

Effective Date: 18 November 2022

# Master Services Agreement



## Asia Pacific

19 David Ave  
North Ryde NSW 2113  
Australia  
+61 2 9157 4555

## Europe

Kiraly utca 26  
Budapest 1061  
Hungary  
+36 1 955 5888



We're The Glue Pty Ltd  
ABN 14 612 411 668 | ACN 612 411 668  
sales@theglue.com.au | www.theglue.com.au

Commercial in Confidence

## CONTENTS

CONTENTS.....	2
DOCUMENT CONTROL.....	3
DOCUMENT REVISIONS.....	3
DISTRIBUTION.....	3
1 DEFINITIONS AND INTERPRETATION.....	4
2 CONSTRUCT OF AGREEMENT.....	8
3 TERM.....	8
4 DURATION OF SERVICES.....	9
5 ORDERING AND ACCEPTANCE PROCEDURES.....	9
7 FEES, PAYMENT AND EXPENSES.....	10
8 LIMITATION OF LIABILITY.....	12
9 WARRANTIES.....	13
10 INDEMNITIES.....	14
11 TITLE AND RISK.....	16
12 DELIVERY.....	16
13 CONFIDENTIALITY.....	17
14 RELATED BODIES CORPORATE.....	19
15 FORCE MAJEURE.....	19
16 ACCESS TO INFORMATION AND SITES.....	19
17 TERMINATION.....	20
18 VARIATION.....	21
19 INSURANCE.....	21
20 NOTICES.....	22
21 DISPUTE RESOLUTION.....	23
22 GENERAL PROVISIONS.....	23

## DOCUMENT CONTROL

Author	Veronica Traversio-Mitchell	Date	01 May 2020
Approver	Allan Dall	Date	18 November 2022

## DOCUMENT REVISIONS

Version	Issue Date	Revisions
1.0	01 Jun 2016	Initial Release
1.5	09 Mar 2017	Revision of Liability and Confidentiality Clauses
2.0	09 Dec 2018	Minor Spelling Corrections
3.0	16 Jun 2020	Reformatted for new branding.
3.1	04 Jul 2022	Added 8.3c (vi) – Funds Transfer Liability Limitation
4.0	18 Nov 2022	Various Changes

## DISTRIBUTION

Name	Position
Document for Public Distribution	

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 DEFINITIONS

In the Agreement, unless otherwise provided, the following capitalised words shall have their meaning as specified:

**Agreement** means the agreement for the provision of Services and/or Products by The Glue to the Customer of which this Master Services Agreement forms part.

**Billing Dispute** means a disagreement or difference between the Customer and The Glue as to Fees payable.

**Billing Dispute Notice** means a notice provided by the Customer to The Glue in accordance with clause 7.6.

**Business Day** means any day which is not a Saturday, Sunday or public or statutory holiday in Sydney, Australia.

**Change Request** means a document by that name which details changes to the Agreement which may include (without limitation) additional Deliverables or quantities or an extended or varied Services Term.

**Commencement Date** means the date of commencement of the Agreement.

**Controller** has the meaning it has in section 9 of the Corporations Act.

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

**Customer-Induced issue** means any non-conformity or issue with respect to a Deliverable which is related to, concerns or results from:

- (a) any Deliverable supplied in accordance with instructions or specifications provided by, or on behalf of, the Customer, or under the operational authority or management of the Customer;
- (b) non-conformities or issues otherwise attributable to the Customer (including, for these purposes, any person acting on its behalf), such as, but without limitation, those resulting from:
  - (i) use of the Deliverable in combination with any equipment, software, accessory, data or business methods not provided by or expressly prescribed or permitted by The Glue;
  - (ii) erroneous or incomplete information from, or provided by, the Customer;
  - (iii) modifications or adjustments to the Deliverable, whether or not authorised by The Glue, or changes in the Customer's data, database or content;
  - (iv) connectivity issues or failure of a network (public and/or private);
  - (v) the handling, use or deployment of the Deliverable in a manner other than permitted in applicable documentation or otherwise in non-compliance with any applicable routine or process prescribed by The Glue;
  - (vi) any negligence, misuse, improper or unauthorised use, reproduction or distribution of the Deliverable which is not permitted under any applicable terms of use or licence, restrictions of use or any relevant acceptable use policy;
  - (vii) the acts or omissions of any Third Party, including the suppliers which have been engaged by The Glue for the purpose of supplying or maintaining a Product and/or Service supplied to the Customer under the Agreement;
  - (viii) faults or defects in Products and/or Services which are caused by the Customer's own conduct or misuse or the conduct or misuse of the Customer's End Users;

- (ix) faults or defects in the Products and/or Services that arise due to equipment or cabling owned or leased by the Customer or an End User or otherwise in the Customer's control or the Customer's End User's control;
- (x) faults or defects in the Products and/or Services that arise due to failure by the Customer or any Third Party (other than a contractor or agent engaged by The Glue) to appropriately maintain any equipment or cabling relevant to the supply of the Product and/or Services.

**Customer's Representative** means the person representing the Customer as provided in Item 1 of Schedule 1.

**Customer Representative's Nominated Email Address** means the email address of the Customer's Representative as provided in Item 2 of Schedule 1.

**Customer's Site** means a location or facility of or concerning the Customer as set out in the Agreement to, or at, which The Glue supplies the relevant Products and/or Services.

**Deliverables** means relevant goods and/or services to be supplied to or procured for the Customer pursuant to the Agreement.

**End User** means the user of the Customer's Services and/or Products.

**Fees** means Service Fees, Product Fees and any other fees, as the case may be or is relevant.

**Force Majeure** means any circumstance beyond the reasonable control of The Glue, howsoever caused or arising, which results in it being unable to observe or perform on time or otherwise as required an obligation under this Agreement. Such circumstances include, but are not limited to:

- (a) an act of God, lightning strike, earthquake, flood, storm, explosion, fire or any natural disaster;
- (b) a failure of a relevant network or IT infrastructure, computer downtime or default of a carrier;
- (c) an epidemic;
- (d) an act of war or the public enemy, terrorism, riot, civil commotion or disturbance, malicious damage, sabotage, nuclear disaster; or
- (e) a strike, lock-out or other labour dispute.

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

**Initial Term** means any initial term of the Agreement.

**Insolvency Event** means:

- (f) a Controller, receiver, manager, receiver and manager, trustee administrator or similar officer is appointed in respect of a person or any asset of a person;
- (g) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (h) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or is made, or a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph (a) or (b);
  - (ii) winding up a corporation; or
- (i) proposing or implementing a scheme of arrangement other than under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (j) any event or conduct occurs which would enable a court to grant a petition or an order is made, for the bankruptcy of an individual or his or her estate under any Insolvency Provision;
- (k) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors, or any similar proceeding

or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered declared or agreed to, or is applied for and is not withdrawn or dismissed within 7 days;

- (l) a person becomes, or admits in writing that it is or is declared to be or is taken under any applicable law to be, insolvent or unable to pay its debts; or
- (m) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

**Insolvency Provision** means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Interest Rate** means, at a particular date, 1.5% above the *Commonwealth Bank Corporate Overdraft Reference Rate* (or its equivalent successor rate as reasonably determined by The Glue) published on, or around, the first day of the month in which that particular date falls.

**Party** means a party to the Agreement.

**Personnel** means officers, employees, agents, sub-contractors and representatives of the relevant person.

**Product Fees** means any fees contemplated by the Agreement as payable by the Customer to The Glue in relation to the supply of a Product, together with any fees charged by The Glue under clauses 7.2 and 7.3).

**Products** means goods to be supplied by The Glue to the Customer.

**Proposal** means a document expressed to be a proposal, work order, purchase order, order for services, service order, statement of work or other contractual proposal, quote or order (in each case in writing) for goods and/or services to be supplied by The Glue and includes any of its schedules and annexures. It may also include or reference terms and conditions specific to relevant goods and/or services by way of a relevant Service Schedule.

**Related Bodies Corporate** means a body corporate that is a holding company of a second body corporate, a subsidiary of that second body corporate or a subsidiary of a holding company of a second body corporate.

**Service Commencement Date** means the relevant commencement date of a Service.

**Service End Date** means the relevant end date of a Service.

**Service Fees** means any fees contemplated by the Agreement as payable by the Customer to The Glue in relation to the provision of the Services.

**Service Schedule** means a document by that name which details terms and conditions specific to a particular service or other Deliverable.

**Services** means services to be supplied by The Glue to the Customer.

**Service Term** means the period of time from the Services Commencement Date to the relevant Service End Date and may include an initial and any subsequent services term as relevant.

**Standard Rates** means the standard published rates or rate card of The Glue from time to time.

**Subsequent Term** means any subsequent or extended term of the Agreement.

**Term** means the Initial Term and any Subsequent Term as contemplated by the Agreement.

**Third Party** means a legal entity, company, or person that is not a Party to the Agreement and not a Related Body Corporate of it.

**Third Party Product** means any software goods and/or services owned by or vested in a Third Party (including for these purposes any free or open source software) in circumstances where licence and/or user rights have either been granted to the Customer:

- (a) by The Glue (on the terms and conditions contemplated by the Agreement); or
- (b) directly by the Third Party Product vendor on terms agreed between the Customer and such vendor (including by way of open source software licence).

## 1.2 INTERPRETATION

In the Agreement:

- (a) headings are for convenience and unless the context indicates otherwise;
- (b) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- (d) 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;
- (e) a reference to:
  - (i) a clause, schedule, exhibit, attachment or annexure is a reference to a clause, schedule, exhibit, attachment or annexure to or of the Agreement;
  - (ii) a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
  - (iii) a document includes any deed certificate, notice, instrument or document of any kind;
  - (iv) a document in writing includes a document recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;
  - (v) a document (including this Master Services Agreement) includes a reference to all schedules exhibits attachments and annexures to it and is to that document as varied, novated, ratified or replaced from time to time;
  - (vi) legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;
  - (vii) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (viii) a right includes a power, remedy, authority, discretion or benefit; and
  - (ix) conduct includes an omission, statement or undertaking, whether in writing or not;
- (f) the word "includes" in any form is not a word of limitation;
- (g) the words "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or to examples of a similar kind;
- (h) a reference to a day is to a period of time commencing at midnight (in Sydney, Australia) and ending 24 hours later;



- (i) if a period of time dates from a given day or the day of an act or event it is to be calculated exclusive of that day;
- (j) a reference to "\$" or "dollar" is to Australian currency; and
- (k) a reference to a "quarter" in relation to a quarter year means a period of 3 months commencing on each of 1 January, 1 April, 1 July or 1 October.

## 2 CONSTRUCT OF AGREEMENT

### 2.1 PURPOSE OF DOCUMENT

The terms and conditions of this Master Services Agreement governs every Agreement (from the effective date stated below) for the supply of Products and/or Services by The Glue to the Customer including as contemplated by any Proposal or Service Schedule.

The Glue is not bound by any terms of purchase of the Customer or any other conditions which the Customer seeks to impose on, or that purport to apply to, the supply of Deliverables by The Glue, unless and to the extent only that they are expressly stated and agreed in a Proposal signed by The Glue.

The Customer agrees that the submission to The Glue, signing or acceptance of a Proposal by it or requesting The Glue to supply Products or Services constitutes acceptance by it of the terms and conditions of this Master Services Agreement.

### 2.2 INCONSISTENCY

Subject to the following provisions of this clause 2.2, if there is any inconsistency between clauses 1 to 22.12 of this Master Services Agreement, any Proposal, any Service Schedule or any other document referred to in the Agreement of which this Master Services Agreement forms part or any of them, that inconsistency will be resolved using the following order of precedence:

- (a) clauses 1 to 22.12 of this Master Services Agreement;
- (b) the relevant Proposal;
- (c) any Change Request;
- (d) the relevant Service Schedule(s); and
- (e) any other documents referred to in the Agreement of which this Master Services Agreement forms part.

The Parties may agree to disapply or vary the above provisions with respect to precedence or any clause in a contractual document. However, in order to do so, the relevant Proposal or other document must expressly identify the inconsistency, disapplication or variation, call it out by reference to this clause 2.2 and detail any conditionality or limitations in respect of the application of relevant contractual provisions. The purpose of this clause 2.2 is to ensure flexibility with respect to the ability of the Parties to agree provisions that may differ in effect from the contemplated provisions in clauses 1 to 22.12 of this Master Services Agreement or as otherwise contemplated by this clause.

## 3 TERM

The relevant term or duration of the Agreement and pertinent obligations under it shall be specified in the Agreement and commence from the Commencement Date.

The rights and obligations under the Agreement shall subsist (subject to any contrary provision or continuing terms) until its expiry or the date on which all Deliverables specified in it have been provided to



and (if required) accepted by the Customer, unless terminated earlier in accordance with the provisions of the Agreement.

## 4 DURATION OF SERVICES

A Service or the provision of any other Deliverable by The Glue to, or for the benefit of, the Customer shall commence on the relevant Service Commencement Date and end on the relevant Service End Date.

In the absence of any express statement to the contrary in the Agreement (such as for any agreed disengagement assistance or data migration Services, or Services provided for a lesser duration), Services shall automatically terminate and cease to be provided at the end of the Term of the Agreement.

This shall not affect continuance of any perpetual licence of software that is fully paid up for the duration of such licence unless the relevant licence provides to the contrary.

## 5 ORDERING AND ACCEPTANCE PROCEDURES

### 5.1 INITIAL ORDERS

Subject to the terms of the Agreement, The Glue will supply the relevant Products, Services and any other Deliverables to the Customer on the terms of the Agreement.

### 5.2 ADDITIONAL SERVICES ORDERS

During the Term of an Agreement, the Customer may request an additional Service at any time from The Glue (**Additional Order for Service**).

An Additional Order for Service shall be in accordance with the terms of any relevant Service Schedule applicable to the Service (including as to the Fees payable).

An Additional Order for Service constitutes a binding offer from the Customer capable of acceptance by The Glue.

The Glue will not be required to accept any Additional Order for Service. The Glue will notify the Customer (which notice may, for the avoidance of doubt, be sent via email to the Customer's Representative at the Customer Representative's Nominated Email Address), within 10 Business Days of receiving the Additional Order for Service, whether or not it accepts the Additional Order for Service. If The Glue does accept any Additional Order for Service, The Glue shall supply the relevant Service to the Customer on the terms of the Additional Order for Service, which is thereby incorporated into and forms part of the Agreement in respect of which the Additional Order for Service is made.

### 5.3 REQUEST FOR ADDITIONAL SERVICE QUANTITIES

During the Services Term of an Agreement, the Customer may request additional Service quantities under an applicable Service Schedule by submitting an Order for Service to The Glue (**Order for Additional Service Quantities**).

An Order for Additional Service Quantities constitutes a binding offer from the Customer capable of acceptance by The Glue.

The Glue will not be required to accept any Order for Additional Service Quantities. If for any reason The Glue cannot or is unwilling to supply the additional Service quantities in accordance with the Order for Additional Service Quantities, The Glue will notify the Customer (which notice may, for the avoidance of doubt, be sent via email to the Customer's Representative at the Customer Representative's Nominated Email Address) within 10 Business Days of receiving the Order for Additional Service Quantities giving

reasons for such inability. If The Glue does accept any Order for Additional Service Quantities, The Glue shall supply the relevant Service to the Customer on the terms of the Order for Additional Service Quantities which is thereby incorporated into and forms part of the Agreement in respect of which the Additional Order for Service is made.

#### 5.4 CHANGE REQUESTS

If an Additional Order for Service or Order for Additional Service Quantities is not clear, does not include all relevant details (including, without limitation, as to applicable Service Period and additional Fees payable) then The Glue may prepare a Change Request in respect of the relevant Agreement for signature by the Parties whereupon it shall have the effect of varying the relevant Agreement in accordance with its terms.

### 6 NON-PERFORMANCE

Nothing in the Agreement requires The Glue to supply Services, Products or any other Deliverables if this would result in The Glue being or becoming in breach of any law or any contract to which it is a party, provided that The Glue has used reasonable commercial endeavours (excluding the payment of money or provision of other valuable consideration) to obtain all necessary consents and authorisations (if available) from Third Parties concerning the supply of the Services, Products or other Deliverables. If The Glue is unable to supply Services, Products or any other Deliverables without breaching any law or contract to which it is a party The Glue will use reasonable commercial endeavours to supply alternative goods or services which are equivalent to the relevant other Services, Products or other Deliverables (as relevant) and the Fee otherwise payable for the replaced Service, Product or other Deliverable will apply.

### 7 FEES, PAYMENT AND EXPENSES

#### 7.1 FEES

The Fees payable by the Customer for Deliverables are set out as in the relevant Proposal or Service Schedule(s) or as otherwise contemplated by the Agreement.

#### 7.2 PAYMENT

The Customer must pay to The Glue all amounts and Fees when due under the Agreement by direct debit, electronic funds transfer, cash or credit card and without set-off (whether in law or in equity), counterclaim or deduction.

#### 7.3 TIME OF PAYMENT

- (a) Subject to clause 7.5(c), the Customer must pay all Fees (and any other amounts payable in accordance with this Agreement including any Service Schedule) as set out in The Glue's invoice within 30 days of the date of the invoice. If the Customer fails to pay The Glue the Fees (and any other payable amounts) within this period, the Customer at The Glue's discretion shall be liable to pay additional interest on the outstanding amount from time to time at the Interest Rate, which shall accrue daily from the due date for payment until the date payment in full is received by The Glue.
- (b) The Glue will invoice the Customer monthly for Fees due under the Agreement or as may otherwise be applicable at the times and in the manner as specified in a relevant Service Schedule.

#### 7.4 TAXES

- (a) All prices quoted for supplies made and/or to be made under the Agreement are in Australian dollars and are exclusive of GST.

- (b) If GST is applicable to any supply made by The Glue under the Agreement, The Glue is entitled to add to the amount otherwise payable an additional amount for the applicable GST.
- (c) The Customer hereby agrees to pay The Glue such GST charge in the same manner and at the same time as the payment for the relevant supply.
- (d) The Glue will issue tax invoices to the Customer for the purposes of GST.
- (e) If required by applicable law, The Glue will give the Customer an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Agreement within 30 days after the date The Glue becomes aware of the adjustment event.

## 7.5 BILLING DISPUTE

- (a) In the event of a Billing Dispute, the Customer may, by written notice provided to The Glue in accordance with clause 7.6, invoke the dispute resolution mechanism in this clause 7.5.
- (b) A Billing Dispute must be initiated only in good faith and for bona fide reasons.
- (c) The Customer must pay the undisputed portion of the invoice containing the disputed amount in accordance with 7.3.
- (d) The Glue is not obliged to accept a notice of a Billing Dispute in relation to an invoice unless the Customer has complied with clause 7.5(c).
- (e) Subject to clauses 7.6 and 7.7, The Glue will investigate a Billing Dispute within 30 days of receipt by The Glue of a Billing Dispute Notice in accordance with clause 7.6, and will report to the Customer on The Glue's findings as soon as possible after completing such investigation.
- (f) If the Billing Dispute cannot be resolved by agreement between the Parties, the disputed amount shall be dealt with in accordance with clause 19.
- (g) Where The Glue determines that it is required to refund an amount disputed by the Customer, The Glue shall pay interest at the Interest Rate on any refund. Interest shall accrue daily from the date on which each relevant amount to be refunded was paid to The Glue until the date the refund is paid to the Customer.

## 7.6 NOTIFICATION OF BILLING DISPUTE

- (a) The Customer must notify The Glue in writing of any Billing Dispute within 30 days of the date of receipt of the invoice to which the dispute relates (in relation to which time is of the essence).
- (b) The Glue will send the Customer a notice of receipt of the Billing Dispute Notice upon receipt of a request for such notice from the Customer.
- (c) The Customer may be requested to provide further details of the Customer's Billing Dispute to The Glue in accordance with a notice in writing provided to the Customer by The Glue.

## 7.7 NOTIFICATION OF DISPUTED INVOICES

In the event that the Customer does not:

- (a) notify The Glue of a Billing Dispute within the time period specified in clause 7.6(a); or
- (b) provide the requested additional information to The Glue within 14 days of receipt of The Glue's request for further information under clause 7.6(c); or
- (c) pay amounts (excluding any disputed amounts) in the invoice to which the Billing Dispute relates by the due date,

then all amounts in the invoice to which the Billing Dispute relates will be deemed to be agreed and accepted by the Customer and acknowledged as a debt due and payable in accordance with the terms of clause 7.3.

## 7.8 PROVISION OF THIRD PARTY PRODUCTS

- (a) If The Glue is requested during the Term to supply or procure the supply of any Third Party Products or information to the Customer, The Glue or relevant Third Party vendor may require the Customer to enter into or agree to be bound by a separate contractual agreement or licence with a relevant Third Party as may be necessary, convenient or appropriate for the supply of the Third Party Products.
- (b) The Glue ordinarily will not be a party to such Third Party agreement or licence (unless entered into by The Glue with the Customer as a permitted sub-licensor or sub-contractor of the Third Party or in the capacity of agent for a Third Party).
- (c) Accordingly, The Glue is not liable, except in the unlikely event that it is an expressed direct contracting party with the Customer as aforesaid (but not in the capacity of agent), for a failure to perform or any breach of any such agreement or licence with the Customer.

## 7.9 SUSPENSION OF SERVICES

If the Customer is late in paying any Fees, in addition to being liable to pay interest to The Glue under clause 7.3, The Glue may at its sole discretion suspend the supply (for such period as it thinks fit) of any or all Products, Services and any other Deliverables (under any Agreement) to the Customer until all Fees due have been paid. The Glue not be in breach of any Agreement in consequence of exercise by the Glue of its rights of suspension.

## 8 LIMITATION OF LIABILITY

### 8.1 NO GUARANTEES ETC

The Glue does not (to the extent lawful and subject to the following provisions) give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, written or oral, arising by statute, operation of law, course of dealing, usage or trade or otherwise with respect to the supply by The Glue of any goods or services in connection with the Agreement, except as expressly stated in it or any collateral pertinent document concerning warranties against defects (as may be relevant).

### 8.2 AGGREGATE LIABILITY

Except as expressly agreed to the contrary in the Agreement and subject to the following provisions of this clause 8, the aggregate liability of The Glue for breach of and all liabilities under, in respect of and in connection with the Agreement, as well as its duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis concerning the same is limited to an amount equivalent to the Fees paid by the Customer in the last 12 months under the relevant Agreement (calculated by reference to the date when the cause of action first arose or in the case of multiple causes of action with respect to related facts or claims then the first such date).

### 8.3 CONSUMER GUARANTEES

To the extent that The Glue has failed to comply with a consumer guarantee under the ACL which cannot be excluded, the liability of The Glue is limited (to the extent lawful) to, at The Glue's option:

- (a) in the case of goods - the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; or

- (b) in the case of services - the supply of the services again or the payment of the cost of having the services supplied again.

#### **8.4 THIRD PARTY PRODUCTS**

To the extent lawful, The Glue shall have no liability to the Customer for, or concerning, any Third Party Products (unless The Glue is a direct contracting party, not as an agent, with the Customer as a sub-licensor or sub-contractor of Third Party Product vendor or licensor) in respect of which the applicable terms and conditions of the Third Party Product supplier shall apply.

#### **8.4 CUSTOMER-INDUCED ISSUES**

To the extent lawful, The Glue shall have no liability to the Customer for, or concerning, any Customer-induced Issue.

#### **8.5 CONSEQUENTIAL LOSS**

In no circumstances will either Party be liable to the other or its successors in title or permitted assignees for Consequential Loss arising out of, in connection with or relating to the performance, breach, termination or non-observance of the Agreement.

#### **8.6 UNLIMITED LIABILITY**

Nothing in the Agreement shall prevent a claim by The Glue or limit or exclude a liability of the Customer to pay the Fees.

Nothing in the Agreement shall exclude or limit the liability of a Party for:

- (a) death or personal injury caused by negligence;
- (b) fraud, deceit or fraudulent misrepresentation; or
- (c) any breach by the Customer of any applicable licence terms or provisions regarding ownership or licensing of intellectual property rights.

#### **8.6 ELECTRONIC TRANSFERS**

The Glue has no liability to the Customer, any of the Customer's End Users or to any other person, for the loss of any money electronically transferred into or between accounts through the use of information technology products or information technology services developed, used or operated by The Glue. A review and verification of proposed electronic transfers and any change to bank details should always be carried out offline with a human verification step by the Customer or its employees.

## **9 WARRANTIES**

### **9.1 MUTUAL WARRANTIES**

Each Party represents and warrants to the other Party that:

- (a) it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as currently owned, leased, operated and conducted;
- (b) it has full power and all necessary rights to enter into this Agreement and to perform its obligations according to the terms of the Agreement; and
- (c) no Insolvency Event has occurred nor is subsisting or has been threatened against it.

## 9.2 CAVEATS

The Glue does not warrant that the Products, Services or any other Deliverables will be free of interruptions, delays, faults or errors.

To the extent lawful, The Glue will not be responsible or liable for any loss and/or damage to the Customer's business and/or the Customer's End User's that may result from any interruptions, delays, faults or errors in connection with the supply of the Products, Services or any other Deliverables.

## 10 INDEMNITIES

### 10.1 THE GLUE TO INDEMNIFY CUSTOMER

Subject to clauses 8 and 10.2 to 10.5 The Glue indemnifies and shall keep indemnified the Customer against any liability, loss, claim or proceeding directly due to:

- (a) any damage to property or death or personal injury, in each case, caused by the negligence of The Glue;
- (b) the use by the Customer as permitted by the Agreement, including any relevant licence terms, of software developed by, or on behalf of, The Glue which is supplied by The Glue to the Customer which use by the Customer as permitted by The Glue infringes a patent or copyright of any Third Party (**IP Claim**);
- (c) the application of any applicable law, including any workers compensation law, which deems the Customer an employer of The Glue's Personnel or otherwise makes the Customer liable for any loss arising out of the death or illness or injury to any of The Glue's Personnel which would, but for that applicable law, be the responsibility of The Glue; and
- (d) any wages or other amounts due and payable by The Glue to its Personnel (not being a Third Party Product vendor),

except to the extent that any damage, injury, loss, claim, liability or proceeding is due to or contributed to by any act or omission of the Customer or of any of the Customer's Personnel or other person under the control or direction of the Customer or the Customer's Personnel.

### 10.2 MITIGATION

The Customer must mitigate its losses and may not recover any amount for which it has insurance or a right of recovery from any other person.

### 10.3 IP CLAIM INDEMNITY CONDITIONS

In respect of the indemnity under clause 10.1(b) concerning an IP Claim, the right of indemnity is conditional upon:

- (a) the Customer providing The Glue with prompt notice that the IP Claim has been threatened or brought, whichever is sooner (**Claim Notice**);
- (b) providing The Glue with sole control of the defence and any appeal or settlement (at The Glue's discretion) of the IP Claim (collectively, **Resolution**);
- (c) cooperating with The Glue (including providing relevant documentation and information) with respect to the IP Claim or Resolution; and
- (d) complying with all court orders.

If delay in providing the Claim Notice causes detriment to The Glue with respect to the Resolution, The Glue's obligations set forth in this clause will not apply to the IP Claim to the extent of such detriment.



Notwithstanding any other provision of the Agreement, The Glue is not responsible for any fees (including solicitor's fees), expenses, costs, judgments, or awards that are incurred prior to The Glue's receipt of the Claim Notice from the Customer.

The Glue will have the sole right to select its solicitor(s) and barrister(s).

The obligations set forth in this clause concerning an IP Claim will not apply to an IP Claim if the alleged infringement, claim, loss or liability is based on, caused by, or results from (in whole or in part):

- (a) The Glue's compliance with any designs, specifications, or instructions of the Customer;
- (b) modification of a Deliverable other than by The Glue;
- (c) incorporation of goods (including software) or materials supplied by, or on behalf of, the Customer or on its behalf;
- (d) use of a Deliverable other than as provided by the Agreement;
- (e) use of other than the latest Deliverable version The Glue has made available or provided to the Customer; or
- (f) combination or use of the relevant Deliverable with any goods or services not supplied to the Customer by The Glue.

#### 10.4 ALTERNATIVES

If an intellectual property infringement allegation is brought or threatened against a Deliverable supplied by The Glue, or The Glue believes that such an allegation may be brought or threatened, The Glue may:

- (a) obtain a licence for the relevant Deliverable;
- (b) modify the relevant Deliverable; or
- (c) replace the relevant Deliverable with goods or services having substantially the same functionality.

If The Glue in its discretion determines that none of the foregoing is available on a reasonable basis, then:

- (d) if the relevant Deliverable is a Service The Glue may upon notice cease providing the Service and refund the unused portion of any prepaid Fees for the Service; or
- (e) if the relevant Deliverable is not a Service, upon notice from The Glue the Customer must promptly return the Product to The Glue, and The Glue will refund the Fees paid to the Customer for the Product (less an amount, reasonably determined by The Glue, for actual or proportionate use and depreciation).

#### 10.5 CUSTOMER TO INDEMNIFY THE GLUE

Subject to clause 8, the Customer is liable for and must indemnify and keep indemnified The Glue and The Glue's Personnel (not including for these purposes the Customer), against any liability, loss, claim or proceeding whatsoever due to:

- (a) any damage to property or death or personal injury, in each case, caused by the negligence of the Customer or the Customer Personnel (not including The Glue); or
- (b) a claim by a Third Party that goods (including software) or materials supplied, provided or made available to The Glue or The Glue's Personnel by the Customer or on its behalf (whether for incorporation into or use in conjunction with a Deliverable or not) infringe the rights (including, without limitation, intellectual property rights) of any person.



## 11 TITLE AND RISK

### 11.1 TITLE AND RISK

- (a) Subject to the following provisions and the terms of any applicable licence or rights concerning software or other intellectual property, risk in goods shall pass to the Customer upon delivery of such goods to the Customer. All such goods delivered to the Customer remain the property and title of The Glue until all invoices rendered with respect to their supply are paid in full.
- (b) Title and all rights to software shall remain with the applicable licensor(s) or relevant owner (whether legal or beneficial) at all relevant times subject to any applicable licences granted.
- (c) Any rights to any pre-existing intellectual property (as well as any enhancements, modifications and adaptations of the same), whether created independently or in the course of providing the Services that is owned by or vested in a Party or a Third Party prior to the entry into the Agreement, or which are developed independently of the Agreement, are retained by and vested in that person (in the relevant capacity), and nothing in the Agreement transfers or grants any rights in that pre-existing or independently developed intellectual property to any other person, nor is any Party entitled to commercially exploit any such pre-existing or independently developed intellectual property in any way save as expressly permitted or granted in the Agreement or a relevant licence.
- (d) The Customer grants to and shall procure for The Glue an irrevocable, perpetual, worldwide, royalty free licence and right of use (including, without limitation, a right to modify, enhance and create derivative versions) in respect of any materials, items, pre-existing or newly developed intellectual property or other rights which are vested in the Customer or to which it is entitled so that The Glue may supply the Products, Services and other Deliverables (as may be relevant) in accordance with the Agreement.
- (e) In respect of specific Deliverables developed by The Glue at the request of the Customer any contrary or additional provisions shall be stated in the relevant Proposal.
- (f) Except as provided in this clause above, title to all goods (including software), work, items, materials and information produced or developed by, or on behalf of, The Glue in the course of or for the purpose of providing or to enable it better to provide the Products, Services or other Deliverables shall be and remain vested in The Glue.

## 12 DELIVERY

### 12.1 PLACE OF DELIVERY

The Glue shall deliver the Products to the place of delivery designated by the Customer and agreed to by The Glue.

### 12.2 DELIVERY BY INSTALMENTS

The Glue may, at its discretion, deliver the Products by instalments in any sequence. Where the Products are so delivered by instalments, each instalment shall be deemed to be a severable obligation and no default or failure by The Glue in respect of any one or more instalments shall vitiate the Agreement in respect of Products previously delivered or undelivered Products.

### 12.3 DELAYS + SUPER GUARANTEE

- (a) Any dates quoted by The Glue for the supply of any Deliverables are approximate only and time is not of the essence with respect to the obligations of The Glue. To the extent lawful and subject to the following provisions of this Agreement, the Glue shall not be liable for any delay in the supply of any Deliverables, howsoever caused.
- (b) If the Customer, a Third Party service provider or any other person (not being a sub-contractor of The Glue) causes a delay in the provision of Deliverables or if a Force Majeure event arises which causes any delays in The Glue performing this Agreement, then the time period for performance by The Glue (including any milestones) (**Original Due Date**) shall be extended by an equivalent period of time plus any additional period as may be determined by The Glue and notified to the Customer as being reasonable in all the circumstances (**New Due Date**).
- (c) If an Order for Service or Service Schedule expressly states that one or more Deliverables are to be supplied by a stated delivery date or dates by The Glue with a *Super Guarantee* then if and to the extent that The Glue fails or is unable to supply such Deliverable(s) by such required delivery date(s), as may be extended by the operation of the above provisions, then The Glue shall reduce the Fees (not including any fees or amounts payable for Third Party Products) payable to it for such Deliverable(s) by 25% (excluding any applicable GST). The reduced Fees shall be deducted against the last applicable invoice(s) otherwise to be rendered under the Agreement. The Customer acknowledges and agrees that such a reduction in Fees comprises liquidated damages, is the sole remedy for such a breach and represents a reasonable pre-estimate of the losses caused.
- (d) If and to the extent The Glue fails or is unable to supply one or more Deliverable(s) by an Original Due Date due to a default or delay on the part of the Customer, its employees, officers, agents or contractors (not including The Glue) or by a Third Party service provider or other person under the control or engaged by the Customer (which may include, without limitation, a failure to allocate appropriate resources internally, the withholding of pertinent information or a failure to respond to requests or comply with obligations in a timely fashion), then the Fees payable by the Customer to The Glue for such Deliverable(s) shall be increased by 25% (excluding any applicable GST). The Customer acknowledges and agrees that this is reasonable pricing adjustment in the circumstances given that the Fees payable are calculated on the basis of the contemplated time to conclude a project or supply Deliverables without such delays and further time costs are detrimental to the commercial interests of The Glue unless the Fees are increased.

## 13 CONFIDENTIALITY

### 13.1 KEEP CONFIDENTIAL THE GLUE MATERIAL

- (a) The Customer shall keep confidential all Confidential Information belonging to The Glue or in The Glue's possession, power or control and which is obtained as a result of The Glue providing the Services, attending The Glue's premises or otherwise. This obligation shall not apply to Confidential Information which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 13.3.
- (b) The Customer shall not use The Glue's Confidential Information except as required to perform this Agreement.
- (c) All Confidential Information supplied by The Glue to the Customer shall, at all times, be and remain the exclusive property of The Glue and securely stored by the Customer until returned to The Glue, and shall not be disposed of or used other than in accordance with The Glue's written instructions and authorisation.

### 13.2 KEEP CONFIDENTIAL CUSTOMER MATERIAL

- (a) The Glue shall keep confidential the Confidential Information provided by the Customer to The Glue, where at the time of its provision, the Customer advised The Glue in writing that the relevant information or material was to be kept confidential.
- (b) The Glue shall not use the Customer's Confidential Information except as required to perform this Agreement.
- (c) All Confidential Information supplied by the Customer to The Glue shall, at all times, be and remain the exclusive property of the Customer and securely stored by the The Glue until returned to the Customer and shall not be disposed of or used other than in accordance with the Customer's written instructions and authorisation.
- (d) This obligation shall not apply to information or material which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 13.3.

### 13.3 USE OF CONFIDENTIAL INFORMATION

A Party may make a disclosure of the other Party's Confidential Information (including the terms of this Agreement), if that Party reasonably believes it necessary, to:

- (a) its suppliers of professional services (including, without limitation, legal and financial advisers, financiers and insurance carriers) if those persons undertake to keep such disclosed information confidential;
- (b) for credit purposes where the persons to whom such information is disclosed undertake to keep the disclosed information confidential;
- (c) any of its officers, employees, consultants, sub-contractors and other agents, where it is necessary to disclose such information, if that person undertakes to keep the disclosed Confidential Information confidential; or
- (d) comply with any applicable law or requirement of any governmental agency.

### 13.4 UNCERTAINTY

If there is any uncertainty by any Party regarding whether any information or material is in the public domain, they shall treat that information or material as confidential until the other Party advises that Party in writing that it is not confidential.

### 13.5 DEFINITION OF CONFIDENTIAL INFORMATION

For the purposes of this clause 11, **Confidential Information** means all personal and corporate information acquired by a receiving Party relating to the disclosing Party's business practices, including but not limited to details of its relationships and agreements with suppliers and financial data. This includes all financial, management and marketing information, all research, plans or other documentation, and all other information imparted in discussions or obtained through inspections or by any other method from the disclosing Party or its agents, advisers, consultants, sub-contractors, employees or contractors of the disclosing Party. Information already in the public domain or that is proven to have been within the knowledge of the receiving Party is not confidential for the purposes of this Agreement.

## 14 RELATED BODIES CORPORATE

### 14.1 THE GLUE'S RELATED BODIES CORPORATE

The Glue may:

- (a) supply Products and/or Services to the Customer through the use of any of The Glue's Related Bodies Corporate; and/or
- (b) invoice the Customer via any of The Glue's Related Bodies Corporate.

The Customer acknowledges that any debt the Customer owes under the Agreement is a debt owed to The Glue and that The Glue may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to that debt has been satisfied by a Related Body Corporate of The Glue or that the invoice for that debt has been provided to the Customer by a Related Body Corporate of The Glue.

### 14.2 THE CUSTOMER'S RELATED BODIES CORPORATE

- (a) The Glue may, upon the Customer's written request and on such conditions as The Glue reasonably requires, supply Products and/or Services to or for the benefit of the Customer's Related Bodies Corporate.
- (b) If The Glue agrees to supply Products and/or Services to or for the benefit of such Related Bodies Corporate, the Customer remains liable for performance of the obligations (including payment obligations) in relation to those Products and/or Services under the relevant Agreement.

## 15 FORCE MAJEURE

### 15.1 NO LIABILITY FOR FORCE MAJEURE

The Glue will not be liable for any delay or failure to perform its obligations under the Agreement if such failure or delay is due (whether partially or wholly) to Force Majeure.

### 15.2 THE GLUE TO NOTIFY CUSTOMER

The Glue will notify the Customer as soon as practicable of any anticipated delay due to Force Majeure. The performance of The Glue's obligations under the Agreement will be suspended for the period of the delay due to Force Majeure.

### 15.3 DELAY

If a delay due to Force Majeure exceeds 40 Business Days, the Customer may terminate the Agreement immediately on providing notice to The Glue. If the Customer gives such notice to The Glue:

- (a) the Glue shall refund moneys previously paid by the Customer under the Agreement for which no Services have been provided; and
- (b) the Customer shall pay The Glue a reasonable sum in relation to services rendered or costs and expenses incurred prior to termination (as reasonably determined by The Glue) for which no payment has been made by the Customer.

## 16 ACCESS TO INFORMATION AND SITES

The Customer will, at its own cost, promptly and when reasonably required provide The Glue with:

- (a) all reasonable information, aid and assistance;
- (b) access to the Customer's and any other relevant person's premises, sites, equipment, computer hardware and software, personnel and information; and
- (c) floor space, communications and any ancillary support services or assistance,

reasonably required by The Glue from time to time in order to supply relevant Deliverables and comply with its obligations under this Agreement, it being acknowledged that The Glue's consultants ordinarily will have their own laptop personal computers when working at the Customer's Site).

## 17 TERMINATION

### 17.1 TERMINATION

Without limiting the generality of any other clause in this Agreement or the law concerning termination of contracts, a Party (**Notifying Party**) may terminate this Agreement immediately by notice in writing to the other Party (**Defaulting Party**) if:

- (a) the Defaulting Party commits a material breach of this Agreement and the Defaulting Party fails to remedy the breach within 30 days after the Notifying Party has served notice in writing requiring it to do so or the breach is not capable of remedy;
- (b) any payment due from the Defaulting Party to the Notifying Party pursuant to this Agreement remains unpaid for a period of 30 Business Days;
- (c) the Defaulting Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any Insolvency Event;
- (d) the Defaulting Party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (e) the Defaulting Party, being a natural person, dies; or
- (f) the Defaulting Party ceases or threatens to cease conducting its business in the normal manner.

### 17.2 ADDITIONAL RIGHTS

If the Agreement is terminated for any reason, The Glue may:

- (a) subject to clause 15.3(b), retain any moneys paid to The Glue by the Customer;
- (b) invoice the Customer a reasonable sum for Services for which no sum has been previously invoiced;
- (c) retake possession of all property of The Glue or its sub-contractors in the possession of the Customer;
- (d) be regarded as discharged from any further obligations under the Agreement (except continuing obligations); and
- (e) pursue any additional or alternative remedies available to it.

Immediately after the termination of the Agreement, The Glue will return to the Customer all of the Customer's property which is in The Glue's possession.

### 17.3 UNPAID SUMS

On termination of the Agreement, all unpaid sums owing by each Party will become due and payable to the other Party, and the Party owing any money not paid within 20 Business Days of the date of termination will be liable to reimburse the other Party for all reasonable legal costs and disbursements incurred by the other Party in the recovery of such sums.

## 18 VARIATION

### 18.1 VARIATION OF A SERVICE SCHEDULE

- (a) If at any time the Customer requests a variation to a Service Schedule which The Glue is prepared to agree in principle, the Parties must immediately review the then current Products and/or Services and Fees and seek to reach agreement in writing as to the revised Products and/or Services and Fees based on the estimated increased/decreased costs incurred to provide the revised Products and/or Services to the Customer (as the case may be). Once the Parties have agreed the revised Products and/or Services and the revised Fees, the Parties must update the Service Schedule and/or sign a Change Request thereby varying the relevant Agreement in that respect.
- (b) Any additional work required by the Customer outside the scope of work set out in a Service Schedule must be the subject of a Change Request.

### 18.2 VARIATION OF AN AGREEMENT

- (a) Except as otherwise provided in the Agreement, the provisions of the Agreement may not be varied, except by agreement in writing signed by the Parties, including by way of Change Request.
- (b) If either Party wishes to vary the Agreement as provided in clause 18.2(a) the proposing Party will submit a copy of the proposed variations to the other Party (**Receiving Party**), specifying a reasonable period in which the Receiving Party is to provide written notice of acceptance or rejection of the proposal.
- (c) If the Receiving Party accepts the variation, the Agreement will be deemed to be so amended from the date of acceptance.
- (d) If the Receiving Party rejects the proposed variation, each Party will perform the Agreement in accordance with the unvaried terms.

## 19 INSURANCE

### 17.1 THE GLUE'S INSURANCE

- (a) The Glue must at its own cost and expense effect and maintain for so long as it is performing or causing to be performed the Services, the following insurance policies:

**Professional liability insurance** in the amount of not less than \$1 million.

**Workers compensation insurance** as required by law.

**Public liability insurance** in the amount of \$10 million per occurrence and in the aggregate.

### 19.2 CERTIFICATES OF CURRENCY

The Glue must provide the Customer with a scanned copy in Adobe portable document format (**PDF**) of all certificates of currency for each insurance policy effected in accordance with the Agreement signed by either The Glue's insurer or insurance broker within 14 days of a request by the Customer.

### 19.3 CANCELLATION OF INSURANCE

The Glue must notify the Customer of the cancellation or lapse of any insurance policy as soon as is reasonably possible. Failure to comply with these requirements may result in The Glue being instructed to cease all work and being removed from site until such non-compliance is rectified. This shall be at The Glue's cost.



#### 19.4 SUBCONTRACTOR'S INSURANCE

If The Glue subcontracts any part of the Services, then The Glue must use reasonable commercial endeavours to ensure that the subcontractor effects similar insurance (to the extent applicable) to that specified in this clause and must provide proof of such insurance in accordance with clause 19.2.

#### 19.5 FAILURE TO MAINTAIN INSURANCE

If The Glue fails to effect or to keep in force any of its insurance policies which it is required by the Agreement to be effected, then the Customer may, in addition to any other rights and remedies it may have:

- (a) effect and keep in force any such insurance and pay any such premiums as may be necessary for that purpose and may recover as a debt due from The Glue the amount so paid and the amount of any excess borne by the Customer or deduct such amounts from any monies due to The Glue pursuant to this Agreement; and/or
- (b) suspend payment of any monies due under the Agreement until The Glue fulfils its obligations under this clause.

### 20 NOTICES

Each communication (including each notice, consent, approval, request and demand) under or in connection with the Agreement:

- (a) must be in writing;
- (b) in the case of The Glue may be posted prepaid by recorded delivery or certified delivery to PO Box 801 North Ryde BC NSW 1670 or emailed to [legal@theglue.com.au](mailto:legal@theglue.com.au);
- (c) in the case of the Customer maybe posted prepaid by recorded delivery or certified delivery to the usual business address of the Customer, or the email address of the Customer;
- (d) must be signed by the Party making it or (on that Party's behalf) by its solicitor or any attorney, director, secretary or authorised agent of that Party;
- (e) may be delivered by hand, or posted by prepaid post to the address, or emailed to the email address in accordance with this clause 20; and
- (f) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the fifth Business Day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the tenth Business Day after the date of posting;
  - (iii) (in the case of email) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by email server from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,
- (g) but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.



## 21 DISPUTE RESOLUTION

### 21.1 NOTICE

If there is a dispute between the Parties in respect of any matter concerning this Agreement including its interpretation or application or the determination of any matter required to be determined pursuant to any provision of this Agreement (**Dispute**), a Party may give to the other Party notice in writing specifying that a Dispute has arisen and identifying the subject matter of the Dispute in adequate detail (**Dispute Notice**).

### 21.2 DISPUTES

If there is a Dispute between the Parties, no Party may commence any court proceedings relating to the Dispute unless it has complied with the provisions of this clause 21. A Party may at any time apply to a court of competent jurisdiction for any urgent interlocutory or declaratory relief, despite anything contained in this clause 21.

### 21.3 MEETING OF MANAGEMENT

Within 10 Business Days after receipt of a Dispute Notice, each of the Parties must procure its managing director or senior officer or executive (or a delegate of such person agreed to by the other Party) to meet and negotiate in good faith with each other to seek to resolve the Dispute expeditiously and informally.

### 21.3 COURT PROCEEDINGS

If resolution of the Dispute is not achieved within 20 Business Days of the service of a Dispute Notice or if a Party fails to comply with clause 21.3, a Party may commence court proceedings.

### 21.4 CONTINUING OBLIGATIONS

Despite the submission of a Dispute to the procedure under this clause 21, the Parties must continue to perform their obligations under this Agreement.

## 22 GENERAL PROVISIONS

### 22.1 RESTRICTION ON ENGAGEMENT OF EMPLOYEES

During the Term and for 12 months after the termination of the Agreement for any reason, each Party will not directly or indirectly employ the services of any of the other Party's employees or sub-contractors, without the other Party's prior written consent. If either Party contrary to this clause knowingly contracts or engages any former employee or sub-contractor of the other Party, that Party agrees to pay the other Party on demand an amount equal to twelve times the monthly salary or fee paid to the former employee or sub-contractor. The parties agree that this is a reasonable pre-estimate of the losses arising in consequence of the breach.

### 22.2 ASSIGNMENT

The Customer will not dispose of, assign or encumber any right or obligation under the Agreement, including this Agreement, without The Glue's prior written consent, which shall not be unreasonably withheld.

### 22.3 SEVERABILITY

Any provision of this Agreement that is illegal, prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction only to the extent of the illegality, prohibition or unenforceability. That does not invalidate the remaining provisions of the Agreement or affect the legality, validity or enforceability of that provision in any other jurisdiction. If any provision or part thereof of this Agreement is made ineffective in any jurisdiction in accordance with this clause 22.4, then that provision will be replaced, to the extent legally possible, with a legal, enforceable, and valid provision that is similar in tenor to the ineffective provision.

#### **22.4 WAIVER**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement, of a right provided by law or under the Agreement by a Party does not preclude or operate as a waiver of the exercise or enforcement, or further exercise or enforcement of that or any other right provided by law or under the Agreement.
- (b) A waiver or consent given by a Party under the Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of a term of the Agreement operates as a waiver of another breach of that term or of a breach of any other term of the Agreement.

#### **22.5 FURTHER ACTS AND DOCUMENTS**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by the other Party to give effect to the Agreement.

#### **22.6 CONSENT**

A consent required under this Agreement from a Party may not be unreasonably withheld, unless the Agreement expressly provides otherwise.

#### **22.7 NO REPRESENTATION OR RELIANCE**

- (a) Each Party acknowledges that neither the other Party (nor any person acting on a Party's behalf) has made any representation or other inducement to it to enter into the Agreement except for representations or inducements expressly set out in this Agreement.
- (b) Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the other Party, except for representations or inducements expressly set out in the Agreement.

#### **22.8 INDEMNITIES**

- (a) Each indemnity in the Agreement is a continuing obligation separate and independent from the other obligations of the Parties and survives termination, completion or expiration of the Agreement.
- (b) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Agreement.
- (c) A Party must pay on demand any amount it must pay under an indemnity in the Agreement.

#### **22.9 NO MERGER**

The rights and obligations of the Parties under the Agreement do not merge on completion of any transaction under the Agreement and survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction under the Agreement.

#### 22.10 SURVIVAL CLAUSES

- (a) Subject to any provision to the contrary, the Agreement will ensure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but will not ensure to the benefit of any other persons.
- (b) The following clauses shall survive termination of the Agreement: clauses 1 (definitions and interpretation) 2 (construct); 4 (duration); 7 (fees, to the extent due); 8 (limitations); 9.2 (caveats); 10 (Indemnities); 11 (title and risk); 12.3 (delays and *Super Guarantee*); 13 (confidentiality); 14 (related bodies corporate); 15 (force majeure); 17.2 and 17.3 (termination); 20 (notices); 21 (disputes); and 22 (general).

#### 22.11 PPSR

The Customer must not lodge any financing statement on the Personal Property Securities Register in connection with this Agreement or any Products or Services without the prior written consent of The Glue.

#### 22.12 GOVERNING LAW

This Agreement is governed by and takes effect and will be construed in accordance with the laws of New South Wales and the Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals therefrom and waives any objection that it may now or in the future have to the venue of any proceedings and any claim that it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause.