

General Terms and Conditions – ML Prime

IT IS AGREED THAT

1. Definitions and interpretation

1.1 *Definitions*

In this Agreement, where the context so admits, the following words and expressions shall have the following meanings:

“Additional Services” means any Professional Services or Software (which is additional to the Software that forms part of the Service as at the Effective Date) that MLS agrees to supply to the Client pursuant to an Additional Work Order;

“Additional Work Order” means any new work orders entered into by the parties after the Effective Date for the provision of Additional Services by MLS to the Client;

“Agreement” means this Master Services Agreement for Development, Maintenance & Support between MLS and the Client;

“Annual Enterprise Access Fees” means, in relation to an Enterprise Subscription, the annual fee specified in a Work Order payable by the Client to access and use the Service and as may be amended in accordance with the terms of this Agreement;

"Authorised User" means the Client's employees or agents of any body corporate, trust, unincorporated joint venture or other business association who have been authorised by the System Administrator to access and use the Service in accordance with the terms of this Agreement;

“Authorised User Access Fees” means, in relation to a User-based Subscription, the monthly fee specified in a Work Order payable by the Client for each Permitted Authorised User to access and use the Service and as may be amended in accordance with the terms of this Agreement;

"Business Day" means each day which is not a Saturday or Sunday or a public holiday in Melbourne, Australia;

"Confidential Information" means all information (whether written, oral or in some other form) disclosed to or obtained by one

party (whether directly or indirectly) from the other (whether before or after the signing of this Agreement), including all information relating to that other's business, operations, systems, processes, products, trade secrets, know how, contracts, finances, plans, strategies or current, former or prospective clients, customers, partners or suppliers (together with copies made of any of the foregoing) and which information is marked as being confidential or might reasonably be assumed to be confidential, but excluding information which:

- (a) is available to the public other than because of any breach of this Agreement;
- (b) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; or
- (c) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

"Client Content"

means all data, information and material that is: (a) provided or made available by or on behalf of the Client to MLS to upload and integrate to the Service by MLS as part of the Content Integration Services; or (b) input or uploaded to the Service or transmitted through the Service by the Client or any Authorised User;

"Client Materials"

means any material provided or made available by or on behalf of the Client to MLS in connection with this Agreement, but excluding Client Content;

"Client Requirements"

means the configuration, customisation and other requirements of the Client (if any) with respect to the Service or any Professional Services as agreed between the parties and as set out in a Work Order;

"Content Integration Services"

means the upload and/or integration of Client Content (including any requested adaptation or optimisation) as required by the Client and in the manner described in a Work Order;

Content Integration Services Fees	the fees payable by the Client to MLS for carrying out the Content Integration Services as specified in a Work Order;
“Customisation Services”	the configuration and customisation of the Service by MLS if required by the Client and in the manner described in a Work Order;
“Customisation Services Fees”	the fees payable by the Client to MLS for carrying out the Customisation Services as specified in a Work Order;
“Development Services”	means any software development services that MLS agrees to provide to the Client pursuant to a Work Order;
“Development Services Fees”	the fees payable by the Client to MLS for carrying out the Development Services as specified in a Work Order;
“Effective Date”	means the date of signing of this Agreement;
“Enterprise Subscription”	means a subscription that does not limit the number of Authorised Users permitted to access and use the Service;
“Force Majeure Event”	means any cause outside the reasonable control of the affected party, including any act of God, war (declared or undeclared), revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm, flood, plague, the COVID-19 pandemic (including any emergency response by any Government Agency to the COVID-19 pandemic), explosion, Government Agency restraint, expropriation, prohibition, intervention or embargo, inability to obtain or delay in obtaining necessary approvals, consents, permits, licences, authorities or allocations from a Government Agency;
“Go-Live”	Means the happening of Go-Live;
"Go-Live Date"	means the date the Service Goes-Live;
“Hosting”	means if the Client has requested and MLS has agreed to host the Service as may be indicated in a Work Order;

“Hosting Fees”	means the fee payable by the Client to MLS for Hosting as specified in a Work Order;
"Initial Term"	means from the Effective Date and for the number of years(s) specified in the Initial Work Order from the Go Live Date, unless terminated earlier in accordance with this Agreement;
"Initial Work Order"	means the initial Work Order entered into by the parties based on the features outlined in the submitted proposal;
"Intellectual Property Rights"	means patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action);
“Mainstream Updates”	means updates and fixes to the Software that apply across MLS’s customer-base generally and not as specifically required by the Client;
“Permitted Authorised Users”	means, in relation to a User-based Subscription, the number of Authorised Users permitted to access and use the Service as specified in the Initial Work Order and as may be increased in accordance with the terms of this Agreement;
“Product Name”	means the product name for the Service as specified in the Initial Work Order and as may be amended from time to time;
"Professional Services"	means any Customisation Services, Content Integration Services, Development Services to be provided by MLS pursuant to a Work Order;
“Professional Services Fees”	means the fees payable by the Client to MLS for carrying out the Professional Services (which includes any Customisation Services Fees, the Development Services Fees and Content Integration Services Fees)

	as specified in a Work Order;
"Renewal Term"	has the meaning set out in clause 13.1;
"Service"	means the service known by the Product Name to be provided by MLS consisting of: <ul style="list-style-type: none"> (a) where MLS is Hosting, the provision of access to the Software on a software as a service (SaaS) basis; and (b) where the Client is hosting the Software, a licence to use the Software and the provision of any Support Services and Professional Services
"Service Specification"	means the general specifications of the Service as described in the Initial Work Order;
"Service Level Agreement"	Means MLS's Service Level Agreement, for software services, available within the latest version of MLS's information security policy published at https://theredfox.group .
"Software"	means any software owned by or licensed to MLS and which forms part of, or is used in the provision of the Service;
"Support Services"	means the support services to be provided by MLS to or for the benefit of the Client pursuant to a Service Level Agreement;
"Target Live Date"	Means the date the parties intend to achieve Go-Live as specified in the Initial Work Order;
"Term"	means the Initial Term and each Renewal Term;
"Territory"	means the territory in which the Client is authorised to access and use the Service as specified in the Initial Work Order;
"User-based Subscription"	means a subscription that limits the number of Authorised Users permitted to access and use the Service to the Permitted Authorised Users; and
"Work Order"	means either an Initial Work Order or an Additional Work Order.

1.2 Interpretation

In this Agreement (including the introduction and schedules) unless the context otherwise requires:

- (a) reference to a person includes a legal person (such as a limited company) as well as a natural person;
- (b) clause headings are for convenience only and shall not affect the construction of this Agreement;
- (c) reference to "**including**" or any similar terms in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words; and
- (d) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation.

2. Professional Services

- 2.1. If MLS has agreed under the Initial Work Order to provide any Professional Services, then MLS will perform such Professional Services in accordance with the Client Requirements. Any timetabled dates for the performance of the Professional Services are estimates only, and time will not be of the essence with respect to their performance.
- 2.2. MLS will notify the Client when MLS considers that the Professional Services have been completed and the Service is ready for activation (**Activation Notice**). The Client will be given access to the Service for checking conformance with the Client Requirements at this time.
- 2.3. The Client must give MLS a detailed description of any non-conformance with the Client Requirements ("**Error**") in writing, within ten (10) Business Days following receipt of the Activation Notice.
- 2.4. MLS will use reasonable endeavours to correct any Error within a reasonable time and, on completion, notify the Client that the Service is available to the Client for re-checking conformance with the Client Requirements. The provisions of Clause 2.3 and this Clause 2.4 will then apply again until any Errors have been corrected. If MLS is unable to correct the Error(s) in all material respects within 20 Business Days of giving the initial Activation Notice, either party may terminate this Agreement without further liability to the other, and provided that MLS will only be liable to refund any pre-paid Annual Enterprise Access Fees, Authorised Users Access Fees and Professional Services Fees.
- 2.5. If the Client does not notify MLS of any Errors within the timeframe to give notice of Errors, or if the Service is found to conform with the Client Requirements in accordance with this Clause 2, then the Service (including the Professional Services) will be deemed accepted as from the date of the notice or failure to give notice ("**Go Live**").

3. Right to access the Service

- 3.1 Subject to full payment of the applicable fees and subject to the other provisions of this Agreement, the Client is granted a non-transferable, non-exclusive licence, from Go-Live for the Term, to access and use the Service within the Territory.

- 3.2 MLS will provide access credentials to permit the Client to use the Service. The Client indemnifies MLS in respect of any loss or liability incurred by MLS arising out the misuse of any access credentials supplied by MLS.
- 3.3 Without prejudice to clause 3.1, the Client may not sub-license the right to access and/or use the Service to any third party. Except as expressly set out in this Agreement, all rights in and to the Service (including the MLS Content but excluding Client Content and Client Materials) and Software are reserved to MLS or its licensors as the case may be.
- 3.4 Only the Client is licensed to access and use the Service and solely for the Client's internal business purposes. The Client is responsible for all access to and use of the Service by Authorised Users.
- 3.5 The Client must not:
- (a) except as expressly permitted by this Agreement, permit any third party to access or use the Service or use the Service on behalf of any third party (which includes operating any form of facility on behalf of any third party or operating a software bureau or similar service);
 - (b) copy, translate, modify, adapt or create derivative works from the Service;
 - (c) attempt to discover or gain access to the source code for the Software or reverse engineer, modify, decrypt, extract, disassemble or decompile the Software (except strictly to the extent that the Client is permitted to do so under applicable law in circumstances under which MLS is not lawfully entitled to restrict or prevent the same), including in order to:
 - (i) build a competitive product or service;
 - (ii) build a product using similar ideas, features, functions or graphics of the Service; or
 - (iii) copy any ideas, features, functions or graphics of the Service;
 - (d) attempt to interfere with the proper working of the Service or Software and, in particular, must not attempt to circumvent security, licence control or other protection mechanisms, or tamper with or disrupt the Service or Software;
 - (e) obscure, amend or remove any copyright notice, trademark or other proprietary marking on, or visible during the operation or use of the Service (including the Software); or
 - (f) use the Service to:
 - (i) upload, store, post, email, transmit or otherwise make available any content that infringes any Intellectual Property Rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, inciteful of violence or hatred, or that does not comply with all applicable laws and regulations ("**Prohibited Content**").
 - (ii) impersonate any person or entity or otherwise misrepresent the Client

relationship with any person or entity;

- (iii) engage in any fraudulent activity or further any fraudulent purpose;
- (iv) collect or store personal data about other users in connection with the prohibited conduct and activities set out in clauses 3.5(f)(i) to (iii);

and must not permit any Authorised User or other third party to do any of the foregoing.

3.6 The Client must:

- (a) supply all equipment necessary to make use of the Service;
- (b) apply or accept any updates or patches issued by MLS in respect of the Software;
- (c) implement any updates to third party software as reasonably required by MLS; and
- (d) comply with all applicable laws in connection with the use of the Service.

4. Administrator and Authorised Users

4.1 The Client must designate one contact and one alternate as the responsible party for communication with MLS during the term of this Agreement (the Client "**System Administrator**"). The Client System Administrator has the authority to bind the Client, except that another duly authorised representative of the Client may change the Client System Administrator by giving written notice to MLS in accordance with clause 16.1.

4.2 The Client System Administrator may establish accounts for Authorised Users. The Client System Administrator is responsible for setting any usage or access limitations (for example, territory or product limitations) for respective Authorised Users.

4.3 If the Client's right to access and use the Service is pursuant to a User-based Subscription, then:

- (a) the quantum of Permitted Authorised Users may not be directly or indirectly exceeded, including by way of the sharing of log-in details between individuals; and
- (b) the Client may increase or decrease the number of Permitted Authorised Users by agreement with MLS.

5. Additional Services

5.1 If the Client wishes for MLS to provide any Additional Services, then the parties shall negotiate and agree the terms of an Additional Work Order. The Client acknowledges that MLS is under no obligation to agree to provide any Additional Services on particular terms or at all.

5.2 If MLS and the Client agree and enter into an Additional Work Order, then MLS will provide the Additional Services to the Client on and subject to the terms of this Agreement and the Additional Work Order. In the event of a conflict or ambiguity between the terms of this Agreement and an Additional Work Order, the terms of this Agreement shall prevail.

6. Fees, invoicing and payment

- 6.1 The Client must pay the Professional Services Fees, Annual Enterprise Access Fees, Authorised User Access Fees and Support Fees (collectively the “Fees”), as may be set out in a Work Order.
- 6.2 MLS will invoice the Client for the Fees payable pursuant to the Initial Work Order on the Effective Date and will invoice the Client for:
- (a) If the Client’s right to access and use the Service is pursuant to an Enterprise Subscription, the Annual Enterprise Access Fees quarterly in advance, on and from the Go-Live Date; and
 - (b) If the Client’s right to access and use the Service is pursuant to User-based Subscription, the Authorised User Access Fees monthly in advance, on and from the Go-Live Date
- 6.3 The Client acknowledges that the Annual Enterprise Access Fees and the Authorised User Access Fees (as the case may be) are inclusive of the following only:
- (a) access to the Service;
 - (b) Mainstream Updates; and
 - (c) any licence fees payable by MLS to third parties for any third-party software incorporated into the Software or the Service.
- 6.4 The Fees will be reviewed annually, and any increase will be communicated by email.
- 6.5 Invoices are payable, in full, within 30 days from end of month in which invoice is received and without deduction, set off or withholding of any kind. In the event of any dispute as to the amount of an invoice, the Client must pay the amount in full pending the resolution of any dispute and MLS shall make any adjustment due immediately upon such resolution.
- 6.6 The Client acknowledges that MLS reserves the right to suspend or withdraw any discount applied to any Fees if the Client breaches its obligations under this Agreement.

7. Warranties

- 7.1 MLS warrants that:
- (a) it has the right to enter into this Agreement and to provide the Service as contemplated by this Agreement;
 - (b) the Service will, under normal operating conditions, substantially conform to the functionality described in the Service Specification; and
 - (c) it is the owner of all the Intellectual Property Rights in the Software or such Intellectual Property Rights are licensed to MLS and the Software does not infringe the rights of any third party,
- 7.2 MLS does not control the content posted to or via the Service and, in particular, does not control the Client Content and, as such, MLS does not make or give any representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, usefulness, quality, fitness for purpose or originality of any of the foregoing content or data.

- 7.3 The Client warrants that:
- (a) the Client has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative;
 - (b) the Client has the authority to grant any rights to be granted to MLS under this Agreement to be used in connection with this Agreement;
 - (c) the Client will access and use the Service in accordance with the terms of this Agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party;
 - (d) MLS's use of any third-party materials supplied by the Client to MLS for use in the provision of the Service or the Professional Services or otherwise in connection with this Agreement shall not cause MLS to infringe the rights, including any Intellectual Property Rights, of any third party; and
 - (e) the Client is able to grant MLS the licence referred to in clause 8.4.
- 7.4 Except as expressly set out in this Agreement and subject only to clause 10.1, no implied conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to the Service or Professional Services or Support Services or to anything supplied or provided by MLS under this Agreement. In particular, MLS does not warrant that the operation of any the Service will be uninterrupted, contaminant-free or error-free.
- 7.5 MLS does not warrant that the Client will obtain any particular results from the use of the Service or that any produced results will be accurate. The Client (and any third person that the Client authorises to use the results) relies on and uses the results of the Service at its own risk and MLS will have no liability to the Client (or any third party) in this respect.

8. Intellectual Property Rights

- 8.1 Nothing in this Agreement shall cause the ownership of any Intellectual Property Rights belonging to one party to be transferred to the other.
- 8.2 MLS and/or its licensors shall, as between the parties, remain the owner of all Intellectual Property Rights in MLS's brands, trademarks and logos, the Service and the Software. Except as expressly permitted by this Agreement, the Client may not use any of MLS's Intellectual Property Rights without MLS's prior written consent.
- 8.3 The Client and/or the Client's licensors shall, as between the parties, remain the owner of all Intellectual Property Rights in the Client Content and Client Materials. The Client grants MLS, free of charge, a royalty-free, worldwide, non-exclusive licence to use the Client Content and Client Materials only to such extent as is necessary to enable MLS to provide the Service and to perform its obligations under this Agreement.

9. Indemnities

- 9.1 The Client indemnifies MLS harmless against all loss or damage that MLS incurs or suffers to the extent caused by the Client or in connection with:
- (a) MLS's receipt, use and/or possession, in accordance with this Agreement, of any Client

Content and Client Materials;

- (b) any of the warranties referred to in clause 7.4 being or becoming untrue; and/or
- (c) any claim by a third party as a result of the Client use of the Service.

10. Exclusions and limitations

- 10.1 Nothing in this Agreement limits or excludes either party's liability for any other liability which may not lawfully be excluded or limited. For the avoidance of doubt, the liability provisions in the Special Conditions shall prevail to the extent of any inconsistency with this clause 10.
- 10.2 Subject to clause 10.1, MLS shall not be liable (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) for any: (a) loss of profit; (b) loss of sales, turnover, revenue or business; (c) loss of customers, contracts or opportunity; (d) loss of or damage to reputation or goodwill; (e) loss of anticipated savings; (f) loss of any software; (g) inability to use hardware, software or data; (h) loss or waste of management or other staff time; or (i) indirect, consequential or special loss; arising out of or relating to this Agreement.
- 10.3 Subject to clause 10.1, MLS shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss, damage, expense or liability incurred or sustained as a result of:
- (a) the use of the Service except for its normal intended purpose;
 - (b) any adaptation of the Service, or integration or combination with any other equipment, software, product or material not supplied by MLS, in each case carried out by anyone other than the MLS or without MLS's express written consent;
 - (c) the compliance by MLS with any design, specification or instructions provided by the Client or on the Client behalf;
 - (d) any Client Content and/or Client Materials; or
 - (e) the continued use of a version or release of Software after MLS has made an alternative version or release of such Software available to the Client, to the extent that any claim would have been avoided by the use of such alternative version or release.
- 10.4 Subject to clauses 10.2 and 10.3, MLS's total liability arising out of or relating to this Agreement (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) is limited to the total of all amounts payable by the Client under this Agreement during such Contract Year.

11. Confidentiality

- 11.1 Subject to clause 11.2, each party must:
- (a) keep confidential all Confidential Information of the other party which it receives in connection with this Agreement;
 - (b) apply to it no lesser security measures and degree of care than those which it takes in protecting its own Confidential Information and in any event no less than that which

a reasonable person or business would take in protecting its own confidential information;

- (c) only use such Confidential Information as strictly necessary for the performance of, or exercise of its rights under, this Agreement;
- (d) not disclose such Confidential Information to any third party (other than its professional advisers, officers, employees, agents, contractors and sub-contractors on a 'need to know' basis as strictly required for the purposes of this Agreement and subject to each such person being bound by an obligation of confidentiality equivalent to this clause 11); and
- (e) promptly, upon request and, in any event, upon termination of this Agreement (for whatever reason), return to the other party all materials (in whatever form) incorporating, embodying or recording any such Confidential Information in its possession or control and, if requested by the other party, certify in writing that it has done so.

11.2 Either party may disclose the other's Confidential Information to the extent required by law or by any court, tribunal, regulator or other authority with competent jurisdiction to order its disclosure (but only to the extent of such requirement).

11.3 The Client acknowledges and agree that the Service and Software and the terms of this Agreement including, in particular, the pricing, constitute Confidential Information of MLS.

12. Force Majeure Event

12.1 If a party is unable, by reason of a Force Majeure Event, to perform any of its obligations under this agreement (other than an obligation to pay money):

- (a) those obligations will be suspended to the extent that, but only for so long as, that party is unable to perform those obligations due to the Force Majeure Event; and
- (b) neither party will be liable to the other party for any additional costs or expenses incurred in connection with that Force Majeure Event or as a result of the suspension of obligations under clause 12.1(a).

12.2 A party affected by a Force Majeure Event must:

- (a) promptly notify the other party; and
- (b) use reasonable efforts to mitigate and overcome the impact of the Force Majeure Event.

12.3 *If MLS's obligation to provide or procure the provision of the Service under this Agreement is suspended due to a Force Majeure Event, then:*

12.4 The Client will not be obliged to pay any fees in respect of the period of the suspension; and

12.5 if the suspension continues for longer than 60 days, then either party may by notice to the other party terminate this Agreement.

13. Term and termination

- 13.1 This Agreement shall commence on the Effective Date and shall, unless sooner terminated in accordance with its terms, continue the Initial Term and thereafter renew automatically for 3 months (unless and until terminated by either party giving the other not less than 60 days' written notice to that effect (such notice to expire at the end of the Initial Term or any subsequent Renewal Term only).
- 13.2 Either party may terminate this Agreement, at any time, by giving the other written notice if the other:
- (a) materially breaches any term of this Agreement and it is not possible to remedy that breach;
 - (b) materially breaches any term of this Agreement and it is possible to remedy that breach, but the other fails to do so within 30 days of being requested in writing to do so; or
 - (c) becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an order is made, or an effective resolution is passed, for its administration, receivership, liquidation, winding-up or other similar process, or has any distress, execution or other process levied or enforced against the whole or a substantial part of its assets (which is not discharged, paid out, withdrawn or removed within 28 days), or is subject to any proceedings which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so.

For the purposes of this clause 13.2, in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party into the same position which (save as to the date) it would have been in if the breach had never occurred.

- 13.3 Without prejudice to clause 13.1, MLS may, in addition, and without liability, terminate this Agreement, or alternatively, may suspend access to and use of any Product and/or the Service, by giving the Client written notice if:
- (a) any invoiced amount (not then-currently being disputed in good faith) is outstanding beyond the due date for payment and not remedied within 30 days of being requested in writing to do so;
 - (b) any provision of clause 3.5 is breached;
 - (c) the Client (or any Authorised User) does or permits to be done anything within its reasonable control (whether or not in connection with the Service) which in the opinion of MLS may adversely affect the reputation of MLS; and/or
 - (d) the Client is in persistent or repeated breach of any of the Client obligations under this Agreement (whether or not it is the same obligation that is breached and whether or not such breaches are remedied).

14. Consequences of termination

14.1 Upon termination of this Agreement for any reason:

- (a) the Client shall immediately cease to access, and discontinue all use of the Service;
- (b) all amounts payable to MLS by the Client become immediately due and owing. For the avoidance of doubt, no refund of fees paid in advance will be due in respect of any unexpired portion of the then-current Term; and
- (c) each Work Order will concurrently terminate.

14.2 The termination of this Agreement for any reason will not affect:

- (a) any accrued rights or liabilities which either party may have by the time termination takes effect; or
- (b) the coming into force or the continuation in force of any of its provisions that expressly or by implication are intended to come into force or continue in force on or after the termination.

15. GST

15.1 Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

15.2 If a party makes a supply to another party under, or in connection with, this Agreement, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST.

15.3 In addition to paying consideration for a supply (unless the consideration is exclusive of GST) the person making the payment must:

- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and
- (b) make that payment as and when the consideration must be paid or provided.

15.4 The person making a payment under this Agreement need not pay GST unless that person has received a tax invoice (or an adjustment note) for that supply.

16. General

16.1 **(Assignment)** The Client must not sub-license or assign, sub-contract or delegate any or all of the Client rights or obligations under this Agreement without the prior written consent of MLS. MLS is not restricted from sub-contracting or delegating any of its obligations under this Agreement. MLS may assign this Agreement to a third party with the prior consent of the Client, which must not be unreasonably denied or delayed.

16.2 **(Notices)**

- (a) A notice or other communication given under this Agreement must be in writing and:

- (i) hand delivered;
- (ii) sent by prepaid ordinary post; or
- (iii) sent by email,

to the party's address set out in this Agreement or such superseding address subsequently notified in writing to the other party. The notice or other communication must be given or made by a party, a party's solicitor or a director or secretary of a party which is a corporation.

(b) A notice or other communication is regarded as given if:

- (i) hand delivered:
 - (A) by 5.00pm on a Business Day, on the date of delivery to the party's address referred to in clause 16.2 (a);
 - (B) after 5.00pm on a Business Day, on the next Business Day following the day of delivery to the party's address referred to in clause 16.2 (a);
- (ii) mailed to an address in Australia, four (4) Business Days after posting; or
- (iii) sent by email, when the sender receives an automated message confirming delivery or four (4) hours after being sent unless the sender receives an automated message that the email has not been delivered, whichever is earlier.

16.3 **(Waiver)** Unless the parties expressly agree otherwise in writing, if a party:

- (a) fails to exercise or delays exercising or only exercises partially any right or remedy provided under this Agreement or by law; or
- (b) agrees not to exercise or to delay exercising any right or remedy provided under this Agreement or by law;

then that party will not be deemed to have waived and will not be precluded or restricted from further exercising that or any other right or remedy.

16.4 **(Severability)** If any provision of this Agreement is held for any reason to be ineffective or unenforceable, this will not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. If any provision of this Agreement is so found to be ineffective or unenforceable but would be effective or enforceable if some part of the provision were deleted, the provision in question will apply with such modification(s) as may be necessary to make it effective and enforceable.

16.5 **(Variations)** All variations to this Agreement must be agreed, set out in writing and signed on behalf of both parties before they take effect.

16.6 **(Relationship of the parties)** Except to the extent that this Agreement expressly provides otherwise, nothing in this Agreement shall or is intended to create a partnership or joint venture between the parties, constitute one party as agent of the other or give either party

authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party. Neither party may act as if it were, or represent (expressly or by implying it) that it is, an agent of the other or has such authority.

16.7 **(Entire Agreement)** This Agreement sets out all of the terms that have been agreed between the parties in relation to the subjects covered by it, and supersedes all previous agreements between the parties relating to such subjects. Each party acknowledges that it has not been influenced to enter this Agreement by, and has no rights or remedies (other than for breach of contract) in respect of, anything the other party has said or done or committed to do, except as expressly recorded in this Agreement.

16.8 **(Governing Law)** This Agreement is governed by the laws of Victoria, Australia. Both parties submit to the exclusive jurisdiction of Victorian courts (and those courts entitled to hear appeals from Victorian courts) in relation to any dispute arising out of or in connection with this Agreement or its subject matter. MLS is also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce its Intellectual Property Rights.

17. **Data Transfer**

17.1 The Client agrees that all data transfers between the parties must be made in accordance with MLS's then current data transfer procedures, a copy of which is available upon request.