GST means a goods and services tax including as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation Support has the meaning given in clause 6.

Intellectual Property Rights means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including copyright, trademarks, trade secrets, designs, patents, inventions, software, know-how, architecture, algorithms, domain names and rights in websites, semiconductor or circuit layout rights, trade, business or company names, trade dress, get up or other proprietary rights, and any other rights relating to any of the foregoing, including any rights to registration of such rights in the world, whether created before, on or after the date of this Agreement.

Laws means all applicable federal, state, and local laws, regulations, and other legal requirements that apply to the parties and the subject matter of this contract.

Non-Conformant Environment means hardware, operating software and/or infrastructure on which the Software is being operated which does not confirm to the Product Documentation.

Order Form means a document executed by both parties specifying, as applicable:

- (a) the party details;
- (b) notice details;
- (c) the Start Date;
- (d) the Software;
- (e) the Fees;
- (f) the number of Users;
- (g) licensed locations;
- (h) Customer notice details; and
- (i) any other specific terms related to the Services,

subject always to variation in accordance with this Agreement.

Personal Information has the meaning given in applicable Privacy Laws.

Personnel means officers, directors, employees, independent contractors, consultants, service providers.

Privacy Laws means the *Australian Privacy Act 1988* (Cth), the *General Data Protection Regulation 2016/679* (GDPR) in the European Union or equivalent laws or regulations governing the collection, handling, storage, processing, use or disclosure of personal information.

Product Documentation means those functional descriptions and specifications relating to the operation of the Software contained in product manuals, training materials, update notes and technical and email notes published and updated from time to time by WTG.

Representative, in relation to a party, means an Affiliate of the party, or officers, employees, agents, contractors and professional advisers of the party or an Affiliate of the party.

Services has the meaning given in clause 5.1.

Services Order means an agreement between WTG and Customer for WTG to provide additional services, such as feature enhancements to the Software.

Software means the software described on the Order Form, including any product or module selections identified on the Order Form.

Start Date means the 'Start Date' identified on the Order Form, or if that is not specified, the date that the Order Form is executed by both parties.

Tax and Taxes include any GST, value added tax, sales tax, or any other taxes, duties, levies or charges imposed or collected by any governmental agency.

Term means the period starting on the Start Date and continuing until the date this Agreement is terminated in accordance with its terms.

Third-Party Software means any software owned by a third party which is embedded in the Software.

Updates has the meaning given in clause 11.

User means any Personnel of Customer authorised by Customer or an Authorised Affiliate to use the Services under this Agreement.

WTG Data Privacy Policy means the privacy policy outlined on the WTG Global website and accessible at <https://www.wisetechglobal.com/privacy-policy>.

WTG IP means all Intellectual Property Rights in the Services including but not limited to software code, designs, algorithms, technology, Product Documentation, trademarks, service marks, logos, and all improvements, enhancements or modifications.

4 INTERPRETATION

4.1 In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) a term used with an initial capital letter indicates that the term is defined in this Agreement and is to be interpreted accordingly. If the same term is used without an initial capital letter, then it will be given its normal meaning without reference to the definition;
- (b) a reference to a schedule is to a schedule to this Agreement; a reference to a part, clause or other sub-clause is a reference to a part, clause or other sub-clause in this Agreement;
- (c) the singular includes the plural and vice versa;
- (d) the word including or any other form of that word is not a word of limitation;
- (e) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a law or regulation includes the law or regulation as amended, consolidated or replaced from time to time;
 - (iii) a party includes its agents, successors and permitted assigns; and
 - (iv) this Agreement includes all schedules and attachments to it; and
- (g) no rules of construction apply to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or any part of it.

5 SERVICES

5.1 Throughout the Term, WTG will provide Customer with:

- (a) access to the Software;
- (b) Implementation Support (if agreed under clause 6); and
- (c) Customer Support,
(together, the **Services**).

5.2 WTG will provide the Services:

- (a) with due care and skill; and

(b) in accordance with the Laws applicable to WTG.

6 IMPLEMENTATION AND TRAINING

6.1 If requested by Customer, then WTG will assist Customer in implementing the Software at the hourly rates specified in the then current price list.

6.2 If requested by Customer, then WTG will provide Customer with estimates for Implementation Support detailing:

- (a) the Software modules for which Implementation Support will be provided;
- (b) an estimate of the hours required and the total hourly fees; and
- (c) the access, resources and Personnel availability required from Customer for WTG to provide the Implementation Support.

(Implementation Support Estimate).

6.3 By accepting an Implementation Support Estimate, Customer agrees that:

- (a) it must provide access to systems and Personnel available as reasonably required by WTG; and
- (b) Implementation Support is charged on a time cost basis and costs may exceed an Implementation Estimate.

6.4 When providing Implementation Support, WTG agrees to:

- (a) use its best endeavours to adhere to the Implementation Estimate; and
- (b) provide Customer with regular updates of progress and fees incurred.

7 CUSTOMER SUPPORT

7.1 WTG will provide Customer with customer support in connection with Customer's use of the Software exclusively through its eRequest portal or such other means as notified by WTG to Customer from time to time **(Customer Support)**.

7.2 Promptly after the Start Date, WTG will provide Customer with access to and instructions on using the eRequest portal.

7.3 WTG does not provide Customer with hardware, operating system, server, networking and other on-premise or third party hosted equipment and operating system support.

7.4 Without limiting any other clause of this Agreement, the following services are not part of Customer Support:

- (a) correction of errors caused by operation of the Software or Customer's computer equipment in a manner other than that specified in the Product Documentation or as otherwise specified by WTG;
- (b) correction of errors caused by modification, variation or alteration of the Software, customization of reports or documents by Customer, or its Non-Conformant Environment;
- (c) correction of errors, losses or problems caused by any computer virus, Trojan, mal-ware, spy-ware or other software not supplied by WTG to Customer;
- (d) correction of errors or losses caused by system failure, data loss or corruption caused by an operating system, hard disk, power, network or other source unrelated to the Software; or
- (e) correction of errors, losses or corruptions caused by a malicious attack from Customer's (or Customer's Affiliates) own staff, contractors or a security breach of Customer's network, the internet or elsewhere.

8 ADDITIONAL SERVICES

- 8.1 The Services do not include:
- (a) software development such as integrations with third-party software (if integrations do not already exist), custom data imports and changes to format and data included on standard forms;
 - (b) supporting or troubleshooting third-party applications or services, even if integrated with the Software;
 - (c) format changes, UI or software customisation;
 - (d) data imports;
 - (e) support requests which require more than 45 minutes of support agent attendance to resolve; or
 - (f) services excluded under clause 7 or the Order Form.
- 8.2 Customer may request additional services from WTG. If supplied, these services will be provided under a Services Order on such conditions and for such fees as WTG may determine in its discretion.

9 FEES, PAYMENTS AND TAXES

- 9.1 Customer must pay the Fees during the Term in accordance with the Order Form.
- 9.2 WTG will invoice Customer the Fees in accordance with the Order Form.
- 9.3 WTG will invoice Customer for the fees incurred by Customer and all Authorised Affiliates, and Customer shall pay those invoices in whole on behalf of itself and all its Authorised Affiliates.
- 9.4 Customer must pay the Fees no later than 14 days following the date of an invoice.
- 9.5 All fees paid on or on behalf of Customer under this Agreement are non-refundable.
- 9.6 Unless otherwise specified, all charges quoted in this Agreement are exclusive of any Tax. In addition to any charges payable by Customer under this Agreement, Customer is liable for and agrees to pay any Tax due on charges levied under this Agreement or for other services offered from time to time by WTG.
- 9.7 Subject to clause 9.8, if Customer is liable to pay, withhold or deduct any amount on account of withholding tax (**Withholding Tax**) on charges levied under this Agreement, then the charges must be grossed up by such an amount as is necessary to ensure that the net amount received by WTG after payment, withholding or deduction of any such Withholding Tax equals the amount WTG would have received had there been no payment, withholding or deduction of Withholding Tax.
- 9.8 Customer may pay, withhold or deduct a Withholding Tax from charges levied under this Agreement and is not required to pay any gross up of such an amount to WTG, provided that:
- (a) WTG consents in writing to the application of this clause 9.8 to Customer (which can be provided or refused in its absolute discretion);
 - (b) the payment, withholding or deduction of the Withholding Tax is required by law;
 - (c) the amount of the payment, withholding or deduction made by Customer does not exceed the maximum amount required to be paid, withheld or deducted by Customer under applicable laws and tax treaties; and
 - (d) Customer delivers to WTG evidence (in a form acceptable to WTG) of:
 - (i) its liability to pay, withhold or deduct the Withholding Tax, such as a tax invoice, certificate or other documentation before the Withholding Tax is paid, withheld or deducted or, if such evidence is not available prior to the due date for payment, withholding or deduction, as soon as practicable thereafter; and

- (ii) the actual payment, withholding or deduction of the Withholding Tax, such as a tax receipt.

- 9.9 Customer must pay any applicable bank charges or merchant fees (**Bank Fees**) associated with its payment of the Fees so that the net amount received by WTG equals the amount WTG have received had there been no Bank Fees. WTG reserves the right to determine the payment methods available to Customer and to impose a reasonable surcharge, reflective of the cost incurred by WTG due to the use of certain payment methods by the Customer, to cover any Bank Fees. This surcharge will not exceed the actual cost incurred by WTG in processing the payment.
- 9.10 If Customer is a non-resident of Australia, then Customer warrants that, for the term of this Agreement, it is a business registered for GST or equivalent in its jurisdiction and all its Australian Users are registered for GST. Customer indemnifies WTG against, and will pay on demand to WTG, any GST or country equivalent, interest, penalties and any other damages or other liability arising from Customer's breach of this warranty.
- 9.11 Despite clause 1.2, any taxes that apply to any Order Forms issued as part of this Agreement are subject to this clause 9.

10 CHANGES TO THE SERVICES OR FEES

- 10.1 The available Services and their features may change from time to time based on factors including customer feedback, usage and online and technology updates.
- 10.2 Customer may by notice to WTG elect to add additional modules to the Services during the Term, and WTG will promptly advise the then-current pricing for those modules. The Services under this Agreement will be updated from the time that Customer accepts the pricing for additional modules or starts using the additional modules, whichever is earlier.
- 10.3 WTG may modify the Services from time to time at its discretion by providing at least 30 days' notice to Customer.
- 10.4 WTG may vary any aspect of the Fees (including any price list) from time to time at its discretion by providing Customer with at least 30 days' notice of the effective date of the change.
- 10.5 If Customer does not terminate the Agreement under clause 23.2 after receiving notice under clause 10.3 or 10.4, then Customer is deemed to have accepted the changes to either or both of the Services or the Fees under this clause 10.

11 UPDATES AND MAINTENANCE

- 11.1 WTG may at its discretion provide updates to the Software from time to time, which may include upgrades, bug fixes, patches, other error corrections or new features (**Updates**).
- 11.2 The Services may be unavailable while WTG implements Updates. WTG must use commercially reasonable efforts to provide advance notice in writing of any scheduled Service disruption.
- 11.3 Updates may modify or remove features in their entirety and WTG has no obligation to continue to provide or enable any features or functionality.
- 11.4 For any updates not automatically deployed, Customer agrees to promptly implement all Updates, in accordance with any instructions provided by WTG, to maintain the functionality and security of the Software.
- 11.5 Customer acknowledges that any failure to implement Updates as required under clause 11.4 may expose them and their Users to security risks or impair the functionality of the Software and is a material breach of this Agreement. WTG may in its discretion impose a surcharge on the Fees to recover its additional maintenance and support costs, if Customer fails to implement Updates as required under clause 11.4.

12 USE OF SERVICES AND CUSTOMER RESPONSIBILITIES

- 12.1 Customer may permit access to the Services and applicable modules by up to the number of Users and in the licensed locations (if applicable) shown in the Order Form.
- 12.2 Customer is solely responsible for all access to and use of the Services by the Users, including:
- (a) the roles and levels of access assigned to Users; and
 - (b) the username, passwords and other login details associated with Customer's account.
- 12.3 Customer is solely responsible for maintaining internet access, IT infrastructure and all other technology, communications, and other matters needed for Customer and Users to access and use the Services.
- 12.4 Customer must ensure that all usernames and passwords used by Customer and Users to access the Services are kept secure and confidential. Customer must immediately notify WTG of any unauthorised use of Customer's (including any User's) passwords or any other breach of security which could impact the Services.
- 12.5 Customer must ensure that all access and use of the Services by Customer and Users does not:
- (a) undermine the security or integrity of WTG's products or, where the Services are hosted by a third party, that third party's computing systems;
 - (b) involve the use or any attempt to use the Services in any way which may impair the functionality of the Services;
 - (c) involve any attempt to gain unauthorised access to any materials or services other than those to which Customer and any User has been given express permission to access;
 - (d) involve any modification, copying, adaptation, reproduction or reverse engineering of any computer programs used to deliver the Services or any attempt to do any such activity, except to the extent Laws prevent WTG from restraining Customer to do so;
 - (e) extract, or attempt to extract, the Third-Party Software or use the Third-Party Software separately from the Software;
 - (f) involve any act not expressly permitted by this Agreement; or
 - (g) breach any Law.
- 12.6 Customer must not redistribute or resell any of the Services.
- 12.7 Customer is responsible and liable for the acts and omissions of Authorised Affiliates as if they were the Customer's own acts and omissions.

13 CONFIDENTIALITY

- 13.1 A party who receives any Confidential Information (the **Receiving Party**) must only use Confidential Information solely for the purposes of this Agreement.
- 13.2 The Receiving Party must:
- (a) keep the Disclosing Party's Confidential Information confidential;
 - (b) subject to clause 13.3, limit disclosure of the Disclosing Party's Confidential Information to its Representatives who have a need to know for the purposes of this Agreement or as approved by the Disclosing Party in writing;
 - (c) ensure that its Representatives comply with the confidentiality obligations under this clause 13 as if they were the Receiving Party and remain responsible to the Disclosing Party for any act or omission of any of its Representatives that would have breached this clause 13 if the act or omission had been by the Receiving Party;
 - (d) protect using the same degree of care, but in any event no less than a reasonable degree of care, the Disclosing Party's Confidential Information from unauthorised access, use or damage;

- (e) inform the Disclosing Party as soon as reasonably practicable if it becomes aware of, or suspects that there has been a breach of the confidentiality obligations under this clause 13 and take reasonable steps required to prevent or stop the suspected or actual breach; and
- (f) upon the request of the Disclosing Party, immediately return or destroy all of the Confidential Information in its and its Representatives possession or control except for documents stored on a back-up server for bona-fide back-up, security and data recovery purposes which is not readily accessible, or Confidential Information contained in any record or document which is required to be retained by any applicable law, professional standard or insurance policy.

13.3 The Receiving Party must not, during or after the term of this Agreement, disclose Confidential Information directly or indirectly to any third party except:

- (a) with the prior consent of the Disclosing Party; or
- (b) to the extent required by Law, regulation, legal process, order of any governmental agency or the rules of a recognised stock exchange.

14 PRIVACY AND DATA PROTECTION

Each party agrees to:

- (a) take all necessary steps to ensure Personal Information held by it is protected against misuse, loss, and unauthorised access, modification and disclosure;
- (b) use Personal Information only for the purposes of this Agreement, unless required or authorised by applicable Laws;
- (c) comply with, and ensure their Personnel comply with, applicable Privacy Laws, the WTG Data Privacy Policy and the Data Processing Addendum at all times;
- (d) assist the other party to comply with its obligations under the Privacy Laws including but not limited to making available all information necessary to demonstrate compliance; and
- (e) immediately notify the other party upon becoming aware of or receiving a complaint relating to a breach of this clause 14, including but not limited to unauthorised access to Personal Information.

15 DATA PROCESSING ADDENDUM

15.1 Legitimate data protection obligations of the parties relating to possible commissioned data processing (especially relating to maintenance and/or support services or defect remedy) are set out in the Data Processing Addendum.

15.2 Execution of the Order Form constitutes acceptance of the terms of the Data Processing Addendum, including any amendments and updates notified by WTG to Customer from time to time.

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Each party acknowledges and agrees that:

- (a) any Intellectual Property Rights existing prior to the date of this Agreement will not be affected by this Agreement;
- (b) all Intellectual Property Rights in WTG IP are owned by WTG (or its licensors as the case may be) and nothing in this Agreement assigns or otherwise transfers any right, title or interest in any of the WTG IP to Customer; and
- (c) all Intellectual Property Rights in Customer Materials are owned by Customer (or its licensors as the case may be) and nothing in this Agreement assigns or otherwise transfers to WTG any right, title or interest in any of Customer Materials.

16.2 Customer grants to WTG a worldwide, royalty free licence to use, reproduce, modify and adapt Customer Materials to the extent necessary for WTG to supply the Services and to perform its obligations under this Agreement during the Term.

17 WARRANTIES

17.1 Each party warrants to the other party that:

- (a) it has the right, power and authority to enter into this Agreement;
- (b) it has all licences, authorisations, consents, approvals and permits required by all Laws in order to perform its obligations under this Agreement; and
- (c) it will comply with all Laws when performing its obligations under this Agreement.

17.2 Each party warrants that any work performed by it, its Affiliates, directors, officers, employees, agents, contractors and subcontractors in connection with this Agreement will be carried out in a professional and responsible manner by persons having the requisite skills and expertise.

18 DISCLAIMERS

18.1 **(General)** Except as set out in this Agreement, all warranties, representations, conditions, terms and undertakings, express or implied, whether by statute, common law, custom or otherwise, including without limitation as to quality, performance or fitness for purpose, in respect of the goods or services to be provided by WTG under this Agreement are excluded to the fullest extent permitted by Law.

18.2 **(Data)** All data provided in the product, whether by WTG or a third party, is provided on an 'as is' basis without warranties or representations of any kind and WTG does not warrant the accuracy, timeliness, completeness, adequacy, merchantability or fitness for a particular purpose of the data.

18.3 **(Third-party data)** Customer acknowledges that the data provided in the product may be sourced from third parties and is not verified nor endorsed by WTG. It is the sole responsibility of Customer independently confirm the accuracy and completeness of such data directly with the applicable third-party provider.

18.4 **(Other)** WTG is not responsible or liable to Customer, any User or other person, for any fault or defect in the Services:

- (a) caused by a Non-Conformant Environment;
- (b) caused by Customer's failure to implement updates as set out in clause 11;
- (c) caused by any Customer third party data, products or services which interact or interoperate with the Services;
- (d) caused by the modification of, or combination, operation, or use of the Services with other data, services or software not provided or authorised by WTG; or
- (e) caused by any breach of clause 12.

19 INDEMNITIES

19.1 WTG indemnifies Customer from and against any damages awarded or settlement agreed because of any claim against Customer by a third party that the Services infringe a third party's Intellectual Property Rights, provided that:

- (a) Customer notifies WTG promptly of any such claim;
- (b) WTG is given sole control of the defence and settlement of the claim; and
- (c) Customer fully co-operates and provides all reasonable assistance to WTG in the defence.

19.2 Customer indemnifies WTG from and against:

- (a) any damages awarded or settlement agreed because of any claim against WTG by a third party that the Customer Materials infringe any third-party's Intellectual Property Rights; and
- (b) any losses suffered or incurred by WTG in connection with Customer's breach of its obligations under clause 11, 12, 13 or 14.

20 LIMITATION OF LIABILITY

- 20.1 Certain legislation may imply warranties or conditions or impose obligations which cannot be excluded, restricted or modified except to a limited extent. This agreement must be read subject to those statutory provisions. If those statutory provisions apply, notwithstanding any other provision of this Agreement, to the extent to which WTG is entitled to do so, WTG limits its liability in respect of any claim to:
- (a) in the case of goods, at WTG's option:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of having the goods repaired, and
 - (b) in the case of services, at WTG's option:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 20.2 Despite anything else in this Agreement, WTG will not be liable to Customer in respect of any indirect, incidental, special or consequential loss or damage or damages for any loss of profits, revenue, goodwill, business opportunity or data incurred by the other party or any third party, however caused, arising in relation to this Agreement or its subject matter even if WTG has been advised of the possibility of such damages.
- 20.3 The total aggregate liability of WTG for any loss or damage arising in relation to this Agreement or its subject matter, howsoever arising, whether in contract, tort (including negligence), statute or otherwise, is limited to the amounts actually paid by Customer to WTG under this Agreement during the 12-month period before the event giving rise to the claim occurred.
- 20.4 The provisions of this Agreement allocate the risks between WTG and Customer and WTG's pricing reflects this allocation of risk and the limitation of liability specified herein.

21 ASSIGNMENT AND NOVATION

- 21.1 WTG may at any time assign or novate its rights and obligations under this Agreement:
- (a) to any of its Affiliates by notice to Customer; or
 - (b) to any other person with the prior consent of Customer.
- 21.2 Customer may at any time assign its rights under this Agreement with the prior consent of WTG, which may be given or withheld in WTG's absolute discretion, and any purported assignment without such consent will be void.

22 FORCE MAJEURE

- 22.1 If a party (**Affected Party**) is unable to perform an obligation under this Agreement, other than an obligation to make a payment, because of a Force Majeure Event, then:
- (a) the Affected Party must notify the other party (**Non-Affected Party**) as soon as reasonably practicable, but in any event no later than 14 days, after the Force Majeure Event arises of the extent to which it is unable to perform its obligation; and

- (b) the requirement to perform the obligation will, to the extent affected by the Force Majeure Event, be suspended for the duration of the Force Majeure Event.

22.2 If a delay arising out of a Force Majeure Event continues for more than 30 days, then the Non-Affected Party may terminate this Agreement with immediate effect by notice in writing.

23 TERMINATION

23.1 Customer may terminate this Agreement no less than 30 days from the end of the month in which notice of termination is given to WTG.

23.2 If WTG has given Customer notice of changes to:

- (a) these terms under clause 2;
- (b) the Services under clause 10.3; or
- (c) the Fees under clause 10.4,

then Customer may terminate this Agreement by notice to WTG within 30 days of receiving such notice, effective the date the changes would have otherwise come into effect.

23.3 WTG may terminate this Agreement at any time with at least 90 days' notice to Customer.

23.4 WTG may terminate this Agreement by notice to Customer with immediate effect from that or any later date that it may nominate if any of the following events has occurred in respect of Customer:

- (a) a material breach of any of its obligations under this Agreement which is capable of remedy, and Customer fails to remedy that breach within 30 days after receipt of written notice from WTG;
- (b) material breach of any of its obligations under this Agreement and the breach is not remediable; or
- (c) a failure by Customer to pay any amount due to WTG under this Agreement within 14 days following receipt of notice from WTG of an overdue invoice.

24 EFFECT OF TERMINATION

24.1 If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available to either party:

- (a) each party retains the rights and claims it has against the other party for any past breach of the Agreement;
- (b) Customer's rights to use the Services and any of WTG's Intellectual Property immediately ceases on termination of this agreement for any reason;
- (c) Customer is responsible and must make all necessary arrangements for exporting its data from the Software, including any data required to be retained in accordance with regulatory requirements. WTG will provide reasonable assistance with offboarding and data exports, charged to the Customer at WTG's usual hourly rates; and
- (d) Customer must immediately pay WTG all outstanding amounts due to WTG under this Agreement.

24.2 Clauses 1, 3, 4, 9, 13, 14, 15, 16, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 29 survive the expiration or termination of this Agreement for any reason, together with those provisions which are expressly stated or by their nature are intended to survive the termination or expiration of this Agreement.

25 DISPUTE RESOLUTION

25.1 The parties must use their best endeavours to resolve all disputes, controversies or claims arising out of, relating to or in connection with this Agreement expeditiously using informal

dispute resolution techniques such as using mediation, expert evaluation or other techniques agreed to by them.

- 25.2 If the parties are not able to resolve a dispute in accordance with clause 25.1, then the parties agree to refer their dispute to arbitration for resolution in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Arbitration Rules. The seat of arbitration will be Sydney, Australia. The language of the arbitration will be English.

26 NOTICES

- 26.1 All notices, consents, requests or any other communication under this Agreement must be in writing and delivered by hand, email or registered mail to the address of the receiving party set out below or as the parties may designate in writing from time to time. Notice will be deemed given:
- (a) if by hand, on delivery;
 - (b) if by email, on the earlier of receipt by the sender of a reply email of the recipient acknowledging delivery, or 30 minutes after the time sent (as recorded on the sender's device) unless the sender receives an automated message that the email has not been delivered; or
 - (c) if by registered mail, three business days after postage,
- but if the delivery or receipt is on a day which is not a business day at the recipient's location or is after 5:00pm (recipient's time) it is deemed to be received at 9:00am (recipient's time) on the following business day.
- 26.2 All communications under this Agreement must be in English to the address for each party specified on the Order Form.

27 GOVERNING LAW AND JURISDICTION

This agreement is governed by the laws of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts sitting there.

28 ORDER FORM

- 28.1 The Order Form may be executed in several counterparts, all of which taken together constitute this single Agreement between the parties.
- 28.2 Each party consents to the other party's use of electronic signatures on the Order Form and neither may object to the legal effect or enforceability because of such electronic signature which will be deemed to be an original binding signature.
- 28.3 No variation of the Order Form is effective unless made in writing and signed by each party.

29 GENERAL

- 29.1 **Relationship.** Nothing in this Agreement is intended to constitute an employment relationship or agency, partnership or trust and no party has authority to bind any other party.
- 29.2 **Compliance with laws.** Each party must comply with all applicable Laws in connection with the exercise of its rights and the performance of its obligations under this Agreement.
- 29.3 **Consents.** Unless expressly specified, any consent or approval required to be given under this Agreement must be not unreasonably withheld or delayed.
- 29.4 **No limitation.** Unless expressly specified, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.
- 29.5 **Entire agreement.** This Agreement is the entire agreement and understanding of the parties with respect to its subject matter and supersedes all previous discussions, agreements,

arrangements, undertakings, representations and warranties, whether oral or written, regarding its subject matter.

- 29.6 **Third parties.** No third-party beneficiary has any enforceable rights or remedies under this Agreement.
- 29.7 **No waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement will operate as a waiver of any such right, power or remedy unless agreed by the parties in writing.
- 29.8 **Severance.** Any clause of this Agreement that is held wholly or partially invalid or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.