

# **KALIBRE PTY LTD SOFTWARE SUPPORT AND MAINTENANCE TERMS AND CONDITIONS**

## RECITALS

- A. The Licensor holds rights in relation to the Licensed Software and (subject to entry into the License Agreement by the Customer in respect of the Licensed Software) has, or will, grant the Customer a license to use that Licensed Software.
- B. The Licensor has agreed to provide, and the Customer has agreed to accept, the support and maintenance services described herein in relation to the Licensed Software on these terms and conditions.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

- (a) **“Agreement”** means these Kalibre Pty Ltd Software Support and Maintenance Terms and Conditions (including all Schedules and Annexures and the Kalibre Software Support And Maintenance Form);
- (b) **“Annexure”** means an annexure to this Agreement and each annexure forms part of this Agreement.
- (c) **“Associates”** means in relation to a person, the employees, officers, directors, representatives, agents and contractors (including sub-contractors) of that person and of any Related Entity of that person (if any).
- (d) **“Authorised Person(s)”** means the employee of the Customer specified in Item 8 of the Schedule.
- (e) **“Business Day”** means a day on which is not a Saturday, Sunday or government declared public holiday in Melbourne, Victoria, Australia.
- (f) **“Commencement Date”** means the date upon which the Licensor provides the Licensed Software to the Customer.
- (g) **“Computer Equipment”** means the Customer computer equipment (if any) as specified in Item 4 of the Schedule.

- (h) **“Confidential Information”** means all information of a confidential nature belonging to or in the possession of a Party, consisting of business, financial and other commercially valuable information in whatever form including know how, trade secrets, unpatented inventions, processes, business and marketing policies and strategies, employee and client details, formulae, computer software, code, graphs, drawings, designs, samples, devices, models and other materials (and in the case of the Licensor, includes details of, and concerning, Maintenance or Software service and the Licensed Software) provided that the following will constitute an exception to such information:
- (i) information which is already in the public domain;
  - (ii) information which hereafter becomes part of the public domain otherwise than as a result of an unauthorised disclosure by the recipient Party or its representatives;
  - (iii) information which is or becomes available to the recipient Party from a third party lawfully in possession thereof and who has the lawful power to disclose such information to the recipient Party; and
  - (iv) information which is rightfully known by the recipient Party (as shown by its written record) prior to the date of the disclosure to it or otherwise independently developed by an employee of the recipient Party who has no knowledge of the disclosure to it hereunder.
- (i) **“Corporations Act”** means the Corporations Act 2001 (Cth).
- (j) **“Customer”** means a person who has:
- (i) been licensed the Licensed Software; and
  - (ii) has duly completed, and provided to the Licensor, a Kalibre Software Support and Maintenance Form.
- (k) **“Customisations”** means any alterations to the Licensed Software performed by the Licensor at the request of and at the expense of the Customer.
- (l) **“Documentation”** means the operating manuals, technical specifications, user manuals, and other printed literature made available to the Customer by the Licensor (if any) to aid the use and application of the Licensed Software as described in Item 3 of the Schedule.

- (m) **“First Line Support”** means the support services in relation to the Licensed Software set out in Item 9 of the Schedule.
- (n) **“Force Majeure”** means any event beyond the reasonable control of the Parties which prevents or materially prejudices or renders materially more expensive, a Party performing one or more of its obligations (other than an obligation to pay money) and includes but is not limited to:
  - (i) acts of God, natural disasters, fire, flood, lightning strikes, earthquakes, storms, explosions, transport delays, telephone and data connection interruption;
  - (ii) acts of war, terrorism, riot, civil disturbance, third party criminal activity; or
  - (iii) industrial action including pickets, work to rule, work bans and strikes.
- (o) **“GST”** has the meaning given in section 195-1 of the GST Act.
- (p) **“GST Act”** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (q) A person is **“Insolvent”** if:
  - (i) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
  - (ii) it is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;
  - (iii) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other Party to this agreement);
  - (iv) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within twenty (20) Business Days), resolution passed, which is preparatory to or could result in any of (a), (b) or (c) above;
  - (v) (under section 459F(1) of the Corporations Act) it has failed to comply with a statutory demand or had the statutory demand set aside pursuant to section 459G of the Corporations Act;

- (vi) it is the subject of an event described in section 459C(2)(b) of the Corporations Act (or it makes a statement from which the other Party to this agreement reasonably deduces it is so subject); or
- (vii) something having a substantially similar effect to (a) to (f) happens in connection with that person under the law of any jurisdiction.
- (r) **“Intellectual Property Rights”** means statutory and other property rights in respect of trademarks, patents, circuit layouts, copyrights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing The World Intellectual Property Organisation of July 1967.
- (s) **“Kalibre Software Support And Maintenance Form”** means the form, a pro-forma of which is set out in Annexure A, pursuant to which a person registers for the provision of software support and maintenance services, by the Licensor to such person.
- (t) **“Liability”** includes Losses.
- (u) **“License Agreement”** means the agreement pursuant to which the Licensed Software is granted by the Licensor to the Customer.
- (v) **“Licensed Software”** means the software licensed to the Customer by the Licensor described in Item 2 of the Schedule and includes any updates, Customisations, Software Enhancement Customisations, further versions and improvements and Software Enhancements provided by the Licensor to the Customer pursuant to this Agreement.
- (w) **“Licensor”** means KALIBRE Pty Ltd (ABN 62 126 737 568) of Level 3, 480 Collins St, Melbourne VIC 3000 Australia.
- (x) **“Licensor’s Website”** means kalibre.com.au.
- (y) **“Losses”** means claims, losses, liabilities, damages, costs and expenses of any kind, including those which are prospective or contingent and those the amount of which is not ascertained or ascertainable.
- (z) **“Maintenance”** means the maintenance services described in Item 1 of the Schedule.
- (aa) **“Moral Rights”** means the suite of rights conferred on a creator of copyright works by Part XI of the Copyright Act 1968 (Cth) or any analogous rights in respect of any other jurisdiction.

- (bb) **“Operating Procedures”** means the operating procedures (if any) which the Licensor may issue to the Customer, from time to time, in relation to the Customer’s use of the Licensed Software including, without limitation, amendments to the Customer’s computer equipment made necessary or desirable as a result of any Maintenance or Support services or Software Enhancements a copy of which procedures, as they exist from time to time, are described in the Documentation.
- (cc) **“Party”** means a party to this Agreement.
- (dd) **“Related Entity”** has the meaning given to it in the Corporations Act.
- (ee) **“Remote Access”** means functionality whereby the Customer’s computer equipment on which the Licensed Software may operate (from time to time) has a secure data connection to the Licensor, enabling Support and Maintenance services to be carried out remotely, consistent with the Licensor’s remote access requirements as notified to the Customer from time to time;
- (ff) **“Schedule”** means the schedule to this Agreement.
- (gg) **“Software Enhancement”** means any general enhancement, improvement or modification to the Licensed Software created by the Licensor which is not specific to the Customer but which is provided by the Licensor to the Customer during the Term.
- (hh) **“Source Code”** means, in relation to software, the complete high level language computer programs in human readable alphanumeric characters, which when compiled, generate the object and executable program that constitutes a usable software product and any relevant documentation including the description of the development environment for the software in a manner allowing a person through a competent software development team with domain expertise to independently operate, modify, support and maintain the Licensed Software.
- (ii) **“Support”** means the support services outlined in Item 10 of the Schedule.
- (jj) **“Support and Maintenance Fees”** means the fees outlined in Item 5 of the Schedule.
- (kk) **“Statute”** means any act of any parliament or other legislative body or any regulations or other subordinate instrument made under or pursuant to such an act.

- (ll) “**Term**” means the period of time specified in Item 7 of the Schedule (which period of time will commence on the Commencement Date) unless terminated in accordance with the Agreement.
- (mm) “**Valid Tax Invoice**” means a tax invoice that complies with the relevant GST Act.
- (nn) “**Viruses**” means any viruses, time-bombs, back doors, trojan horses and any other form of malevolent or defective code or similar items.

1.2 In this Agreement headings are inserted for convenience only and will not affect interpretation. Unless expressly provided otherwise:

- (a) words expressed in the singular include the plural and vice versa;
- (b) a word importing a gender includes the other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) the meaning of general words are not limited by specific examples;
- (e) a reference to a Party or a person includes the Party’s or the person’s executors, legal personal representatives, successors, permitted transferees and assigns;
- (f) words and expressions defined in the Corporations Act as at the date of this Agreement have the meaning given to them in the Corporations Act at that date, except where a contrary definition is given in clause 1.1;
- (g) a reference to legislation includes any statutory modification or replacement and any subordinate or delegated legislation issued under such legislation;
- (h) a reference to “\$” or dollars means Australian dollars and a reference to payment means payment in Australian dollars.

1.3 If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion, unless this Agreement expressly provides otherwise.

1.4 An obligation, covenant, agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually.

1.5 An obligation, covenant, agreement, representation or warranty imposed on, or given by, two or more persons binds them jointly and each of them individually.

## 2. EXECUTION, ACCESS AND OPERATING PROCEDURES

2.1 Subject to the Customer having entered into the Licence Agreement, the Agreement is accepted by the Customer and becomes binding on the Customer upon the Customer raising a purchase order.

2.2 The Customer will throughout the Term;

(a) provide the Licensor with access (including Remote Access) to the Computer Equipment, any premises at which the Computer Equipment may be located (from time to time) and the Licensed Software, as required by the Licensor in order to carry out the Support and Maintenance services; and

(b) comply with the Operating Procedures (if any), as such Operating Procedures may exist from time to time.

2.3 The Licensor may amend the Operating Procedures, at any time, by notice, in writing, to the Customer and the Customer will comply with all Operating Procedures.

2.4 Any amendments to the Operating Procedures will be effective immediately upon such amendments being notified to the Customer.

2.5 The Customer acknowledges and agrees that;

(a) it is a condition of the provision of the Maintenance and Support services described in this Agreement that the Customer complies with the Operating Procedures (if any), as such Operating Procedures may exist from time to time;

(b) the Maintenance and Support services described in this Agreement will be provided solely in relation to the software described in a single relevant Kalibre Software Support And Maintenance Form; and

(c) in the event that the Customer is granted a license to other software of the Licensor, the Customer will be required to enter into a separate support and maintenance agreement with the Licensor in relation to such other software and sign a separate Kalibre Software Support And Maintenance Form.

2.6 The Licensor will not be liable for any failure of the Licensed Software or any loss caused by the Customer's failure to strictly comply with the requirements set out in the Operating Procedures.



- 2.7 The Customer further acknowledges that updates and changes to the Documentation (including updates or changes to the operating manuals, technical specifications and user manuals) may be made available from time to time on the Licensor's Website.

### 3. **SOFTWARE LICENSE**

- 3.1 In the course of providing the Maintenance and Support services, the Licensor may deliver to the Customer improvements, upgrades to, amendments to, and new versions of, the Licensed Software.
- 3.2 Subject to the terms of this Agreement (including without limitation, clause 3.3), the Licensor grants to the Customer a license of any improvements, upgrades to, amendments to, and new versions of, the Licensed Software delivered to the Customer in the course of providing these Maintenance and Support services during the Term.
- 3.3 The Customer acknowledges and agrees that any improvements to, amendments to and new versions of the Licensed Software licensed to it pursuant to this Agreement shall, other than where expressly provided to the contrary in this Agreement, be subject to the terms and conditions of the License Agreement.
- 3.4 Any delay by the Customer in allowing Remote Access will not discharge the obligation of the Customer to pay the Support and Maintenance Fees invoiced by the Licensor in accordance with this Agreement.

### 4. **MAINTENANCE**

- 4.1 In consideration of payment of the Support and Maintenance Fees, the Licensor will provide the Maintenance services to the Customer at the times and in the manner described in Item 1 of the Schedule.
- 4.2 The Licensor shall be under no obligation to provide Maintenance or Support services in the event that the Customer has not updated the Licensed Software or any third party software the use of which software has been the subject of a recommendation of the Licensor or complied with the Operating Procedures.

### 5. **SOFTWARE ENHANCEMENTS AND CUSTOMISATIONS**

- 5.1 The Licensor may offer Software Enhancements to the Customer at the Licensor's absolute discretion during the Term.
- 5.2 In the event Software Enhancements are provided by the Licensor to the Customer, they will, subject to the terms of this clause 5, become part of the Licensed Software on delivery to the Customer.

- 5.3 The Customer acknowledges and agrees that any Software Enhancement will be developed by the Licensor based on the actual, perceived or apprehended requirements and priorities of all of the Licensor's current and potential client base, and so will not be tailored specifically for the Customer.
- 5.4 The Licensor makes no warranties in relation to any Software Enhancements. In particular the Licensor does not warrant that the Software Enhancements will work in relation to the Customer's Licensed Software.
- 5.5 Customisations of the Licensed Software requested by the Customer, any customisations required to enable Software Enhancements to function for the Customer, and Customer specific modifications are not included in any Software Enhancements and should the Customer wish any Customisation or Software Enhancement Customisation to be carried out, the Customer will, by notice in writing, request the Licensor to undertake such Customisation or Software Enhancement Customisation and the Licensor will notify the Customer, in writing, as to whether it is prepared to provide such Customisation or Software Enhancement Customisation and the terms upon which it is prepared to do so.

## 6. **SUPPORT SERVICES**

- 6.1 The Customer is responsible for First Line Support.
- 6.2 Provided that the Customer has fully satisfied its obligation to provide First Line Support, the Licensor will provide the Support.
- 6.3 The Licensor will not, in any event, be responsible for providing Support in relation to any defect or fault unless, and until, the Customer is able to establish, to the Licensor's satisfaction, that the defect or fault is reproducible on the Customer's Computer Equipment.

## 7. **INTELLECTUAL PROPERTY**

- 7.1 Other than rights expressly granted at clause 3, no right, title or interest is granted to the Customer in the Licensed Software and the Customer expressly disclaims any such right, title or interest and will not during or after this Agreement challenge or dispute the Licensor's ownership of or rights to the Licensed Software.
- 7.2 The Licensor retains all rights to all Intellectual Property Rights in the Licensed Software and all Source Code, and the Customer will not during or after the Term, challenge or dispute such ownership or rights.

- 7.3 The Customer must, prior to entering into this Agreement, provide accurate and up-to-date information in respect of all installed software used or to be used by the Customer in conjunction with the Licensed Software. The Licensor will not be liable for failure to provide the Maintenance and Support services or any other material or thing on the terms and conditions of this Agreement to the extent due to the Customer's failure to comply with this clause.
- 7.4 The Customer warrants to the Licensor that:
- (a) it owns or has all necessary Intellectual Property Rights to all material provided by it or its agents to the Licensor for use in connection with the Maintenance and Support services or the Licensed Software; and
  - (b) it has all necessary authority from relevant third party software owners to permit and enable the Licensed Software to inter-operate with such third party software.
- 7.5 The Customer will, at all times, appoint a person to be the Customer's representative in relation to the Maintenance and Support services and the Licensed Software, which person will have the power to bind the Customer in relation to all matters concerning this Agreement, the Maintenance and Support services and the Licensed Software. The Customer acknowledges and accepts that the Licensor is entitled to rely upon any agreement, undertaking or representation made by such person as if such person were the Customer.
- 7.6 The Customer's representative for the purpose of clause 7.5 as at the date of this Agreement is the Authorised Person.

## 8. **SECURITY**

- 8.1 The Customer will treat all logons and passwords used by the Licensor in connection with the Licensed Software or the Maintenance and Support services as Confidential Information belonging to the Licensor.
- 8.2 The Customer will use all reasonable endeavours to ensure that the Licensed Software is protected at all times from access, use or misuse, copying, damage or destruction not authorised under this Agreement, and only reveal the Licensed Software to those of its employees, officers and contractors on a needs to know basis.
- 8.3 The Customer will not delete or allow the deletion of any confidentiality/proprietary notices on, and will replicate such notice on any copy of, the Licensed Software.

9. **TIME OF THE ESSENCE**

Time, in relation to the payment of Support and Maintenance Fees or other amounts by the Customer to the Licensor under, or pursuant to, this Agreement, is of the essence.

10. **WARRANTIES**

10.1 Subject to clauses 13.2 and 14.7, the Licensor provides no representation or warranty in relation to the Support or Maintenance services or the Licensed Software.

10.2 The Customer acknowledges and agrees that the Support or Maintenance services and the Licensed Software is provided by the Licensor solely on an "as is" basis.

10.3 Without limiting the generality of clause 10.1, the Customer acknowledges and agrees that the Licensor provides no representation or warranty:

- (a) that use of the Support or Maintenance services or the Licensed Software:
  - (i) will not infringe or otherwise violate the rights (including Intellectual Property Rights or Moral Rights) of any person; or
  - (ii) constitute a misuse of any person's confidential information,
- (b) that the Support or Maintenance services or the Licensed Software will meet the Customer's requirements;
- (c) that the Support or Maintenance services or the Licensed Software does not contain any defects or Viruses;
- (d) that operation of the Support or Maintenance services or the Licensed Software will be error free;
- (e) that there are no defects, faults or malfunctions in, or associated with, the Support or Maintenance services or the Licensed Software;
- (f) that the Support or Maintenance services will be operative at all times; or
- (g) that the Support or Maintenance services or the Licensed Software will detect or correctly identify and/or disinfect any threats, applications (whether malicious or otherwise) or any other components.

11. **FEES**

11.1 The Customer will pay the Support and Maintenance Fees and any applicable GST in the manner and at the times specified in Item 5 and Item 6 of the Schedule.

- 11.2 The Customer will pay the Support and Maintenance Fee in full and without deduction or abatement.
- 11.3 The Customer will pay interest on any sums unpaid to the Licensor after becoming due and payable and at the rate from time to time applied by the ANZ Banking Group Limited on overdrafts in excess of one hundred thousand dollars (AU\$100,000.00) plus three percent (3%).
- 11.4 Payments will be made by electronic funds transfer to the account(s) which the Licensor nominates to the Customer from time to time.
- 11.5 All Support and Maintenance Fees and any other amounts payable by the Customer to the Licensor under this Agreement are expressed in Australian dollars.

## 12. **CONFIDENTIALITY**

- 12.1 In relation to the Confidential Information of a Party, the other Party, if it is in receipt of such Confidential Information will:
- (a) use the Confidential Information only for the purposes for which it has been disclosed;
  - (b) keep that Confidential Information confidential and not disclose it or allow it to be disclosed to any third party except:
    - (i) with the consent of the owner of the Confidential Information;
    - (ii) to Associates to the extent that each has a need to know for the purposes contemplated by this Agreement and who are aware that the Confidential Information will be kept confidential;
    - (iii) to its legal advisors and auditors and other consultants who require it for the purposes contemplated by this agreement or for the purpose of providing legal or commercial advice in relation to this agreement;
    - (iv) if required to do so by law or a stock exchange; or
    - (v) if required to do so in connection with legal proceedings relating to this Agreement;
  - (c) take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information; and
  - (d) continue to keep confidential all Confidential Information of the other Party.

- 12.2 If the Licensor has any material containing Confidential Information of the Customer, the Licensor must, on the request of the Customer:
- (a) return to the Customer such material that the Customer requests be returned; or
  - (b) destroy any such material that the Customer requests be destroyed and certify that such destruction has taken place.
- 12.3 Upon the request of the Licensor, the Customer must return to the Licensor any Confidential Information of the Licensor that the Licensor requests that the Customer returns.
- 12.4 The rights and obligations of the Parties set out in this Agreement with respect to Confidential Information will survive termination of this Agreement.
- 12.5 Subject to clause 12.6 and 12.7, the Parties agree not to make any public announcements in relation to this Agreement without the consent of the other Party.
- 12.6 The Licensor is entitled to inform third parties of the fact that the Customer has a license of the Licensed Software.
- 12.7 The Customer is entitled to inform third parties of the fact that the Customer has a license of the Licensed Software from the Licensor.

### 13. **IMPLIED TERMS**

- 13.1 Subject to clauses 13.2 and 14.7, to the maximum extent permitted by law, all terms, conditions and warranties in relation to the Support and Maintenance services or the Licensed Software, other than expressly stated in this Agreement, whether express or implied, are hereby expressly negated and excluded.
- 13.2 Where any legislation implies in this agreement any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of, or any liability under, such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, the liability of the Licensor for any breach of such condition or warranty will be limited, at the Licensor's option, to one or more of the following:
- (a) if the breach relates to goods:
    - (i) the replacement of the goods with equivalent goods or the supply of equivalent goods;
    - (ii) the repair of such goods;

- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

#### 14. **LIMITATION OF LIABILITY**

- 14.1 Subject to clauses 13.2 and 14.7, but otherwise notwithstanding anything to the contrary in this Agreement, the total liability of the Licensor for damages or any other form of monetary relief for matters related to, connected with or arising out of this Agreement or the transactions contemplated by it, regardless of the cause of action, whether in contract, tort (including, without limitation, negligence) or breach of any Statute or any other legal or equitable obligation is limited to the amount specified in Item 11 of the Schedule.
- 14.2 In no event will the Licensor be liable to another for any indirect or consequential Losses including loss of profit, revenue, goodwill, anticipated savings, loss of data, work stoppage or computer failure.
- 14.3 Without limitation to the generality of clause 14.2, under no circumstances will the Licensor be liable for direct, indirect or consequential Losses arising out of or in connection with:
- (a) the Customer's computer equipment failing to operate in accordance with its specification or otherwise; or
  - (b) any act or omission of any person acting as the Customer's representative for the purpose of clause 7.5.
- 14.4 The Customer warrants that it has not relied on any representation made by the Licensor which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document or publicity material produced by the Licensor.
- 14.5 The Customer acknowledges that to the extent the Licensor has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

14.6 Subject to clauses 13.2 and 14.7, the Customer indemnifies and will keep indemnified the Licensor and each of its Associates (the "Indemnified") against any Losses incurred by the Indemnified, arising directly or indirectly, out of any of the following:

- (a) any fraud or wilful misconduct of the Customer, or its Associates under or in connection with this agreement causing Liability;
- (b) any infringement or alleged infringement of the Licensor's or a third party's Intellectual Property Rights by the Customer or any of its Associates;
- (c) personal injury, death or loss of or damage to real or tangible personal property caused by the Customer or any of its Associates;
- (d) any loss or damage caused to the Licensor's computer system or data or to the computer systems or data of the Licensor's other customers which loss or damage:
  - (i) is caused by;
  - (ii) results from;
  - (iii) arises out of;
  - (iv) relates to; or
  - (v) is connected with,(whether directly or indirectly) the Customer's access to, or use of, the Support and Maintenance services or the Licensed Software or any access to, or use of, the Service or the Licensed Software by a third party which use or access is authorised, or assisted, by the Customer;
- (e) breach by the Customer of any obligation of confidentiality owed to the Licensor;
- (f) any proven claim, action or proceeding by a third party against any of the Indemnified to the extent that it relates to a breach of this Agreement by the Customer; or
- (g) a breach of the warranty in clause 7.4.

14.7 Where any Statute provides a guarantee in relation to the supply of any good or service and that Statute avoids or prohibits provisions in a contract excluding, restoring or modifying the application of, or the exercise of, or liability under such guarantee, such guarantees as are not excludable, will be deemed to be included in this Agreement. However, to the maximum extent permitted under the Statute, the



liability of the Licensor for any failure to comply with the guarantee will be limited, at the option of the Licensor, to any one or more of the following:

- (a) if the failure relates to goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of such goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired, and
- (b) if the failure relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

## 15. DISPUTE RESOLUTION

15.1 A Party will not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement ('dispute') unless it has complied with this clause.

15.2 A Party claiming that a dispute has arisen must notify the other Party to the dispute giving details of the dispute.

15.3 During the five (5) Business Day period after a notice is given under clause 15.2 (or longer period agreed in writing by the Parties) ('initial period') each Party to the dispute ('disputant') must use its best efforts to resolve the dispute.

15.4 If the disputants are unable to resolve the dispute within the initial period, each disputant agrees that the dispute must be referred for mediation at the request of any disputant, to:

- (a) a mediator agreed on by the disputants; or
- (b) if the disputants are unable to agree on a mediator within seven (7) Business Days after the end of the initial period, a mediator nominated by the then President of the Law Institute of Victoria, Australia.

15.5 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a disputant unless that disputant has so agreed in writing.

- 15.6 Any information or documents disclosed by a disputant under this clause:
- (a) must be kept confidential by the other Party; and
  - (b) may not be used by the other Party except to attempt to resolve the dispute.
- 15.7 Each disputant must bear its own costs of complying with this clause and the disputants must bear equally the costs of any mediator engaged. The charges for the mediation may be fixed by the mediator.
- 15.8 It must be a term of the engagement of the mediator that the Parties release the mediator from any Court proceedings relating to this Agreement or the mediation.
- 15.9 If the dispute is not resolved within fifteen (15) Business Days after the appointment of the mediator, the mediation will cease and the Parties are at liberty to pursue their rights through a court of competent jurisdiction.
- 15.10 Nothing in this clause will affect or limit a Party's rights to obtain injunctive relief.
- 15.11 Subject to its rights pursuant to clause 15, the existence of a genuine dispute between the Parties will not affect the Customer's obligations to pay the Licensor in accordance with this Agreement.

16. **SUSPENSION AND TERMINATION**

- 16.1 The Licensor may suspend the Support and Maintenance services, if the Customer fails to pay any Support and Maintenance Fees or any other amount due to be paid by the Customer to the Licensor under, or pursuant to this Agreement, when due, and after written notice from the Licensor to the Customer notifying the Customer of such failure, the Customer fails to make payment of such Support and Maintenance Fees within five (5) Business Days of receipt of such notice.
- 16.2 The Licensor may terminate the License:
- (a) if the Customer uses any of the Support and Maintenance services or Licensed Software in an unauthorised manner or allows unauthorised third parties to use the Support and Maintenance services or the Licensed Software, and after written notice from the Licensor to the Customer notifying the Customer of unauthorised use, the Customer fails to prevent (with the reasonable assistance of the Licensor) such unauthorised use within five (5) Business Days of receipt of such notice;
  - (b) if any loss or damage is caused to the Licensor's computer system or data or to the computer systems or data of the Licensor's other customers which loss or damage:

- (i) is caused by;
- (ii) results from;
- (iii) arises out of;
- (iv) is related to; or
- (v) is connected with,

(whether directly or indirectly) the Customer's access to, or use of the Support and Maintenance service or the Licensed Software or any access to, or use of, the Support and Maintenance service or the Licensed Software by a third party which use or access is authorised, or assisted, by the Customer;

- (c) or, at the Licensor's option, renegotiate the License, if the Customer as a whole stops conducting its business (and the Customer will inform the Licensor within five (5) Business Days of becoming aware of such change);
- (d) immediately, and without notice to the Customer, if the Customer becomes Insolvent; or
- (e) if an event of Force Majeure continues for any on period of a month and for periods (in aggregate) of more than two months.

16.3 Upon termination of this Agreement under clause 16.2 by the Licensor, all rights of the Customer in relation to the Licensed Software and Documentation under this Agreement will cease immediately and the Customer will return all copies of any Licensed Software and any Documentation to the Licensor immediately.

16.4 Termination of this Agreement pursuant to clause 16 will not otherwise affect the accrued rights of any party.

## 17. **GST**

17.1 The Support and Maintenance Fees are exclusive of any applicable GST chargeable in relation to the supply of the Support and Maintenance services or the supply of any other goods or services to the Customer. The GST treatment of any supply will be determined pursuant to the GST Act of the jurisdiction where a taxable transaction for GST purposes is deemed to take place.

- 17.2 If GST is properly chargeable on any such supply or supplies, the Customer will pay to the Licensor an amount equal to the GST, if any, chargeable in the relevant jurisdiction; provided, however, that such amount will only be required to be paid once the Licensor provides to the Customer with a Valid Tax invoice in relation to that amount.
- 17.3 Each Party will, to the extent permitted by law, provide the other with any additional Valid Tax Invoices as required for the purposes of this Agreement and, to the extent required by law, will correctly account for any GST properly due in its jurisdiction.
- 17.4 Subject to each Party's obligations relating to GST, each Party will cause all royalty tax, taxes, duties and other sums (including any royalty withholding tax, stamp duty, other documentary taxes, environmental tax or levy) legally payable by that Party arising in connection with this Agreement to be paid. In addition, in the event that the Licensor is required by law to pay any royalty tax, taxes, duties and other sums ("Other Taxes") which are properly for the account of the Customer, the Customer will promptly indemnify or reimburse the Licensor in respect of such Other Taxes.

18. **COSTS AND EXPENSES**

- 18.1 The Customer will pay all stamp duties which may be payable or determined to be payable in relation to the execution, delivery or performance of this Agreement.
- 18.2 Subject to clause 18.1, each Party will bear its own costs and expenses in respect of the negotiation, preparation, execution, delivery and stamping of this Agreement and any documents entered into pursuant to or in respect of this Agreement.

19. **NOTICES**

- 19.1 A notice required or permitted to be given by one Party to another under this Agreement will be in writing and will be treated as being duly given and received if it is:
- (a) delivered personally to that other Party;
  - (b) left at that other Party's address;
  - (c) sent by pre-paid mail to that other Party's address;
  - (d) transmitted by facsimile to that other Party; or
  - (e) transmitted by email to that other Party.
- 19.2 A notice given to a Party will be duly given and received:

- (a) when delivered (in the case of it being delivered personally or left at that Party's address) provided that a notice delivered after 5.00 p.m. on any day or on a day which is not a Business Day will be treated as having been duly given and received at 9.00 a.m. on the next Business Day;
- (b) on the third Business Day after posting (in the case of it being sent by pre-paid mail); and
- (c) on the day of transmission if given by facsimile or email (and provided that no intimation has been received by the sender that the notice has not been delivered, whether that intimation comes from that Party or from the operation of the facsimile or email transmission mechanism or otherwise), provided that a notice transmitted after 5.00 pm on any day or on a day which is not a Business Day will be treated as having been duly given and received at 9.00 am on the next Business Day.

19.3 For the purposes of this clause, the address of a Party is the address set out in Item 12 of the Schedule or such other address of which a Party may from time to time give notice in writing to each other Party.

## 20. FURTHER ASSURANCES

20.1 Each Party will sign, execute, deliver and do and will procure that each of its officers, employees and agents signs, executes, delivers and does, all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party to effectively carry out and give full effect to this Agreement and the rights and obligations of the Parties under it.

## 21. NO MERGER

21.1 The rights and obligations of the Parties in respect of agreements, indemnities, covenants and warranties contained in this Agreement will remain in full force and effect, be continuing agreements, indemnities, covenants and warranties and not be merged or extinguished by or upon termination or completion of any obligations under, this Agreement.

## 22. NO PARTNERSHIP

- (a) Nothing contained or implied in this Agreement will create or constitute, or be deemed to create or constitute, a partnership between the Parties for the purposes of the Partnership Act, Income Tax Assessment Act 1936 or any other law of any jurisdiction.
- (b) A Party will not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other Party to any obligation.

23. **ENTIRE AGREEMENT**

23.1 With the exception of the License Agreement, this Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the Parties or their respective officers, employees or agents and all such other agreements will (other than in relation to Confidential information) be replaced by this Agreement.

24. **WAIVER**

24.1 The failure, delay, relaxation or indulgence on the part of a Party in exercising any power, right or remedy conferred upon that Party by this Agreement will not operate as a waiver of that power, right or remedy, nor will the exercise or any single or partial exercise of any power, right or remedy preclude any other or further exercise of such power, right or remedy or the exercise of any other power, right or remedy under this Agreement.

24.2 Any waiver of a breach of this Agreement will be in writing signed by the Party granting the waiver and will be effective only to the extent expressly set out in such waiver.

25. **APPLICATION OF LAW**

25.1 This Agreement will be deemed to have been made in the State of Victoria, Australia and the construction, validity and performance of this Agreement will be governed in all respects by the law for the time being in force in that State.

25.2 The Parties hereby submit themselves to the exclusive jurisdiction of the Supreme Court of Victoria and any court hearing appeals from that Court in respect of any dispute, proceeding or matter relating to this Agreement.

26. **SEVERABILITY**

26.1 If any provision of this Agreement is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

27. **ASSIGNMENT AND SUB CONTRACTING**

27.1 The Customer may not assign this Agreement or any of its rights or obligations under this Agreement other than with the written consent of the Licensor, which consent may be granted or withheld at the Licensor's absolute discretion.

27.2 The Licensor may assign this Agreement or sub contract tasks allocated to the Licensor pursuant to this Agreement to a third party upon giving the Customer twenty (20) Business Days prior written notice of the assignment or proposed sub contract.

28. **SURVIVAL OF TERMS**

28.1 Notwithstanding termination or expiration of this Agreement, the following clauses are deemed to survive such termination or expiration: clauses 1, 7, 8, 10, 12 to 15 inclusive), 16.3 to 16.4 (inclusive) 17 to 18 (inclusive), 20 to 27 (inclusive) and this clause 28.

29. **FORCE MAJEURE**

29.1 If a Force Majeure occurs, a Party will be relieved from its obligation to perform any obligations to which the Force Majeure relates, for the time during which the Force Majeure is in operation.

## **SCHEDULE**

### **Item 1 Maintenance**

A detailed description of the maintenance services to be provided by Kalibre (including the timing of delivery of such services) pursuant to this Agreement is described in “Kalibre Support Maintenance Additional Terms and Conditions” document viewable on the Licensor’s Website.

### **Item 2 Licensed Software**

The software described in the Kalibre Software Support and Maintenance Form.

### **Item 3 Documentation**

Any manuals or updates to manuals in relation to the Licensed Software previously made available (whether online via the Licensor’s Website, in electronic or hard copy form pursuant to the License Agreement) and any other documentation issued by the Licensor in relation to the operation of the Licensed Software.

### **Item 4 Computer Equipment on which the Licensed Software will operate**

Details of computer equipment on which the Licensed Software will operate, as described in the Documentation.

### **Item 5 Support and Maintenance Fees**

The support and maintenance fees payable by the Customer are described in the Kalibre Software Support And Maintenance Form.

### **Item 6 Payment Arrangements**

Maintenance and Support Fees will be paid 12 months in advance upon invoice from Kalibre to the Customer. Payment of the Maintenance and Support Fees will be strictly on the terms described in the Kalibre Software Support And Maintenance Form.

### **Item 7 Term**

12 Months

### **Item 8 Authorised Person**

The authorised person at the Customer who will initially have authority to provide instructions and otherwise bind the Customer in relation to the Maintenance and Support services and the Licensed Software is listed in the Kalibre Software Support And Maintenance Form.



**Item 9 First Line Support**

First Line Support activities to be provided by the Customer are described in the "Support Maintenance Additional Terms and Conditions" viewable on the Licensor's Website.

**Item 10 Support**

The Support services to be provided by the Licensor pursuant to this Agreement are described in the "Support Maintenance Additional Terms and Conditions" viewable on the Licensor's Website.

**Item 11 Cap on Liability (Clause 14.1)**

The amount equal to the Maintenance and Support Fee defined in Item 5 of this Schedule.

**Item 12 Address for Notices**

The address for notices are listed in the Kalibre Software Support And Maintenance Form.

## ANNEXURE A

### Kalibre Software Support and Maintenance Form

#### Licensed Software

#### Support and Maintenance Fees

#### Payment Arrangements

#### Authorised Person

The authorised person at the Customer who will initially have authority to provide instructions and otherwise bind the Customer in relation to the Maintenance and Support services and the Licensed Software is: ***[insert details]***

#### Address for Notices

The address for notices are:

(a) the Licensor :

- (i) phone: ***[insert phone number]***
- (ii) email address: ***[insert email address]***
- (iii) facsimile: ***[insert facsimile number]***
- (iv) address:

Attention: ***[insert person to whom correspondence should be addressed]***

(b) the Customer:

- (i) phone: ***[insert phone number]***
- (ii) email address: ***[insert email address]***
- (iii) facsimile: ***[insert facsimile number]***
- (iv) address: ***[insert street address]***

Attention: ***[insert person to whom correspondence should be addressed]***