



# **MASTER SERVICES AGREEMENT**

EHG Services Pty Ltd

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## BACKGROUND

- A The Client wishes to engage EHG Services to provide the Licensed Product(s) and associated Services.
- B The Client has agreed to acquire the Licensed Product(s) and Services on the terms and conditions of the Agreement.
- C EHG Services has agreed to provide the Licensed Product(s) and Services to the Client on the terms and conditions of the Agreement.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

1.1 In the Agreement capitalised terms shall have the following meanings:

**Additional Training** means any training for which an additional Fee is payable by the Client, as determined in accordance with a Product Agreement.

**Additional Product Agreement** means a document issued by EHG Services after the Commencement Date specifying additional Licensed Product(s) and/or Services purchased by the Client under the Agreement, along with the applicable Minimum Licence Period(s), the Licence Metrics and the Fees.

**Adverse Event** means, in respect of the Client:

- (a) a liquidator is appointed to that party in any jurisdiction; or
- (b) the Client ceases or indicates that it is about to cease, carrying on, business.

**Agreement** means the agreement formed in accordance with clause 3.

**AssetWhere** means any of the AssetWhere software products made available by EHG Services.

**AssetWhere FM** means any of the AssetWhere FM software products made available by EHG Services.

**Associated Documentation** means all user guides and other documents describing the Licensed Product which are provided or made available by EHG Services from time to time pursuant to the Agreement.

**Authorised User** means a person authorised to use a Licensed Product under the Agreement, which is determined in accordance with section 1.2 of Schedule 1.

**Bug** means a reproducible malfunction of the Licensed Product that prevents the Licensed Product from performing in accordance with the operational specifications described in the then current Associated Documentation.

**Business Day** means a day other than a Saturday, Sunday or a national public holiday in Australia.

**Client** means the person or entity specified as such in the Initial Product Agreement.

**Client Data** means all data, information, text, drawings, statistics, analysis and other materials relating to the Client which are created, generated, placed in, stored in, accessed or retrieved by using the Licensed Product.

**Cloud Hosting Service** means the third party hosting service for a Licensed Product, which may be procured by EHG Services on behalf of the Client if specified in a Product Agreement.

**Commencement Date** has the meaning given to that term in clause 3.1.

**Confidential Information** means in relation to a party, information that is by its nature confidential, is designated by that party as confidential, or the other party knows or ought reasonably to know is confidential, and includes including any information relating to the financial affairs, assets or liability of a party, or any information relating to the internal management of a party, its personnel, policies, plans, strategies, customers, suppliers, products or services. EHG Services' Confidential Information includes the terms of the Agreement, Intellectual Property Rights and all Associated Documentation. Confidential Information does not include information or material which:

- (a) is or becomes generally known to the public other than through a breach of the Agreement;
- (b) at the time it was first disclosed to a party, was already in that party's lawful possession;
- (c) is developed independently by a party; or
- (d) is disclosed to a party by a third party entitled to disclose it.

**Contact Person** means the person or persons appointed by the Client as a "Contact Person" for the Agreement and identified as such in a Product Agreement or any replacement appointed from time to time in accordance with clause 7.3.

**Current Rates** means EHG Services' then current time and materials rates.

**Custom Software** means any software developed by EHG Services pursuant to Schedule 4.

**Deliverable** means an item to be delivered by EHG Services under the Agreement, which includes the Licensed Product and the Associated Documentation and, if EHG Services provides Software Development Services, Custom Software.

**EHG Services** means EHG Services Pty Ltd, ABN 61 638 543 754 of Building 1, Level 1, 303-313 Burwood Highway, Burwood East, VIC 3151.

**Equipment** means the computer system, including peripheral equipment and operating system software, used by the Client and its Personnel in connection with the Licensed Product. References in this Agreement to Equipment do not apply in respect of any Licensed Product for which the Client purchases Cloud Hosting Services from EHG Services.

**Fee Estimate** means EHG Services' estimated fees for Software Development Services or Installation Services, as set out in a Product Agreement or otherwise provided by EHG Services in writing.

**Fees** mean the fees payable by the Client to EHG Services for provision of the Deliverables and the Services, which fee is to be calculated in accordance with the Licence Metrics and set out in a Product Agreement.

**Harmful Component** means any virus, Trojan horse, worm, time bombs, back doors or any similar device, mechanism, code or routine that manifests harmful, contaminating, destructive or disabling properties.

**Improvement** has the meaning given to that term in clause 9.2.

**Initial Product Agreement** has the meaning given to that term in clause 3.1.

**Installation Services** means the delivery, development, customisation, installation, testing and implementation of a Licensed Product by EHG Services.

**Intellectual Property Rights** or **IPR** means all intellectual property rights at any time recognised by law, including:

- (a) patents, copyright (including future copyright), circuit layout rights, designs, trade marks, designs and business names, whether registered or not, trade secrets, know-how and other intellectual property rights, but not including Moral Rights (as that term is defined in the *Copyright Act 1968* (Cth)); and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

**Interface** means an application programming interface developed by EHG Services or a third party which functions to interface between the Licensed Product and third party systems, applications or software.

**IPR Claim** has the meaning given to that term in clause 13.1.

**Licence** means the licence granted by EHG Services to the Client under clause 4.1.

**Licence Fee** means the fees payable by the Client for the grant of a Licence, as specified in a Product Agreement and varied from time to time in accordance with the Agreement.

**Licence Metrics** means the variable element identified in a Product Agreement as the basis on which the Client's right to use a Licensed Product, and the Fees payable by the Client for use of the Licensed Product, have been calculated. By way of example only, the Licence Metric may be the number of Authorised Users licensed to use a Licensed Product.

**Licensed Product** means each software product identified in a Product Agreement which is to be made available by EHG Services to the Client under the Agreement, including any new Releases, versions, updates, and other software delivered by EHG Services from time to time in accordance with a Service Level Agreement.

**Minimum Licence Period** means the minimum duration of each Licence, as specified in the relevant Product Agreement, subject to earlier termination in accordance with the terms of the Agreement.

**Minimum Technical Requirements** has the meaning given to that term in clause 5.1.19.

**Non Excludable Guarantee** has the meaning given to that term in clause 6.4.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Personnel** of a party means the officers, employees, agents and contractors of that party.

**Privacy Laws** means all applicable privacy and data protection laws and regulations relating to or impacting on the handling, processing and/or privacy of Personal Information, including the *Privacy Act 1988* (Cth), *Spam Act 2003* (Cth) and the *Privacy and Data Protection Act 2014* (Vic).

**Product Agreement** means the Initial Product Agreement and/or an Additional Product Agreement, as the context requires.

**Release** means a version of the Licensed Product in which new software functionality and/or software restructuring and/or bug-fixes have been included.

**SEQTA** means any of the SEQTA™ Suite comprising SEQTA Teach and other related products made available by EHG Services.

**Service Level Agreement** means, as the context requires:

- (a) in respect of Synergetic, the document in Schedule 2A;
- (b) in respect of SEQTA, the document in Schedule 2B;
- (c) in respect of AssetWhere the document in Schedule 2C, and/or
- (d) in respect of AssetWhere FM the document in Schedule 2D,

as may be updated from time to time in accordance with clause 3.7.

**Services** means the services (or any of them) identified in a Product Agreement which are to be provided by EHG Services under the Agreement, which may include Installation Services, Software Development Services and/or Support and Maintenance Services.

**Software Development Services** means the services provided by EHG Services pursuant to Schedule 4.

**Support and Maintenance Services** means the services to be provided by EHG Services in accordance with a Service Level Agreement.

**Support Fee** means the fees payable by the Client for the Support and Maintenance Services, as specified in a Product Agreement and varied from time to time in accordance with the Agreement.

**Support Day** means a day which is a Business Day and on which EHG will perform Support and Maintenance Services. EHG will notify the Client in advance of any Business Days on which the Support and Maintenance Services will not be performed.

**Support Term** means the minimum period for which Support and Maintenance Services will be provided, as set out in the relevant Service Level Agreement.

**Synergetic** means the Synergetic Management System software made available by EHG Services.

**Term** means the duration of the Agreement, as determined in accordance with clause 3.2, subject to earlier termination in accordance with the terms of the Agreement.

1.2 In the Agreement (unless the context requires otherwise):

- 1.2.1 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.2 references to a clause, schedule, paragraph or appendix are references to the clause, schedule, paragraph or appendix of, or to, the Agreement;
- 1.2.3 reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated from time to time;
- 1.2.4 words importing persons shall include natural persons, bodies corporate, un incorporated associations and partnerships (whether or not any of them have separate legal personality);
- 1.2.5 the headings, index and front sheet are all for reference only and shall be ignored when construing the Agreement;
- 1.2.6 if the Agreement is translated and there is any conflict, ambiguity or inconsistency between the English language version and the translated version, then the English version shall prevail;

and

- 1.2.7 reference to any legislative provision shall be deemed to include any statutory instrument, bye-law, regulation, rule, subordinate or delegated legislation or order and rules and regulations which are made under it, and any subsequent re-enactment or amendment of the same.

## **2 NON-EXCLUSIVE APPOINTMENT**

- 2.1 The Client appoints EHG Services on a non-exclusive basis to provide the Licensed Product(s) and Services to the Client subject to the terms and conditions of the Agreement.

## **3 SCOPE OF AGREEMENT AND PRECEDENCE**

- 3.1 The Agreement is formed between EHG Services and the Client on the date that the first order which the Client places with EHG Services (**Initial Product Agreement**) is executed on behalf of the last party (**Commencement Date**). An Initial Product Agreement will be in the format specified by EHG Services from time to time and will include, as a minimum:

- 3.1.1 the name of the Client;
- 3.1.2 the Licensed Product(s) and/or Services which are the subject of the Initial Product Agreement;
- 3.1.3 for each Licensed Product which is the subject of the Initial Product Agreement:
  - 3.1.3.1 the Minimum Licence Period; and
  - 3.1.3.2 the Licence Metrics;
- 3.1.4 the Fees and frequency at which the Fees will be invoiced;
- 3.1.5 each party's address for notices; and
- 3.1.6 any training to be provided by EHG Services.

- 3.2 Following the Commencement Date, the parties may execute an Additional Product Agreement in the format specified by EHG Services from time to time if the Client wishes to receive any additional Licensed Product(s) and/or Services from EHG Services under the terms of the Agreement.

- 3.3 The Agreement commences on the Commencement Date and will continue until the termination or expiry of the final Product Agreement, subject to earlier termination in accordance with its terms.

- 3.4 The Agreement is comprised of the following documents (in descending order of precedence):

- 3.4.1 clauses 1 to 22 of these terms and conditions;
- 3.4.2 Schedule 1 of these terms and conditions;
- 3.4.3 if a Product Agreement states that the Client has elected to the following Licensed Product:
  - 3.4.3.1 Synergetic, the Service Level Agreement in Schedule 2A;
  - 3.4.3.2 SEQTA, the Service Level Agreement in Schedule 2B;

- 3.4.3.3 AssetWhere, the Service Level Agreement in Schedule 2C,
  - 3.4.3.4 AssetWhere FM, the Service Level Agreement in Schedule 2D; and/or
  - 3.4.3.5 AssetWhere FM, the myBuildings terms and conditions in Schedule 5
  - 3.4.4 if a Product Agreement states that the Client has elected to receive Installation Services:
    - 3.4.4.1 Schedule 3A; and
    - 3.4.4.2 if the Installation Services are to be provided in respect of Synergetic, Schedule 3B;
  - 3.4.5 if a Product Agreement states that the Client has elected to receive Software Development Services, Schedule 4; and
  - 3.4.6 each Product Agreement,
- each as may be updated by EHG Services in accordance with clause 3.7.
- 3.5 In the event and to the extent of any inconsistency between the documents listed in clause 3.4, the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
- 3.6 EHG Services is not obliged to provide access to any Licensed Product or perform any Services unless and until a Product Agreement is executed on behalf of both parties.
- 3.7 EHG Services may, on written notice to the Client, vary the terms of the Agreement, including these terms and conditions or any Service Level Agreement. Any variations in the Agreement under this clause 3.7 will take effect at the start of the next Support Term. EHG Services will notify the Client of the variations not less than 30 days prior to this.

#### **4 SOFTWARE AND SERVICES**

- 4.1 EHG Services grants the Client a licence to use each Licensed Product on the terms set out in Schedule 1. The Licence granted under this clause is perpetual, subject to the termination rights in clause 15.
- 4.2 EHG Services will:
  - 4.2.1 perform the Services with due care and skill and in a professional, punctual and diligent manner;
  - 4.2.2 obtain and maintain all necessary authorisations required for the provision of the Licensed Product(s) and the Services; and
  - 4.2.3 use reasonable endeavours to complete the Services within the timeframes specified in the Agreement. The parties agree that any timeframe specified in the Agreement is an estimate only and EHG Services will not be liable for any failure or delay in completing the Services in accordance with the specified timeframe.
- 4.3 EHG Services will provide training to the Client in accordance with a Product Agreement, if applicable.



## **5 CLIENT RESPONSIBILITIES**

### **5.1 The Client must:**

- 5.1.1 provide EHG Services with all necessary co-operation in relation to the Agreement, and all necessary access to such information as may be required in order to provide the Deliverables and Services;
- 5.1.2 conduct business with EHG Services in a courteous and professional manner and in accordance with any protocols and procedures set out in the Agreement;
- 5.1.3 comply with all applicable laws and regulations with respect to its activities under the Agreement, including the Privacy Laws;
- 5.1.4 ensure that its Authorised Users are properly trained in the use and application of the Licensed Product and the Equipment on which it is used;
- 5.1.5 ensure that each Licensed Product is used in accordance with the Associated Documentation;
- 5.1.6 provide on request all information as may be required by EHG Services to determine Licence Metrics that may be required to calculate the Licence Fee and/or Support Fees from time to time;
- 5.1.7 ensure that its Authorised Users use the Deliverables in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement;
- 5.1.8 obtain and maintain all necessary licences, consents and permissions necessary for EHG Services to perform its obligations under the Agreement;
- 5.1.9 document and promptly report all errors in or malfunctions of the Licensed Product to EHG Services;
- 5.1.10 use all reasonable endeavours to complete procedures for the rectification of errors or malfunctions in the Licensed Product within a reasonable time after such procedures are notified to it by EHG Services;
- 5.1.11 maintain up-to-date software to protect against viruses and other Harmful Code and appropriate information security controls on all Equipment;
- 5.1.12 to enable EHG Services to remotely support the Licensed Product, install and provide to EHG Services access to any remote access software specified in the Product Agreement or notified in writing by EHG Services to the Client from time to time;
- 5.1.13 other than where the Client purchases Cloud Hosting Services for the Licensed Product from EHG Services, maintain a current backup copy of the Licensed Product and Client Data;
- 5.1.14 consult EHG Services before making any changes to its Equipment that may disrupt or negatively impact the delivery of the Licensed Product;
- 5.1.15 if it allows Authorised Users to access the Licensed Product remotely, provide appropriate security measures;

- 5.1.16 provide all information required by EHG Services to open a support request;
  - 5.1.17 once a support request has been submitted, make Personnel available, as appropriate, to work with EHG Services to ensure that the scope of the support request is fully understood and that, if applicable, site-testing can be undertaken in a timely manner;
  - 5.1.18 provide all necessary and requested documentation, information, and knowledge capital to EHG Services as appropriate in respect of a support request; and
  - 5.1.19 ensure that its Equipment and any other hardware, software and infrastructure comply with the minimum requirements specified by EHG Services from time to time, including as part of the Associated Documentation, where applicable (**Minimum Technical Requirements**).
- 5.2 Any Services (including any Support and Maintenance Services) which EHG Services is required to provide as a result of the Client's failure to provide Authorised Users with the Minimum Technical Requirements are not included within the Fees specified in a Product Agreement and will be performed by EHG Services at its Current Rates.

## 6 WARRANTIES

- 6.1 The Client warrants and undertakes to EHG Services that:
- 6.1.1 it has all legal rights and powers to enter into the Agreement and perform its obligations hereunder; and
  - 6.1.2 it will comply with the requirements of any applicable laws, authorisations and statutory regulations with respect to the performance of its obligations hereunder.
- 6.2 EHG Services warrants to the Client that:
- 6.2.1 it has the right and authority to grant the Licence to the Client;
  - 6.2.2 the Associated Documentation contains sufficient information to enable the Client to understand the basic operation of the Licensed Product; and
  - 6.2.3 the Services will be performed with reasonable care and skill using appropriately qualified, experienced and skilled Personnel.
- 6.3 Subject to clause 6.2 and any Non Excludable Guarantees, to the fullest extent allowed by law, EHG Services:
- 6.3.1 makes no warranties, whether express or implied, relating to the Deliverables or the Services;
  - 6.3.2 does not warrant that the Licensed Product or any Custom Software will be error free or will perform in an uninterrupted manner; and
  - 6.3.3 excludes all implied warranties of merchantability, satisfactory quality and fitness for a particular purpose (even if EHG Services had been informed of such purpose) with respect to the Deliverables and the Services.
- 6.4 If a mandatory term is implied by law or a mandatory consumer guarantee (each a **Non Excludable Guarantee**) applies to goods or services provided in connection with the Agreement, to the maximum

extent permitted by law, EHG Services' liability for breach of the Non Excludable Guarantee is limited, at EHG Services' option, to:

- 6.4.1 in the case of goods not of a kind ordinarily acquired for personal, domestic or household use or consumption, either replacement or repair of the goods or payment of the cost of replacing or repairing the goods; and
  - 6.4.2 in the case of services not of a kind ordinarily acquired for personal, domestic or household use or consumption, to either resupply of the services or payment of the cost of the resupply of the services.
- 6.5 EHG Services' Personnel have no authority to bind EHG Services in respect of any oral representations or warranty concerning any Deliverables or Services. Other than the Non Excludable Guarantees, any representation or warranty not expressly contained in the Agreement cannot be relied upon by the Client.

## **7 CONTRACT MANAGEMENT**

- 7.1 The Client must appoint a Contact Person who will be the primary point of contact for all communications with EHG Services in relation to the Agreement.
- 7.2 The Client may change its Contact Person upon written notice to EHG Services.
- 7.3 EHG Services will provide the Client with a contact email address. Day-to-day communications by the Client and its Contact Person must be sent to this address.
- 7.4 EHG Services' may schedule meetings as required with both technical and management Personnel of each party to review the status of the Agreement. The Client must ensure that the relevant Personnel attend any such meetings requested by EHG Services, acting reasonably.

## **8 FEES AND INVOICING**

- 8.1 The Client agrees to pay the Fees, as set out in or calculated in accordance with a Product Agreement or a Fee Estimate.
- 8.2 The Client must pay or reimburse EHG Services for any out-of-pocket expenses, including travel and travel-related expenses and any identified pass-through expenses, in connection with EHG Services' performance of its obligations under the Agreement. EHG Services will include all such reimbursable expenses on its invoices.
- 8.3 EHG Services will invoice the Client at the frequency specified in the relevant Product Agreement. The Client must pay invoices by the due date specified in each invoice or, if no due date is specified, within 30 calendar days of the date of the invoice.
- 8.4 The Client acknowledges that the Fees have been calculated in accordance with the Licence Metrics specified in the Product Agreements. If the Client wishes to make any change to the variables within the Licence Metrics, such as increasing the number of Authorised Users, the Client must notify EHG Services immediately and a corresponding increase in the Fees may be payable by the Client.
- 8.5 The Client will pay EHG Services interest on overdue amounts at a rate two (2) per cent higher than the then current rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic). The Client will further be responsible for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by EHG Services as a result

of or in connection with a failure by the Client to comply with its payment obligations under the Agreement.

- 8.6 Without limiting its rights under the Agreement or at law, EHG Services may suspend access to a Licensed Product and/or its performance of any or all of the Services for non-payment of invoices within 30 days of the due date for payment.
- 8.7 EHG Services may increase the Licence Fees payable under the Agreement at any time.
- 8.8 An increase in the Fees under clause 8.7 will take effect at the start of the next calendar month and EHG Services will notify the Client of the revised Fees not less than 30 days prior to this date.
- 8.9 The Client is not entitled to raise a set off or counterclaim in respect of any amount it owes to EHG Services and all amounts to be paid by the Client under the Agreement will be paid in full without deduction or withholding. An amount owed includes any amount owed, whether actually, contingently or prospectively.
- 8.10 All amounts and fees stated or referred to in the Agreement:
- 8.10.1 subject to clause 8.11, shall be payable in Australian Dollars;
  - 8.10.2 are, subject to clause 15.4, non-cancellable and non-refundable; and
  - 8.10.3 are exclusive of goods and services tax or any other applicable sales tax, which shall be added to EHG Services' invoices at the appropriate rate.
- 8.11 The parties may agree in a Product Agreement that payments made by the Client under the Agreement will be in a currency other than Australian Dollars provided that EHG Services may, from time to time, invoice the Client for more than the amount specified in the Product Agreement to ensure that the amount received by EHG Services is the same as the amount which EHG Services would have received had the payment been made in Australian Dollars.
- 8.12 The Client agrees to pay or reimburse EHG Services for all sales, personal property, excise or other taxes or duties imposed by a governmental authority in any jurisdiction and arising out of or in connection with the Agreement or the transactions contemplated by the Agreement, other than taxes imposed on EHG Services' income.
- 8.13 All third party fees related to the method of payment selected by the Client will be the responsibility of, and must be paid by, the Client.

## **9 INTELLECTUAL PROPERTY**

- 9.1 The Client acknowledges that EHG Services owns and will own all existing and future rights, title and interest (including all Intellectual Property Rights) in each of the following:
- 9.1.1 the Licensed Product;
  - 9.1.2 the Associated Documentation; and
  - 9.1.3 any other Deliverables.
- 9.2 If the Client or any person or entity acting on its behalf makes, devises, discovers or otherwise acquires rights in any improvement, enhancement or modification to any Deliverable (**Improvement**) it must promptly notify EHG Services in writing, giving details of the Improvement and shall, if the EHG Services so requests, provide any further information as would be reasonably required to enable it to evaluate

the Improvement effectively.

- 9.3 The Client assigns to EHG Services all right, title and interest, including IPR, in each Improvement. Such assignment will be effective immediately on creation (including as a present assignment of future copyright) without the need for further assurance.

## **10 CLIENT DATA AND SECURITY**

- 10.1 All right, title and interest (including all Intellectual Property Rights) in all Client Data stored and/or processed by the Client using a Licensed Product is and remains vested in the Client and the Client is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all such Client Data.
- 10.2 The Client agrees that EHG Services:
- 10.2.1 will use the Client Data to the extent necessary to fulfil its obligations under the Agreement;
  - 10.2.2 may use Client Data and usage statistics regarding the Client's use of a Licensed Product for improving product and user experience and, in respect of de-identified data only, for commercial purposes;
  - 10.2.3 may access the Client Data for technical and support purposes at any time in connection with the Support and Maintenance Services; and
  - 10.2.4 may disclose Client Data where required to do so by law or court order, provided that EHG Services will use reasonable endeavours to notify the Client of any such request.
- 10.3 The Client acknowledges and agrees that:
- 10.3.1 other than where the Client purchases Cloud Hosting Services for a Licensed Product from EHG Services, it has sole responsibility for backing up any Client Data stored within the Licensed Product, notwithstanding any related tools or functionality provided by EHG Services; and
  - 10.3.2 security risks cannot be eliminated and the internet is not a secure medium and, as with all systems that permit data upload or transmission over the internet, the use of a Licensed Product carries with it the risk that the Client or any Authorised User may send, receive, upload, download or transmit a file that contains Harmful Components, and that Harmful Components may damage the Client's or any Authorised User's computers, systems and Client Data, and may spread and damage other persons' computers, systems and data.

## **11 CONFIDENTIALITY**

- 11.1 A recipient of Confidential Information may only use the Confidential Information of the discloser for the purposes of performing the recipient's obligations or exercising the recipient's rights under the Agreement.
- 11.2 A recipient must:
- 11.2.1 not disclose the Confidential Information of the other party to any person except if the Agreement permits;

- 11.2.2 not assist or permit any person to make any unauthorised use of the discloser's Confidential Information; and
  - 11.2.3 take reasonable steps to safeguard the Confidential Information, including co-operating with the discloser as reasonably required to protect the confidentiality of its Confidential Information.
- 11.3 A recipient may only disclose Confidential Information to:
- 11.3.1 its Representatives on a "need to know basis"; or
  - 11.3.2 any other person only with the discloser's prior written consent,
- and, before doing so, the recipient must ensure that those persons are aware of the confidential nature of the Confidential Information and are bound by confidentiality obligations consistent with this clause 11.
- 11.4 On expiry or termination of the Agreement, or at any other time, EHG Services may request the Client to deliver to it, or destroy and certify the destruction of, all documents and other materials in any medium in the Client's possession or control which contain or refer to EHG Services' Confidential Information. However, the Client may retain a single copy of any document or other material containing or referring to EHG Services' Confidential Information to the extent it is required to do so by law or any other Confidential Information which is required to use a Licensed Product whilst the Licence is ongoing.
- 11.5 Notwithstanding this clause 11, the Client agrees that EHG Services may use its name in press releases, product brochures, EHG Services websites, EHG Services social media posts and financial reports indicating that the Client is a customer of EHG Services.

## **12 PRIVACY**

- 12.1 EHG Services acknowledges that some of the Client Data may be subject to the Privacy Laws. EHG Services will:
- 12.1.1 only use the Client's Personal Information for the purposes set out in this Agreement;
  - 12.1.2 take reasonable steps to protect the Client's Personal Information from unauthorised access, modification or disclosure and from misuse, interference or loss; and
  - 12.1.3 use reasonable endeavours to comply with written directions from the Client regarding its use and handling of such Client Data.
- 12.2 The Client warrants and represents on a continuing basis that, in respect of any Personal Information which it discloses or otherwise makes available to EHG Services in connection with the Agreement (including Personal Information within the Client Data):
- 12.2.1 it complies with, has done and will continue to do all things necessary to ensure and maintain its compliance with Privacy Laws in relation to: (i) the collection, use and disclosure of the Personal Information; and (ii) the disclosure of Personal Information to EHG Services for the purposes permitted by and contemplated under the Agreement; and
  - 12.2.2 it has collected Personal Information by lawful and fair means and otherwise in accordance with the Privacy Laws.

### **13 INTELLECTUAL PROPERTY INFRINGEMENT**

13.1 Subject to clauses 13.2 and 13.3, EHG Services indemnifies the Client against any court awarded damages arising directly out of a claim by a third party that a Deliverable infringes any Intellectual Property Right of that third party (**IPR Claim**).

13.2 Where the Client wishes to enforce the indemnity in clause 13.1, it must:

13.2.1 give written notice to EHG Services as soon as practicable after becoming aware of the IPR Claim;

13.2.2 permit EHG Services, at EHG Services' expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow in relation to the IPR Claim; and

13.2.3 provide all reasonable assistance to EHG Services in the handling of any negotiations and litigation.

13.3 The indemnity in clause 13.1 does not apply to the extent the claim of infringement arises as a result of:

13.3.1 modifications to the Deliverables not made or approved in writing by EHG Services;

13.3.2 any Custom Software created to the Client's specifications;

13.3.3 the Client's use of the Deliverables in a manner contrary to the instructions given to the Client by EHG Services, including any requirements in the Associated Documentation;

13.3.4 the Client's use of a Deliverable after notice of the alleged or actual infringement from EHG Services or any appropriate authority; or

13.3.5 the combined use of a Deliverable with any software, hardware or services not provided by EHG Services.

13.4 If an IPR Claim is made or looks possible, the Client must permit EHG Services, in its sole and absolute discretion, to:

13.4.1 replace or modify the infringing Deliverable so that it is non-infringing; or

13.4.2 obtain a licence for the Client to use the infringing Deliverable.

13.5 The remedies under this clause 13, constitute the Client's sole and exclusive rights and remedies, and EHG Services' (including its Personnel's) entire obligations and liability, for infringement of any IPR.

13.6 The Client shall defend, indemnify and hold harmless EHG Services against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services and/or Deliverables.

### **14 LIABILITY**

14.1 Subject to clause 14.2 and any Non Excludable Guarantees:

14.1.1 EHG Services' total aggregate liability arising in out of or in connection with the Agreement shall be limited to the lesser of:

- 14.1.1.1 the Fees paid by the Client in the previous 12 months in respect of the Licensed Product or Service to which the event giving rise to the liability relates; and
- 14.1.1.2 \$50,000; and
- 14.1.2 EHG Services will not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement.
- 14.2 [The limitations and exclusions in clause 14.1 will not apply in respect of EHG Services' liability for:
  - 14.2.1 IPR infringement, which will be limited as set out in clause 13;
  - 14.2.2 personal injury and death; and
  - 14.2.3 fraud and fraudulent misrepresentation.
- 14.3 The limitations and exclusions of the liability set out in this clause 14 apply regardless of the basis on which such liability arises, whether in contract, breach of statutory duty, tort (including negligence), in equity or under statute.
- 14.4 To the extent permitted by law, a party's liability to each other party under or in connection with the Agreement is reduced to the extent that the loss or damage is caused or contributed to by any or all of the following:
  - 14.4.1 the negligence or wilful misconduct of the other party, its Personnel or a third party engaged by it;
  - 14.4.2 any breach of the Agreement by the other party;
  - 14.4.3 any failure by the other party to mitigate its loss; or
  - 14.4.4 in the case of any liability of EHG Services, an error of an Authorised User in the use of a Deliverable, including a data input error.

## **15 TERMINATION**

- 15.1 At any time after the Minimum Licence Period, either party may terminate a Licence (and the corresponding Support and Maintenance Services) with effect from the end of the current Support Term, provided that at least 30 days' notice of such termination is provided.
- 15.2 If a Licence is terminated under clause 15.1, EHG Services will not be required to provide any other Services which are related to the relevant Licensed Product and the whole or part of the relevant Product Agreement will be deemed to be terminated, as applicable. The Agreement will continue in respect of any other ongoing Product Agreements.
- 15.3 EHG Services may, by notice in writing, terminate the Agreement immediately if any of the following occurs:
  - 15.3.1 the Client does not pay EHG Services in accordance with the terms in clause 8;



- 15.3.2 the Client fails to rectify a breach of the Agreement which is able to be rectified within 20 Business Days after receiving a written notice from EHG Services specifying the breach and requiring the Client to rectify it;
  - 15.3.3 the Client commits a breach of this Agreement which cannot be rectified;
  - 15.3.4 the Client repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement; or
  - 15.3.5 an Adverse Event happens to the Client.
- 15.4 The Client may, by notice in writing, terminate the Agreement immediately if EHG Services fails to rectify a breach of the Agreement which is able to be rectified within 20 Business Days after receiving a written notice from the Client specifying the breach and requiring EHG Services to rectify it.
  - 15.5 If the Client terminates the Agreement under clause 15.4, EHG Services will refund to the Client, on a pro rata basis, any Fees paid in advance by the Client which relate to the period after termination of the Agreement.
  - 15.6 All clauses in the Agreement relating to payment, confidentiality, privacy, warranties, indemnities, limitations on liability, non-exclusivity, licensing or assigning of Intellectual Property, non-solicitation, insurance, disputes, the provisions of clause 22 and any clauses which are by their nature intended to survive termination or expiry shall survive the termination or expiry of the Agreement.
  - 15.7 On termination of the Agreement for any reason, any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
  - 15.8 Upon termination or expiry of the Agreement or a Product Agreement, all relevant Licences will come to an end and the Client must, at its own expense and at the option of EHG Services, deliver to EHG Services or destroy all copies of the Licensed Product and any other Deliverables in the possession or under the control of the Client or its Authorised Users.

## **16 AUDIT AND ACCESS**

- 16.1 The Client agrees to give EHG Services access and assistance as may reasonably be necessary, at EHG Services' cost, for EHG Services to audit the Client's premises and records to confirm the Client's compliance with the Licence Metrics and the Agreement generally.
- 16.2 EHG Services may conduct an audit under clause 16.1 on no more than one occasion per calendar year during the Term and for 2 years thereafter.
- 16.3 If an audit referred to in clause 16.1 reveals that the Client has underpaid any Fees (including Licence Fees) to EHG Services, then without prejudice to EHG Services' other rights, EHG Services may invoice the Client for an amount equal to such underpayment as calculated in accordance with the relevant Product Agreement and the Client must pay such invoice within 14 days of receipt.
- 16.4 EHG Services will use reasonable steps to ensure that an audit causes minimal disruption to the Client's business and operation.

## **17 DISPUTE RESOLUTION**

- 17.1 The parties agree that if a dispute arises out of or in relation to the Agreement (**Dispute**), a party may not commence any court proceedings relating to the Dispute unless it has complied with the provisions of this clause, except to seek urgent interlocutory relief.
- 17.2 If a Dispute arises, the parties first agree to meet to attempt to resolve the Dispute in consensual discussions between nominated contacts of the parties. If the dispute cannot be resolved using that method within 14 Business Days of the initial request by a party for a meeting, the parties will refer the Dispute to mediation in accordance with the mediation procedure set out below.
- 17.3 The mediation procedure is as follows:
- 17.3.1 one party may start the mediation process by serving a mediation notice on the other party. Such notice must state that a Dispute has arisen and identify what the Dispute is;
  - 17.3.2 the mediator will be selected by mutual agreement. If the parties have not reached agreement on a mediator within seven (7) days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator;
  - 17.3.3 it must be a term of the engagement of the mediator that the parties release the mediator from any liability relating to the mediation;
  - 17.3.4 once the mediator has accepted the appointment, the parties must comply with the mediator's instructions;
  - 17.3.5 the mediator is not bound by the rules of natural justice and may discuss the Dispute with a party in the absence of any other party; and
  - 17.3.6 if the Dispute is not resolved within thirty (30) days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.
- 17.4 Each party shall bear its own costs in relation to the mediation and the costs of the mediator shall be shared equally by the parties.

## **18 INSURANCE**

- 18.1 EHG Services must maintain the following insurances during the Term:
- 18.1.1 public and product liability insurance for an insured amount no less than \$10 million per event and in the annual aggregate;
  - 18.1.2 Worker's Compensation as required by law; and
  - 18.1.3 professional indemnity insurance for an insured amount no less than \$10 million per event and in the annual aggregate.

## **19 NOTICES**

- 19.1 Any notice given to a party under the Agreement is only given if it is in writing and delivered or posted or sent via facsimile or email to the relevant address set out in the Initial Product Agreement.
- 19.2 If a party gives the other party 3 Business Days' notice of a change of its address, fax number or email address, any notice is only given by that other party if it is delivered, posted, faxed or emailed to the

latest address, fax number or email address.

- 19.3 Subject to clause 19.4, any notice is to be treated as given at the following time:
- 19.3.1 if it is delivered, when it is left at the relevant address;
  - 19.3.2 if it is sent by post, 2 (or, in the case of a notice or communication posted to another country, 9) Business Days after it is posted;
  - 19.3.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
  - 19.3.4 if it is sent by email, upon receipt of a delivery notice or other explicit acknowledgement of receipt.
- 19.4 If any notice is given at the place of the party to whom it is sent on a day that is not a Business Day or after 5.00pm on a Business Day, it is to be treated as having been given at the beginning of the next Business Day.

## **20 NON-SOLICITATION**

- 20.1 During the Term and for a period of 6 months after the expiry or termination of the Agreement, neither party may, for its benefit nor for the benefit of another, directly or indirectly solicit or retain the services of any Personnel of the other party without that party's prior written consent.
- 20.2 A party must promptly notify the other if it intends to make an offer to employ or contract a person who is employed or contracted by the other party prior to the expiration of the period referred to in clause 20.1.
- 20.3 Clause 20.1 does not restrict a party from employing or engaging any person who makes an unsolicited application in response to a bona fide recruitment campaign.

## **21 FORCE MAJEURE**

- 21.1 EHG Services is not liable for failure to perform or delay in performing an obligation under the Agreement if each of the following conditions is satisfied:
- 21.1.1 the failure or delay arose from a cause beyond the reasonable control of EHG Services. A cause beyond the reasonable control of EHG Services includes an act of God, strike, lockout or other industrial disturbance or labour difficulty, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, pandemic, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation or anything done or not done by or to a person, government or other competent authority, except EHG Services;
  - 21.1.2 EHG Services took all reasonable precautions against that cause and did its best to mitigate its consequences. This does not require EHG Services to settle a labour dispute if, in EHG Services' opinion, that is not in its best interests; and
  - 21.1.3 EHG Services gave the Client notice of the cause as soon as practicable after becoming aware of it.
- 21.2 From the date notice is served in accordance with clause 21.1.3, EHG Services is not required to perform its obligations under the Agreement that are dependent on the delayed or failed obligations until such

time as EHG Services is able to resume fully performance of its obligations.

- 21.3 If the cause and resulting failure or delay lasts more than 30 days, either party is entitled to terminate the Agreement immediately by giving the other party written notice.

## **22 GENERAL**

- 22.1 The Agreement forms the entire agreement between EHG Services and the Client in relation to its subject matter and replaces all previous agreements, arrangements, understandings, representations or other communications between the parties in relation to that subject matter.
- 22.2 Subject to clause 3.7, any changes to the Agreement must be agreed in writing by EHG Services and the Client.
- 22.3 The Client shall not be entitled to assign, novate or deal in any way with all or any part of the benefit of, or its rights or benefits under, the Agreement without the prior written consent of EHG Services, which consent will not be unreasonably withheld. EHG Services may impose any conditions it sees fit when granting its consent under this clause.
- 22.4 EHG may assign, novate or deal in any way with all or any part of the benefit of, or its rights or benefits under, the Agreement at its discretion and will notify the Client if it exercises its rights under this clause.
- 22.5 EHG Services may engage subcontractors for the performance of aspects of the Services under the Agreement. EHG Services will be responsible for the acts or omissions of its subcontractors as if they were EHG Services' own acts or omissions.
- 22.6 The Agreement is governed by the laws of the State of Victoria, Australia. The parties submit to the jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia.
- 22.7 No waiver of a right or remedy under the Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under the Agreement does not prevent a further exercise of that or of any other right or remedy.
- 22.8 Any provision of the Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The remainder of the Agreement will remain in full force and effect.
- 22.9 A Product Agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.
- 22.10 Except where expressly stated to the contrary in the Agreement, the rights of a party under the Agreement are cumulative and are in addition to any other rights available to that party, whether those rights are provided for under the Agreement, any other document or by law.
- 22.11 Except as expressly provided in the Agreement, no party is an agent, representative, trustee, employee or partner of any other party by virtue of the Agreement and no party may represent itself as such in any circumstances.
- 22.12 No term or condition of the Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Agreement or that provision.
- 22.13 Neither party will transfer, directly or indirectly, any Deliverable (including technical data or software furnished provided to it under the Agreement), or the direct output of a Deliverable, to any country for

which the United States or any other applicable Government entity requires an export licence or other governmental approval without first obtaining such licence or approval.

## **SCHEDULE 1: LICENCE TERMS**

### **1 GRANT OF LICENCE**

- 1.1 EHG Services grants to the Client a non-exclusive and non-transferable licence for it and its Authorised Users to:
  - 1.1.1 use the Licensed Product;
  - 1.1.2 use the Associated Documentation in connection with use of the Licensed Product; and
  - 1.1.3 copy the Licensed Product and Associated Documentation solely as required for the Client's own internal operational use, in-house educational and training purposes and backup or archival purposes, provided that the Licensed Product, Associated Documentation and any titles, trade mark symbols, copyright symbols and legends and other proprietary markings must not be modified in any way.
- 1.2 For each Licensed Product, the Authorised Users are determined as follows:
  - 1.2.1 if specific roles, numbers or types of people are specified as part of the Licence Metrics in a Product Agreement, then the Authorised Users will be determined by those Licence Metrics; and
  - 1.2.2 if no other limit is specified, the Authorised Users are the Client's employees.
- 1.3 The Client must comply and must ensure its Authorised Users comply with the Associated Documentation relating to the Licensed Product and must not use the Licensed Product except in accordance with the Associated Documentation and the terms and conditions set out in the Agreement.
- 1.4 The Client must ensure that the Licensed Product is protected from access, use, damage or destruction by any third party.

### **2 COMPLIANCE WITH LICENCE METRICS**

- 2.1 The Client must use the Licensed Product in accordance with the Licence Metrics in the Product Agreement, if applicable. The Client must not exceed the Licence Metrics unless agreed with EHG Services.

### **3 OWNERSHIP**

- 3.1 The Client acknowledges that:
  - 3.1.1 the Licensed Product is of importance and value to EHG Services;

- 3.1.2 all IPR (whether registered or not) in and to the Licensed Product is owned or licensed by, and vests in, EHG Services or its licensors; and
  - 3.1.3 except for the Licence granted by the Agreement, the Client does not have any interest in or to the Licensed Product.
- 3.2 All goodwill arising from the use of the Licensed Product vests in and accrues solely for the benefit of EHG Services.

#### **4 INTELLECTUAL PROPERTY**

- 4.1 The Client acknowledges that any and all trade marks, trade names, copyrights, patents and other Intellectual Property Rights used or embodied in or in connection with the Licensed Product, the Associated Documentation or other Deliverables will be and remain the sole property of EHG Services and/or its licensors.

#### **5 LICENCE RESTRICTIONS**

- 5.1 Except to the extent permitted by law or the Agreement, the Client agrees that it will not directly or indirectly, whether through any of its Authorised Users or third party or otherwise:
  - 5.1.1 transfer, sell, assign, lease, rent, sublicense, encumber, redistribute or otherwise permit any unauthorised person to use or access the Licensed Product, in whole or part;
  - 5.1.2 reproduce, modify, adapt, translate or create derivative works based upon the Licensed Product or the Associated Documentation;
  - 5.1.3 decompile, disassemble, or reverse engineer any portion of the Licensed Product or other Deliverables or attempt to do so;
  - 5.1.4 use the Licensed Product or other Deliverables to provide processing services to third parties or for commercial timesharing, rental or sharing arrangements; or
  - 5.1.5 provide, disclose, divulge or make available to, or permit use of Licensed Product or other Deliverables by persons other than the Authorised Users without EHG Services' prior written consent.

#### **6 INTERFACES**

- 6.1 EHG Services may, in its absolute discretion, from time to time authorise the Client to use an Interface to connect part or all of the Licensed Product with software developed by a third party.
- 6.2 EHG Services may charge a subscription Fee for each Interface that is used for by the Client. Such Fee will be in the form of a quarterly subscription for each Interface used by the Client. If the Client wishes to unsubscribe to a particular Interface, it must provide at least thirty (30) days written notice to EHG Services.
- 6.3 EHG Services has no liability to the Client in respect of any Interface provided by a third party or in respect of any third party software to which an Interface connects.

- 6.4 EHG Services may, at any time and at its absolute discretion, withdraw its consent to the Client's use of an Interface on written notice to the Client.