LOGICALIS
Architects of Change

Logicalis Australia
Terms and Conditions

Effective – 1 March 2021

Logicalis Australia Terms And Conditions

These terms and conditions are effective for transactions on or after 1 March 2021. Terms and conditions applicable to transactions prior to this date are available from Logicalis Australia on request.

1. Introduction

These terms and conditions apply to all Product and professional services supplied by Logicalis Australia Pty Ltd.

2. Definitions and Interpretation

2.1. In these terms and conditions unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Agreement" means the agreement for supply of Product, Services and/or Deliverables between Logicalis and the Customer consisting of (i) these Terms and Conditions; (ii) (ii) the SOW itself; (iii) other SOWs, where more than one (if any) incorporated or identified between the parties; and (iv) any other document that Logicalis and the Customer agree in writing forms part of the Agreement including any Credit Application.

"Assumption" means any assumption (by whatever name called) which Logicalis has made in calculating the Charges and which is stated in the SOW or elsewhere in the Agreement.

"Business Day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;

"Change" means any variation to all or part of the Statement of Work;

"Change Request" means a written request by a party for a Change and must include any additional information reasonably necessary to enable the other party to properly assess the request;

"Charges" or "Fees" or "Price" means the amounts payable by the Customer for the Product, Services and/or Deliverables as stated in the SOW, together with any other amounts which are payable by Customer to Logicalis under the Agreement.

"Claims" means all claims, demands, suits, actions and other proceedings of any kind, whether arising under contract (including under any warranty or indemnity), in equity, in restitution, in negligence or any other tort, under strict liability, under statute, or otherwise at all.

"Credit Application" means the written application by the Customer for a trading account with Logicalis in the form provided by Logicalis;

"Customer" means the person, firm, company, Government body or other entity who purchases Product, Services and/or Deliverables from Logicalis.

"Customer Obligation" means any obligation of the Customer stated in the SOW or elsewhere in the Agreement.

"Deliverables" means all materials created by Logicalis specifically for the Customer, including, without limitation, data, diagrams, reports and specifications.

"Exclusion" means any item identified in the SOW or elsewhere in the Agreement as (i) not available from Logicalis; or (ii) available from Logicalis for an additional Charge under clause 5.5.

"Fixed Term Services" means Services which are purchased for a fixed term.

"GST" means any goods and services tax imposed by A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended, renamed or replaced from time to time.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Hardware" means any equipment specified in the SOW to be provided by Logicalis to the Customer.

"Law" means principles of law or equity established by decisions of courts, statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law;

"Logicalis Property" means all property (including the Services) in which LA has an interest under this Agreement or a Security Interest for the purposes of the PPS Law;

"Logicalis" (or Logicalis Australia) means Logicalis Australia Pty Ltd (ACN: 091 623 326), an Australian corporation and member of the Logicalis Group with registered office at 79 Swan St, Richmond, Victoria Australia 3121.

"Logicalis Group" means Logicalis Australia Pty Ltd and all related bodies corporate as defined in section 9 of the Corporations Act 2001 .

"Maintenance" means maintenance services described in a quotation for Product or a SOW which shall include (a) Manufacturer's Maintenance Services and (b) that maintenance forming part of the Support Services.

"Manufacturer" means the manufacturer of the Product.

"Manufacturer's Maintenance Services" means any maintenance services which, although ordered from Logicalis, are purchased from and supplied by the Manufacturer in respect of Product.

"Manufacturer's Terms" means the Manufacturer's standard warranty, Software licensing and/or service terms applicable to the Product and/or Manufacturer's Maintenance Services, as may be packaged with the Product, set out on the Manufacturer's website, or otherwise provided by the Manufacturer.

"Personal Information" means any information or opinion about a natural person (whether or not true), as defined in the Privacy Act, which either Party deals with in connection with performing its obligations under the Agreement;

"PPSA" means the *Personal Property Securities Act 2009 (Cth)*;

"PPS Law" means the PPSA and any amendment made at any time to any other Law as a consequence of the PPSA;

"Pre-existing Materials" means materials which existed before the commencement of the Services.

"Pre-paid Services", means Fixed Term Services which are payable in advance for the full term of the Service.

"Premises" or "Site" means the premises to which the Product is to be delivered and/or at which Services are to be performed, as specified in the SOW.

"Privacy Laws" means any legislation or administrative requirement (as amended from time to time) imposing an obligation in relation to the collection, use, disclosure, storage and transmission of personal information (including health information) which is applicable to a party in the performance of its obligations under this document, including without limitation any codes, principles or guidelines contained in or arising out of such legislation and includes the Privacy Act (including the National Privacy Principles or Australian Privacy Principles under the Privacy Act), and any other privacy or general legislation which binds the Parties and which relates to the protection of Personal Information as amended from time to time;
"Privacy Act" means the *Privacy Act 1988 (Cth)* as amended from time to time;

"Product" means any Hardware and/or Software (including any associated Maintenance) that Logicalis is to supply to the Customer in accordance with this Agreement.

"Security Interest" has the meaning given to that term in section 12 of the PPSA; and

"Sensitive Information" means 'Sensitive Information' as defined in the Privacy Act;

"Services" means the information technology consultancy services, management consultancy services, and other services provided by Logicalis to the Customer and includes any Support Services specified in the Statement of Work provided to the Customer in accordance with the Agreement

"Service Level" means a measure of the standard or quality to which a service is performed, including:

a)   the time taken to initiate or complete performance of the service;

b)   the accuracy, quality and completeness of the results of performing a service;

c)   the time taken for an end-user to process a transaction using any computer hardware or computer software which is the subject of the service; and

d)   the availability, reliability or functionality of computer hardware or computer software resulting from the performance of the service.

"Service Level Agreement" or "SLA" means the document or documents contained in a SOW or SOW which define the Service Levels in accordance with which the Services must be performed.

"Software" means any operating system or other software, including Third Party Software, installed on the Product or otherwise supplied by Logicalis and/or specified in the Statement of Work.

"Statement of Work" or "SOW" means a written statement (including any attachments) for the provision of Services and/or Product entitled Statement of Work or 'Product quotation' or similar as between Logicalis and the Customer;

"Support Services" means the maintenance and support services specified in the Statement of Work

"Termination Charges" or "Cancellation Charges" means:

a)   the full Charges for all delivered Product, Services and/or Deliverables;

b)   the full Charges for undelivered Product & Manufacturer's Maintenance Service orders which cannot be cancelled with the Manufacturer;

c)   the cancellation charges for undelivered Product & Manufacturer's Maintenance Service orders which can be cancelled with the Manufacturer;

d) the full Charges, for the full term, of Fixed Term Services;

e) an administration fee of $500.00;

f) any other termination or cancellation fees set out in the SOW or the Agreement; and

g) all other costs, losses and expenses reasonably incurred by Logicalis as a consequence of such termination including Unavoidable Costs.

"Third Party Software" means Software that is not proprietary to Logicalis and which is installed on the Product or otherwise supplied by Logicalis.

"Transaction" means any transaction contemplated by or in connection with this Agreement.

"Unavoidable Costs" means.

a) any costs incurred by Logicalis, in connection with the performance of its obligations under this Agreement or any agreement with any third party in connection with this Agreement which cannot be cancelled, refunded or re-allocated to Logicalis' other operations or business activities;

b) the costs of any redeployment or termination of employment of Logicalis' personnel engaged for the purposes of providing the Services; and

c) the costs identified by Logicalis for any capital purchases made in connection with the Services.

2.2. In this Agreement unless the context otherwise requires:

a) the singular includes the plural and vice versa;

b) the headings are used for convenience only and do not affect the interpretation of this Agreement;

c) other grammatical forms of defined words or expressions have corresponding meanings;

d) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

e) the word "month" means calendar month and the word "year" means 12 months;

f) the words "in writing" include any form of communication capable of being read by the recipient;

g) a reference to a thing includes a part of that thing;

h) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

i) wherever "include" or any form of that word is used, it must be construed as if it were followed by
"(without being limited to)"; and

j) money amounts are stated in Australian currency unless otherwise specified.

3. Statements of Work

3.1. All SOWs are valid for thirty (30) days from date of the SOW, unless otherwise stated in the SOW. All SOWs are subject to these Terms and Conditions.

3.2. Logicalis may, but is not obliged to, incorporate or identify in the SOW, a statement containing details of the Product, Services and/or Deliverables and any applicable Exclusions, activities, outputs and Assumptions.

3.3. Logicalis may at any time before both parties have signed the SOW, withdraw and amend it to reflect any increase in the cost to Logicalis of any Product, Services and/or Deliverables which form part of the SOW.

4. Conditions

4.1. **Exclusion**: These terms and conditions shall apply to the exclusion of any standard terms or conditions of the Customer, whether appearing in an order or in any other document, or published on any media issued by the Customer and notwithstanding any statement to the contrary appearing in such standard terms or conditions.

4.2. **Priority:** In the case of any conflict or inconsistency between the documents forming the Agreement, then the documents will take priority in the following order-(i) these Terms and Conditions; (ii) the SOW; (iii) the Credit Application (where applicable); and (iv) any other documents that Logicalis and the Customer agree in writing forms part of the Agreement.

5. Formation, variation of Agreement and warranties

5.1. Term

The Agreement is made on the date that (i) both parties sign, or confirm acceptance in writing of, the SOW; or (ii) Logicalis delivers the Product or supplies the Services to the Customer; (whichever occurs earlier) and will continue for the initial period stated in the SOW and until all Services specified in the SOW have been provided to the Customer ("Initial Term") unless earlier terminated in accordance with the Agreement. If the SOW provides for renewal terms then upon expiry of the
Initial Term, the Agreement will automatically continue for successive renewal terms identified in the SOW ("Renewal Terms") unless terminated by either party notifying the other in writing not less than 90 days before expiry of the then current Term. Any term of the Agreement, whether the Initial Term or a Renewal Term, is referred to as the "Term".

5.2. Services

(a) Logicalis will deliver and, where applicable, install or provide the Product and/or Services on the dates and in the manner specified in a Product order or SOW as applicable; and.

(b) Logicalis is not responsible for any failure to perform any of its obligations under this Agreement where such failure is caused or materially contributed to by the Customer or any third party.

5.3. Warranties

5.3.1. General

a) Logicalis warrants that it has full power and authority to enter into and perform its obligations under the Agreement and that it will comply with all laws and

regulations which are applicable to Logicalis in the performance of its obligations under the Agreement.

b) Any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

c) Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Customer by the Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other applicable Law that cannot be excluded, restricted or modified by agreement.

d) To the fullest extent permitted by law, the liability of Logicalis for a breach of a non-excludable condition or warranty referred to in clause 5.3 (c) is limited, at Logicalis' option, to:

    i) in the case of Product, any one or more of the following:

        a) the replacement of the Product or the supply of equivalent Product;

        b) the repair of the Product;

        c) the payment of the cost of replacing the Product or of acquiring equivalent Product; or

        d) the payment of the cost of having the Product repaired; or

    ii) in the case of Services (subject to clause 5.3.3 below):

        a) the supplying of the Services again; or

        b) the payment of the cost of having the Services supplied again.

5.3.2. Product Warranty

a) Logicalis is not the manufacturer of the Product and does not provide any warranty in relation to the Product. All Product is supplied subject to the Manufacturer's Terms. Wherever possible Logicalis will pass to the Customer any warranty provision provided by the Manufacturer of the Product.

b) Any licence for third party Software will be between the Customer and the Manufacturer and the Customer will comply with the Manufacturer's terms.

c) For the removal of doubt, Manufacturer's Maintenance Services are provided subject to the Manufacturer's Terms. Logicalis gives no warranties in relation to Manufacturer's Maintenance Services.

5.3.3. Service Warranty

a) Warranty Period: The warranties in this clause apply for the period starting at the time the Services specified in the SOW begin to be supplied and ending 30 days following completion of the Service, or its acceptance, if acceptance is specified in the SOW ("Warranty Period"). Logicalis warrants for the Warranty Period that:

(i) it will provide Services which comply in all material respects with the SOW and the Agreement, with due care and skill and in a professional manner and in accordance with general industry standards and practices;

(ii) it will obtain and maintain all licences, permits and other consents required for its performance of the Services; and

(iii) it will comply with all laws and regulations which are applicable to Logicalis in the performance of the Services.

b) Rectification of Service defects: Logcalis will rectify at no charge, any failure to comply with a warranty in this clause ('Warranty Failure") which is notified by the Customer within the Warranty Period. If the warranty notification:

(i) is not due to a Warranty Failure; or

(ii) is made outside the Warranty Period; or (a) is a Service

Exclusion or a Customer Obligation;

then Logicalis will be entitled to Charge the Customer its then standard commercial charges for responding to the warranty notification.

5.4. Risk and Title in Product

a) **Risk:** Risk in the Product shall pass to the Customer when the Product has been delivered to the Premises.

b) **Title:** Ownership of the Product shall pass to the Customer when Logicalis has received payment in full for the Product, and until such time payment has been received the Customer shall hold the Product on a fiduciary basis as Logicalis' bailee and permit Logicalis to enter any premises on which the Product is stored; to inspect, and where Customer is in material breach or this agreement is terminated for insolvency, recover and remove the Product.

5.5. Customer Obligations:

The Customer undertakes to:

a) do all things reasonably necessary to enable Logicalis to perform its obligations under this Agreement including performing any works, providing any Product or connecting any services as reasonably required by Logicalis from time to time;

b) provide Logicalis with all reasonable assistance and co-operation in the performance of this Agreement required by Logicalis including providing Logicalis with;

i) access to the Site as and when reasonably required by Logicalis;

ii) access to relevant Customer individuals, directors, officers, employees, agents, consultants, subcontractors, specialists and other personnel; and

iii) all information and documentation as reasonably requested by, or as otherwise necessary for,
Logicalis,

for the purposes of performing its obligations under this Agreement;

c) appoint and maintain sufficient numbers of appropriately qualified personnel immediately aforementioned to liaise with Logicalis in relation to the performance of this Agreement; and

d) negotiate in good faith and not unreasonably delay performance of its obligations, including consents, under this Agreement.

5.6. Contract Changes:

Either party may at any time request a Change to the Statement of Work as follows:

a) At any time during the term of the Agreement, Customer or Logicalis may request any reasonable alteration to a SOW via a Change Request.

b) Any Change Request shall be in writing and served on the other party in accordance with clause 13 (Notices).

c) For each Change Request, Logicalis will, within a reasonable period, provide Customer with written details of the effect the Change Request will have on the Agreement, including (i) the provision of the Product, Services and/or Deliverables; and (ii) the Charges.

d) If agreement is reached between the parties on the Change Request, then the parties shall prepare and sign a written record of the alteration to the SOW (a "Contract Change").

e) No proposed Change Request will be binding on the parties unless a Contract Change is signed by both parties. Until a Contract Change is signed by the Customer and Logicalis, each party shall continue to perform its obligations under the Agreement without taking account of the proposed Change Request.

f) Once a Contract Change has been signed by both parties, such Contract Change shall constitute an amendment to the SOW in accordance with the content thereof with effect from the date of signature.

g) The costs of preparing a Change Request initiated by Logicalis will be borne by Logicalis. The cost of responding to a Change Request initiated by Customer shall be (i) borne by Logicalis if a Contract Change is agreed which produces increased revenue for Logicalis; and (ii) otherwise will be charged by Logicalis to Customer using the rates specified in the SOW, or if no rates are specified, then using Logicalis' then current standard commercial charges.

6. Charges

6.1. Charges

Logicalis shall charge and the Customer shall pay the Charges set out in the SOW in AUD$, without deduction, set off or counterclaim.

6.2. Additional Charges

a) Unless specifically excluded in the SOW, Logicalis may make an additional Charge at its then current standard commercial charges for:

(i) all Product and Service related taxes, duties and imposts, and all Product related delivery costs and installation charges;

(ii)   any increase in costs to Logicalis resulting from Force Majeure, changes in laws, changes in exchange rates, changes in the prices and fees charged by its suppliers and/or changes, errors or omissions in Customer's instructions, data or requirements;

(iii)   any Assumptions proving to be incorrect;

(iv)   any delays caused by Customer, or Customer's failure to fulfil any Customer Obligations;

(v)   any Contract Change agreed under clause 5.6;

(vi)   Service related travel and accommodation expenses specified in a SOW; and

(vii)   any other amounts which Logicalis is entitled to receive from the Customer under the Agreement.

b)   Where an expenses policy is included or referred to in the SOW, then expenses will be charged by Logicalis as set out in that policy.

c)   Customer will pay a cancellation fee to Logicalis in the event that Customer cancels or rearranges the work schedule without giving at least three (3) Business Days written notice prior to the day on which work was due to commence (the "Commencement Date"). The cancellation fee shall be 100% of the Charges of the days cancelled, plus any expenses incurred.

6.3. Invoicing and Payment

Unless otherwise stated in a SOW, or in the Agreement: (a) all invoices must be paid by the Customer within 30 days after the date of Logicalis' valid tax invoice for the same; and (b) Logicalis will be entitled to invoice the Customer as follows:

(i)   Charges for Product will be invoiced on delivery of the Product to the Premises;

(ii)   Charges for other Pre-paid Services, including Maintenance service renewals, will be invoiced, in advance, on the commencement date of the Service, or the commencement date of the Service renewal, as the case may be;

(iii)   Charges for all other Services, Deliverables and any other amounts due under the Agreement will be invoiced as specified in a Statement of Work; and

(iv)   All Manufacturer's Maintenance Services are payable in advance, for the full term, within thirty (30) days after the date of Logicalis' invoice.

6.4. Calculation of Charges

If the means of calculating the Charges is not specifically stated in the SOW, then the Charges will be calculated using Logicalis' then current standard commercial charges.

6.5. Revision of Charges

Except where the SOW specifies that a Charge is fixed, the Charges may be revised by Logicalis from time to time, consistent with Logicalis' then current standard commercial charges. Charges for Prepaid Services will not be revised during the pre-paid term, but will be revised to Logicalis' then current standard commercial charges on renewal of the pre-paid term.

6.6. Acceptance

The Customer's obligation to pay the Charges is not dependent on the Product, Services, and/or Deliverables meeting any acceptance criteria, unless stated in the SOW.

6.7. Failure to pay

If any amount payable to Logicalis under a Statement of Work remains unpaid by the Customer for more than 30 days after the Customer receives written notice from Logicalis that the amount is overdue, Logicalis may:

a) suspend its obligations to provide Product, Services and/or Deliverables and recover any
Product storage costs incurred;

b) require payment in advance of delivery of Product, Services and/or Deliverables;

c) charge interest on overdue amounts at the Commonwealth Bank of Australia's Published
Base Rate plus four (4%) percent per annum;

d) recover all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by Logicalis in recovering sums due;

e) enter the Site to remove the Services and/or Product (where applicable); and/or

f) terminate this Agreement.

6.8. Other Rights Not Affected

The exercise by Logicalis of any of its rights under clause 6.7 does not affect:

a) the Customer's obligation to pay any money due and payable; or

b) any other rights or remedies Logicalis may have in relation to any failure by the Customer to pay an amount due,

under this Agreement or any other agreement between Logicalis and the Customer.

6.9. GST

a) In this clause 6.9:

(i) the expressions **Consideration**, **GST**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**); and

(ii) Supplier means any party treated by the GST Act as making a Supply under this Agreement.

b) Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

c) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.

d) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

e) If this Agreement requires a party (the "First Party") to pay for, reimburse, set off or contribute to any expense, loss or outgoing (Reimbursable Expense) suffered or

incurred by the other party (the "Other Party"), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

(i) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and

(ii) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

7. Liability and dispute resolution

7.1. Death or bodily injury, IP infringement and Personal Information

Neither party excludes or limits liability to the other party for (i) death or bodily injury due to its negligence; or (ii) infringement of Intellectual Property Rights or moral rights; or (iii) any other liability which may not be excluded by law.

7.2. Limitation of liability for claims

Subject to clause 7.1, clause 7.3 and clause 7.7, the total liability of Logicalis for all Claims, loss and damage arising out of, or in connection with a SOW, will not exceed:

a) An amount equivalent to the total Charges paid and payable under that Statement of Work; or

b) Notwithstanding 7.2(a) above, where a Statement of Work prescribes specific Service Level terms and for Logicalis to provide rebates for failure to meet such Service Levels the rebates will be the Customer's sole and exclusive remedy and Logicalis' sole and exclusive liability with respect to Logicalis' failure to meet the Service Levels and such failure will not be deemed to be a breach of this Agreement.

7.3. Exclusion of losses and damages:

Subject to clause 7.1, Logicalis will not be liable for any loss which does not arise naturally, according to the usual course of things, from the default, act, omission or event which creates (or would otherwise create) the liability whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time of entering this Agreement, as the probable result of the relevant breach, and such loss shall include:

a) any loss of profits, revenues, business, goodwill, opportunity, anticipated savings, or data; or

b) any exemplary, punitive or special damages; or

c) any indirect, consequential or economic losses, (including down time costs and failure or loss of or inability to use Product or software or loss of data); or

d) any loss or damage specifically excluded in the SOW,

howsoever arising (in negligence or otherwise), in relation to any Claim, or otherwise in connection with the Product, the Services, the Deliverables, the SOW or the Agreement, or any act or omission by Logicalis irrespective of whether such loss and/or damage was foreseeable.

7.4. If for any reason the exclusion of liability in clause 7.3 above is void or unenforceable, then Logicalis' total liability for all loss or damage under the Agreement shall be as provided in clause 7.2.

7.5. Time limitation

No Claim may be brought under the Agreement more than two years after the circumstances giving rise to the Claim have come, or with reasonable diligence should have come, to the notice of the party bringing the Claim.

7.6. Proportionate Reduction in Liability

The liability of a party for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under this Agreement or a Statement of Work and/or to the extent that the negligence of the other party has contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or for negligence.

7.7. Customer's business and operations

The parties agree that Logicalis will not be exposed to the business and operational risks associated with Customer's business and operations. Customer therefore agrees that (i) any use of the Product, Services and/or Deliverables in the conduct of the Customer's business and operations will be entirely at its own risk, and (ii) it will indemnify, defend and hold harmless Logicalis, from and against any third party claim, suit, action or proceeding arising out of the use or attempted use by the Customer of the Product, Services and/or Deliverables in the conduct of the Customer's business and operations and such indemnity shall extend to include any failure by the Customer to obtain consent necessary for Logicalis to provide the Services), except for a third party claim for which Logicalis is liable under clause 10 (Intellectual Property Rights indemnity). In addition to the immediately aforementioned indemnity, where Logicalis accepts the Customer's Credit Application the Customer indemnifies Logicalis on the terms of the indemnity contained in clause 4.5 of the Credit Application.

Logicalis does not warrant uninterrupted or error free operation of any Product, Service or Deliverable.

7.8. Dispute resolution:

Save where expressly stipulated to the contrary in the Agreement, all and any disputes or differences arising out of or in connection with the Agreement (including any question as to its validity or termination) (the 'Dispute') shall be resolved in accordance with the provisions of this clause 7.8 and, for the removal of doubt, a party may not commence any legal proceedings relating to the dispute unless it has complied with the provisions of this clause except to seek urgent equitable or interlocutory relief. The procedures in this clause must be completed within 40 Business Days from the giving of notice referred to in this clause. After expiry of this time a party may commence legal proceedings relating to the dispute.

a) Either party may serve a notice of dispute upon the other party. All disputes notified under the Agreement will be escalated to each party's Chief Executive (or a delegate specifically authorised by the Chief Executive) for resolution by negotiation.

b) If the dispute is not resolved by negotiation within 14 days, then it will be referred for non binding mediation conducted in accordance with mediation process of the

Australian Commercial Disputes Centre. The parties may be legally represented and will share equally the cost of the mediation.

c) Subject to paragraph (d) following, all disputes which are not resolved by mediation will be referred to arbitration conducted in accordance with the Rules for the Conduct of
Commercial Arbitrations, of the Institute of Arbitrators and Mediators Australia. The parties may be legally represented and the arbitrator will determine an appropriate allocation of costs.

d) All disputes for more than $1,000,000 or which require urgent injunctive relief may be referred by either party directly to the Court for determination.

e) In the event of a dispute, Logicalis will only be obliged to continue to provide the Product, Services and/or Deliverables if the Customer pays and continues to pay (i) any undisputed amount to Logicalis without deduction; and (ii) any disputed amount into an escrow account administered by the auditors of each party, pending the outcome of dispute resolution as outlined above.

8. Termination

8.1. Termination for breach

Either party may terminate the Agreement forthwith by notice in writing to the other party where the other party has committed a material breach and (i) such breach is not capable of remedy, or (ii) such breach is capable of remedy within 20 days and the other party has failed to remedy such breach within twenty (20) days of receiving notice specifying the breach and requiring its remedy; or
(iii) such breach is not capable of remedy within 20 days and the other party has failed to commence and diligently progress the remedy of such breach within twenty (20) days of receiving notice specifying the breach and requiring its remedy.

8.2. Termination for insolvency

Either party may terminate the Agreement forthwith by notice in writing to the other party if the other party is unable to pay its debts as they fall due, or is the subject of any action, application or proceeding for the appointment of (i) a receiver, or receiver and manager, of its property; (ii) an administrator, including an administrator of a deed of company arrangement; (iii) a liquidator; or (iv) a trustee or similar officer, in respect of that party's affairs.

8.3. Termination Charges

Without prejudice to any rights or remedies arising as a result of such termination, if Logicalis terminates the Agreement under clause 8.1 or 8.2 or if the Customer terminates the Agreement under clause
14.3 (Force Majeure) then Customer will be liable for payment of the Termination Charges.

8.4. Termination for Convenience and associated Charges

Unless otherwise provided in the SOW, the Agreement may not be terminated for convenience and the supply of any Product, Services and/or Deliverables may not be cancelled by the Customer, except with the agreement in writing of Logicalis and payment by the Customer of the Termination Charges. The Customer acknowledges that termination or cancellation of Fixed Term Services will require payment of the full Charges for the full term. Charges for Pre-paid Services, are not refundable.

8.5. Return of property

On the termination of the Agreement each party shall return to the other party any Product, documents or other materials (including Confidential Information) belonging to the other party which it has no legal right to retain. To the extent that Confidential Information of the other party has been incorporated into a party's own material and cannot be separated and returned, then that party must destroy that Confidential Information and certify destruction to the other party.

8.6. Survival

Except for Clauses which are expressed to, or which by their nature, survive the termination or expiration of the Agreement, including, without limitation, clauses 5.4, 6 to 13 inclusive and clauses 15 to 19 inclusive, the termination of the Agreement shall relieve both parties from further performance of their respective obligations hereunder but shall not affect the accrued rights of either party in respect of the Agreement or any breach.

8.7. Termination not to affect other Statements of Work

Termination of this Agreement or a Statement of Work (where there are more than one Statement of Work under this Agreement) will not affect any other Agreements or Statements of Work which are in effect between Logicalis and the Customer at the time of the termination and such other Statements of Work will continue in accordance with their respective terms.

8.8. Customer Rights on Termination

Subject to the Customer complying with its obligations in clauses 8.3 and 8.4, (a) the Customer shall be entitled to retain and use that part of the Services provided by Logicalis and paid for in full by the Customer on or before the date of termination; and (b) the Customer must immediately cease using and return to Logicalis any part of the Services that is not paid for by the Customer, at the Customer's cost.

8.9. No Cancellation of Maintenance

Notwithstanding this clause 8, the supply of Manufacturer's Maintenance Services may not be cancelled or terminated by the Customer.

9. Intellectual Property Rights

9.1. Retention of rights

Each party retains all Intellectual Property Rights in its own Pre-existing Materials, software, development tools, know how, methodologies, processes, technologies and algorithms used or disclosed pursuant to the Agreement. The parties acknowledge that the Manufacturer retains all Intellectual Property Rights in the Product (including Third Party Software).

9.2. Ownership of rights

Except where stated otherwise in the SOW, all Intellectual Property Rights in the Deliverables and the Services shall be owned by Logicalis. To the extent that any Intellectual Property Rights in the Deliverables and the Services do not automatically vest in Logicalis, the Customer immediately assigns to
Logicalis absolutely and beneficially the whole of its rights, title and interest in and to those Intellectual Property Rights, whether presently existing or which arise at a date

after the date of this Agreement, with effect from the date the Statement of Work is signed by the Customer. Logicalis hereby licenses such rights to the Customer free of charge and on a perpetual, non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable internal use of the Deliverables and the Services as described in the SOW.

9.3. Third Party Software:

(a) The Customer acknowledges that the licences for all Third Party Software will be between the Customer and the Manufacturer and the Customer must comply with the Manufacturer's Terms.

(b) Logicalis may provide the Customer with Software licensed by a third party ("Third Party Material") the Customer acknowledges that its use of the Third Party Material will be subject to the third party licensor's licence agreement.

9.4. Pre-existing Materials

To the extent that the Customer's license to use the Deliverables and the Services in clause 9.2 is dependent upon use of Pre-existing Materials, then the license in clause 9.2 will include such Pre-existing Materials, provided that Logicalis is the owner of the same. The Customer's use of rights in Pre-existing Materials (other than Third Party Software) owned by third parties is conditional on Logicalis obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors to such extent as is necessary to enable the Customer to make reasonable internal use of the Deliverables and the Services as described in the SOW.

9.5. Infringement

Customer agrees not to directly or indirectly infringe the Intellectual Property Rights of the Manufacturer, or Logicalis, or its suppliers and to ensure that such rights are not infringed by its employees or contractors.

9.6. Confidentiality

Any Confidential Information which a party ('Disclosing Party') supplies or discloses to, or which is otherwise obtained by, the other party ('Receiving Party') in connection with the Agreement shall be treated as confidential by the Receiving Party, using the same standard of care that it uses to protect its own Confidential Information of like importance, but in any event not less than reasonable care.

The Confidential Information (i) shall not be disclosed by the Receiving Party to any third party without the Disclosing Party's prior written consent; and (ii) shall not be used by the Receiving Party and its employees, agents and contractors except as necessary to perform its obligations and exercise its rights under the Agreement. The Receiving Party shall have an appropriate agreement with each of its employees, agents and contractors having access to Confidential Information, with terms no less restrictive than the terms of this clause 9.6.

In the Agreement, "Confidential Information" means:

a) the terms of the Agreement, including information submitted or disclosed by either party during negotiations, discussions and meetings relating to the Agreement;

b) information that at the time of disclosure by a Disclosing Party is identified to the Receiving
Party as being confidential; and

c) all other information belonging or relating to a Disclosing Party, which the Receiving Party knows, or ought reasonably to be expected to know, is confidential to that Disclosing Party or any related entity of that Disclosing Party;

Information shall not be considered to be Confidential Information if it (1) is already or otherwise becomes publicly known through no wrongful act of the Receiving Party; or (2) is compelled to be disclosed by law.

9.7. Privacy

Each party must take such steps as are reasonable in the circumstances to implement practices, procedures and systems that will ensure that it complies with Australian Privacy laws in relation to any personal information disclosed by either party to the other. In particular, without limiting the foregoing, the Receiving Party must-

a) not collect, disclose, store, transfer or handle the information except in accordance with
Australian Privacy laws;

b) take all reasonable steps to ensure that the information is protected from misuse, interference, or loss, and from unauthorised access, modification or disclosure;

c) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of the Agreement;

d) co-operate with any reasonable request or direction the Disclosing Party makes which relates to the protection of the information or the exercise of the functions of the Privacy
Commissioner under Australian Privacy laws;

e) ensure that access to the information is limited to those of the Recipient's personnel who are required to access that information for the purposes of the Agreement; and

f) comply with any reasonable direction of the Disclosing Party in relation to a complaint concerning privacy received by either party which shall include any mandatory reporting requirements imposed on the parties by law and both parties shall take all reasonable steps and do all reasonable things to ensure such mandatory reporting requirements are met.

9.8. Protection of Customer's data:

a) Customer's data will remain at all times Customer's property. Logicalis is authorised to access and use Customer's data solely for the provision of the Services.

b) To the extent permitted by law, Logicalis will observe any data safeguards and storage requirements detailed in the SOW. Customer acknowledges that the data safeguards detailed in the SOW provide adequate protection for its business and that any additional or enhanced safeguards must be processed as a Contract Change under clause 5.6 save that each party shall independently comply with any mandatory reporting requirements imposed on each party by law, but only to that extent, and each party shall take reasonable steps and do all reasonable things to ensure such mandatory reporting requirements and notifications are met as required by law.

c) On termination of the Agreement for any reason, or when Customer's data is no longer required, and subject to payment in full of all Charges then due, Logicalis will destroy Customer's data or return Customer's data to Customer in accordance with any transition plan agreed between the parties or otherwise specified in a Statement of Work.

10. Intellectual Property Rights Indemnity

10.1. Indemnity

Each party agrees to indemnify the other party from and against any third party claim, suit, action or proceeding (collectively called "Action") brought against the other party to the extent that such Action is based on a claim that any product, material, or service provided by the indemnifying party under the Agreement (other than third party Product and Third Party Software) infringes the third party's Intellectual Property Rights (an "Infringing Item"), provided that:

a) The indemnified party fully co-operates with the indemnifying party in defending or settling the Action, does not at any time admit liability and makes its employees available to give such statements, advice, information and evidence as the indemnifying party may reasonably request;

b) The indemnifying party is notified promptly in writing of any Action by the indemnified party and is given the sole control of and authority for the conduct of any Action and all negotiations for its settlement, compromise or resolution.

10.2. Product

Logicalis does not provide whatsoever any indemnity in respect of infringement of Intellectual Property Rights by Product (including Third Party Software). Logicalis shall pass to the Customer so far as it is permitted by the Manufacturer to do so, any warranty provision applicable to the Product which is provided by the Manufacturer of the Product, but otherwise excludes liability for infringement of Intellectual Property Rights by Product.

10.3. Exclusion

Neither party shall have any liability to indemnify the other against any Action to the extent that such Action is caused or contributed to by:

a) any use by or on behalf of the indemnified party, of the Infringing Item in combination with products, materials, or services not supplied or approved by the indemnifying party in writing; or

b) Any modification carried out by or on behalf of the indemnified party to the Infringing

Item without the written approval of the indemnifying party; or

c) the indemnified party's unreasonable refusal to use modified products, materials, or services provided pursuant to Clause 10.4; or

d) any infringement or alleged infringement of any Intellectual Property Right arising only by reason of the indemnifying party's compliance with the express written instructions of the indemnified party.

10.4. Remedies

In the event of an Action, the indemnifying party may at its own expense:

a) Procure the right for the indemnified party to continue to use the Infringing Item; or

b) Make such alterations modifications or adjustments to the Infringing Item that it becomes non-infringing without materially reducing performance or function; or

c) Replace the Infringing Item with non-infringing substitutes which are substantially their equal in performance and function; or

d) If none of the above is practicable refund the price of the Infringing Item.

11. Publicity

11.1. Customer agrees that Logicalis may use the name of the Customer and details of Product, Services and/or Deliverables supplied by Logicalis to the Customer for marketing purposes including: using the Customer's name on lists of Logicalis' customers; announcing new Orders placed by or contracts awarded by the Customer and the preparation and publication of case studies both on Logicalis' web site and in printed format.

11.2. Save in respect of trademarks owned by the Customer or any third parties, Intellectual Property Rights in any documents, pictures, charts or other visual or audible material (whether in physical or electronic form) created by Logicalis for marketing purposes will vest in Logicalis.

11.3. Customer may withdraw its consent to the use of its name by Logicalis for marketing purposes by sending written notice to Logicalis. Such withdrawal of consent will not apply to material published by Logicalis before the notice of withdrawal of consent is received.

11.4. A party ('Disclosing Party") will not make or authorise any public announcement, advertisement or disclosure concerning the other party which the Disclosing Party knows, or ought reasonably to be expected to know, is detrimental to the other party or any related entity of the other party. This clause will not apply to information which is compelled to be disclosed by law.

12. Contract Management and Personnel

12.1. Personnel

a) Where individuals are named in the SOW, Logicalis will use reasonable commercial endeavours to ensure that those personnel are of good character, properly qualified and made available to perform the Services.

b) Logicalis may replace any personnel who are temporarily or permanently unable to perform the Services due to ill health, holidays, termination of employment or leave of absence.

c) Logicalis will consult with the Customer and if appropriate replace an employee or contractor if the Customer determines on reasonable grounds

that the employee or contractor is a security risk or is not acting in a professional manner.

d) The Logicalis personnel performing the Services will be and remain either employees or contractors of Logicalis and Customer will not be liable for salary, health, accident or workers' compensation benefits of such personnel, or for deduction of any personal taxes or superannuation contributions in respect of such personnel.

12.2. Solicitation

Each party will not, without the prior written consent of the other party, at any time during the Term and for twelve months thereafter (i) solicit or encourage any employee of the other party who is or was directly involved in performing the Agreement, to leave the employ of the other party; or (ii) solicit or encourage any consultant or other contractor under contract with the other party who is or was directly involved in performing the Agreement, to cease work for the other party. In the event that a party breaches this clause, it will pay to the other party as liquidated damages an amount equal to the last 12 months remuneration paid by the other party to that employee, consultant, contractor or subcontractor.

13. Notices

13.1. Any notice given in connection with the Agreement must be in writing and must be delivered by hand at or sent by facsimile or pre-paid registered or recorded delivery post addressed to a party at the party's registered office or principal place of business for the time being or at such other address as may be notified for the purpose of the service of notices. A notice is deemed to have been given on the date on which it is delivered by hand, or in the case of a notice being sent by facsimile is deemed to have been given at the time of dispatch and in the case of a notice being sent by post, it is deemed to have been given two Business days after the date of posting provided that in each case a notice received outside of normal business hours or on a day which is not a Business day shall be deemed to have been received at the start of normal business hours on the next Business day. A notice (other than a notice under clause 8 (Termination)) may also be given by email, provided that receipt is acknowledged by the recipient.

14. Force Majeure

14.1. Neither party will be liable for any act, omission, or failure to fulfil its obligations under the Agreement if such act, omission or failure arises from any cause reasonably beyond its control including (without limitation) acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental action after the date of the Agreement, acts or omissions of the other party, acts or omissions of a Manufacturer or supplier of Product, acts or omissions of a Carrier, or fire, communication line failures, power failures, earthquakes or other disasters (each such cause is called "Force Majeure").

14.2. The party unable to fulfil its obligations due to Force Majeure will immediately:

a) Notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and

b) Use all reasonable endeavours to avoid or remove the cause and perform its obligations.

14.3. Where a Force Majeure event continues for more than 40 consecutive days, either party may at its election immediately terminate the Agreement or the relevant Statement of Work by written notice to the other. If the Customer elects to terminate the Agreement under this clause then it must pay the Termination Fees. If Logicalis elects to terminate the Agreement under this clause then it will entitled to receive any amounts then due but will not be entitled to any other Termination Fees.

14.4. In no event will a Force Majeure affect the one party's right to pay the other under this Agreement.

14.5. If an affected Party fails to perform obligations because of a claimed Force Majeure event, any other Party may (but is not obliged to) make alternative arrangements for the performance of the obligation or obligations, whether by another person or otherwise for so long as the Force Majeure event continues and

(i) must notify the affected Party of the alternative arrangements; and

(ii) is not liable in any way to the affected Party in respect of the alternative arrangements for so long as the Force Majeure event continues.

15. Cost of Compliance with Law

15.1. If the direct cost to Logicalis of the performance of the Agreement shall be increased or reduced by reason of the making after the commencement of the Agreement of any relevant law or any relevant order, regulation or by law having the force of law that shall be applicable to the Agreement (other than any tax upon income), the amount of such increase or reduction shall be notified to Customer and shall take effect upon proof by Logicalis of the amount of any such increase or reduction, which increase or reduction shall be added to or deducted from the Charges stated in Clause 6.

16. Know-how

16.1. Nothing herein shall be so construed as to prevent Logicalis from using data processing techniques, ideas, know how and the like gained during the performance of the Services in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information or infringement of any valid Intellectual Property Rights of Customer.

17. Personal Property Securities Regime

a) If, in Logicalis' reasonable opinion:

(i) this Agreement contains, or any of the Transactions create, a Security Interest for the purposes of the PPS Law; or

(ii) the PPS Law does or could affect Logicalis' rights or obligations under or in connection with this Agreement,

(each a "PPSA Event"), Logicalis may, at its discretion, do any of the following:

(iii) register or give any notification in connection with any relevant Security Interest and exercise rights in connection with the Security Interest; and

(iv) give notice to the Customer requiring it to do anything at its expense that Logicalis requires for the purposes of the relevant PPSA Event including, but not limited to, amending this Agreement, executing any new document or agreement, obtaining consents and supplying information.

b) The Customer must comply with any notice received pursuant to clause 17(a) within the time stipulated in the notice.

c) If:

(i) any action referred to in clause 17(a) is not taken to Logicalis' reasonable satisfaction; or

(ii) despite such action Logicalis determines on reasonable grounds that its rights or obligations under or in connection with the Transactions or this Agreement have been or will be materially adversely affected,

then Logicalis may give written notice to the Customer terminating all or any of this Agreement or any other document in connection with the Transactions and requiring:

(iii) full repayment of all outstanding monies; and

(iv) the return of all Logicalis Property within the control of the Customer,

within 30 days after the date of notification.

d) The Customer irrevocably and unconditionally waives its right to receive from Logicalis any notice under the PPS Law (including notice of a Verification Statement) unless required by the PPS Law and if the notice cannot be excluded.

e) The Customer must not register a Security Interest against Logicalis without its prior written consent.

f) The Customer must notify Logicalis immediately of any change in its name, address, and any other information provided to Logicalis to enable Logicalis to register a financing change statement under the PPS Law if required.

g) The parties agree that the subject matter referred to in section 275(1) of the PPS Law is confidential and each party must not disclose any such information to a third party.

18. General

18.1. Entire agreement

The Agreement is complete and constitutes the entire agreement between the parties with respect to the subject matter hereof and any and all written or oral agreements, arrangements, representations, or understandings of any kind that may have been made prior to the date of the Agreement shall be deemed to have been superseded by the terms of the Agreement. No statement or representation (other than as set out in the Agreement) made by either party has been relied upon by the other party in agreeing to enter into the Agreement.

18.2. Amendment:

Except as otherwise provided for under the Contract Change procedure, the Agreement shall not be amended or modified unless in writing signed by the parties.

18.3. Assignment:

A party cannot assign any or all of its rights under the Agreement without the prior written consent of the other party, which will not be unreasonably withheld; provided that Logicalis may at any time assign all or any of its rights or obligations under the Agreement to another company in the Logicalis Group.

18.4. Waiver

Any failure or delay by either party to enforce or take action on any of its rights under the Agreement shall not be construed as a waiver of the same.

18.5. Severability

a) If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated. In the event that a provision of the Agreement that is fundamental to the accomplishment of the purpose of the Agreement is held invalid, Logicalis and the Customer shall immediately commence good faith negotiations to remedy such invalidity.

b) The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement and the Agreement shall continue in full force and effect except for any such invalid and unenforceable provision.

18.6. Third parties

A person who is not a party to the Agreement has no right to enforce any term of the Agreement. Logicalis has no duty of care to any customer, supplier, contractor, or related body corporate or associated entity (as defined in section 9 of the Corporations Act 2001) of the Customer.

18.7. Agency

Logicalis and the Customer acknowledge and agree that the Agreement shall not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organisation of any kind and neither Logicalis nor the Customer shall have the right to bind the other without the other's express prior written consent.

18.8. Set off

Logicalis may retain or set off any amount owed to it or to any other company in the Logicalis
Group by Customer against any amount due to Customer under this or any other Agreement.

18.9. Approvals

Where agreement, approval, acceptance, consent or similar action by either party is required or permitted by any provision of the Agreement, such action shall not be unreasonably delayed or withheld.

19. Law

19.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria. The United Nations Convention on the International Sale of Goods is hereby expressly excluded from application to the Agreement.

19.2. Customer and Logicalis hereby irrevocably submit to the jurisdiction of the Courts of the State of Victoria. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of Logicalis to take proceedings against Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.