



# **SECURITY AND COMPLIANCE AS A SERVICE**

**IDENTITY SECURITY PTY LTD  
ACN 153 244 707**

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## SCHEDULES 1, 2 AND 3

### PARTIES

The party named as to the Supplier in item 1 of Schedule 1 ("**Supplier**")

The party named as to the Customer in item 1 of Schedule 1 ("**Customer**")

### RECITALS

- A. The Customer requires access to the IDS Visitor Management System and related services to assist the Customer to operate at the Premises.
- B. The Supplier supplies services to enable access to the IDS Visitor Management System, and supplies related services.
- C. The Customer agrees to subscribe for access to the IDS Visitor Management System and the Supplier agrees to provide services to enable the Customer to access the IDS Visitor Management System, and related services, subject to the terms and conditions of this Agreement.

### OPERATIVE TERMS

#### 1. Definitions

1.1 In this Agreement, unless the contrary intention appears:

**Additional Fees** means:

- (a) the Supplier's standard fees and charges in effect from time to time for each of the Goods and Additional Services (other than Customisation services), as specified in the *IDS Visitor Management System SaaS Price List* in effect from time to time;
- (b) the Approved Subtenant Subscription Fees;
- (c) the Tenant Workstation Subscription Fees;
- (d) the fees and charges agreed by the parties from time to time in respect of Customisation Services; and
- (e) the fees and charges otherwise agreed by the parties from time to time for the supply of any other Goods or Services,

excluding the fees specified in Schedule 2.

**Additional Modules** means each of the Modules (other than the Standard Modules) to which the Supplier is willing and able to grant access from time to time pursuant to this Agreement.

**Additional Services** means each of the services (other than the Standard Services) that the Supplier is willing and able to supply as an additional service from time to time pursuant to this Agreement. As at the Commencement Date, the Additional Services available are:

- (a) the Services identified as additional services in Schedule 3;
- (b) the Customisation Services (other than Included Customisations).

**Administrator Set Up Guide** means the document attached as Attachment "D" to this Agreement, together with any amendments to that document agreed between the parties in writing.

**Tenant** means the Tenant named in Schedule 1.

**The agreement** means the agreement set out in this document including the Schedules.

**Approved Subtenant** means:

- (a) as at the Commencement Date, each of the persons who is specified as an approved

Subtenant in Schedule 1; and

- (f) otherwise, each person who qualifies for appointment as an Approved Subtenant under this Agreement in respect of whom the Supplier has received notice of appointment in accordance with clause 7.2 of this Agreement.

**Approved Subtenant Subscription Fees** means:

- (a) as at the Commencement Date, the fee included in Schedule 2 in respect of the Approved Subtenants specified in Schedule 1; and
- (b) otherwise, means the subscription fee in respect of each additional Approved Subtenant, as specified in the *IDS Visitor Management System SaaS Price List* in effect from time to time.

**Approved Subtenant Subscription Period** means whichever of the periods described below is the period in respect of which the Approved Subtenant Subscription Fee has been paid in accordance with this Agreement:

- (a) the first such payment of the Approved Subtenant Subscription Fee is made in respect of the period from the Commencement Date (or such later time as the Approved Subtenant is appointed) until the next anniversary of the Commencement Date or the end of the Term (whichever is earlier); and
- (b) the second such payment of the Approved Subtenant Subscription Fee is made in respect of the period from the first anniversary of the Commencement Date until the end of the Term.

**Australian Consumer Law** means the law set out in schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Australian Sanctions Law** means any Australian law under which sanctions are imposed on specified individuals, entities or countries, including each of the *Charter of the United Nations Act 1945* (Cth) and the *Autonomous Sanctions Act 2011* (Cth) and the *Autonomous Sanctions Regulations 2011* (Cth).

**Commencement Date** means the commencement date specified in Schedule 1.

**Confidential Information:**

- (a) of the Customer means Customer Data and other data entered by the Customer or any Approved Subtenant into the IDS Visitor Management System; and
- (c) of the Supplier means information provided or made available to the Customer or any Approved Subtenant by the Supplier, including information:
- (i) in relation to this Agreement;
  - (ii) in relation to the IDS Visitor Management System;
  - (iii) in relation to the business, operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Supplier and its related parties;
  - (iv) in relation to the personnel, policies, systems and data of Supplier; and
  - (v) in relation to the terms of this Agreement and any agreement contemplated by it.

**Credit Card Surcharge** means the credit card surcharge being 1.75% of the GST exclusive amount of the payment plus 30c, per credit card payment.

**Customer Access Facilities** means telecommunications, networks, systems and any other facilities (including Customer or third party software, applications and web browsers) which the Customer uses or needs to access any of the Included Modules or obtain any of the Services, excluding the hardware or other facilities, actually supplied by Supplier pursuant to this Agreement. For the avoidance of doubt, the third party cloud service provider infrastructure and facilities on which the Services are hosted (currently Amazon Web Services) shall be deemed to be hardware or facilities supplied by the Supplier pursuant to this Agreement.

**Customer Data** means data which the Customer or any Approved Subtenant provides to the Supplier either in relation to or for the purpose of obtaining Services or in the course of accessing or using the IDS

Visitor Management System.

**Customisation Services** means services related to the planning, documentation, specification, design, coding and testing of new or enhanced functionality or features requested by the Customer in relation to the IDS Visitor Management System, excluding the Included Customisations.

**Defence Trade Controls Law** means any Australian law restricting or regulating the export, transfer or trading of specified defence-related or weapons-related goods, services or technologies, including each of the *Defence Trade Controls Act 2012* (Cth), *Customs Act 1901* (Cth), *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth), *Nuclear Non-Proliferation (Safeguards) Act 1987* (Cth) and *Chemical Weapons (Prohibition) Act 1994* (Cth).

**Deliverable** means the hardware, software, documentation and any other material supplied by the Supplier to the Customer under this Agreement.

**Essential Term** means each of clauses 5.3, 7.1, 7.4, 7.8(a), 8, 9.4, 10, 11, 12, 14.2, 15.1, 16, 17, 18, 19, 26 and 33.2 of this Agreement.

**Fees** means:

- (a) the fees and charges specified in Schedule 2; and
- (g) any Additional Fees payable by the Customer pursuant to this Agreement from time to time.

**Force Majeure** means an event or circumstance beyond the reasonable control of Supplier which results in Supplier being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) any faults, defects, incorrect operation of, or other circumstance affecting or relating to, Customer Access Facilities; and
- (b) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution and strikes.

**Goods** mean each of the goods that the Supplier is willing and able to supply from time to time pursuant to this Agreement. As at the Commencement Date, the Goods are the goods identified in Schedule 3.

**GST** means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or another charge under a law of such a tax.

**GST Law** means the same as "GST Law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**IDS Visitor Management System SaaS Product Specifications** means the document listing features and functions included IDS Visitor Management System and System Requirements to operate the software attached as Attachment C to this Agreement.

**IDS Visitor Management System** means the IDS Visitor Management System. The modules and main features of the IDS Visitor Management System are described in the *IDS Visitor Management System SaaS Product Specifications* in effect from time to time. The IDS Visitor Management System is updated from time to time and its features may change. It includes any computer, computer network, computer application, imaging device, storage device or media, mobile computing device, or any other information technology hardware or software, owned, leased or controlled by the Supplier or operated by a third party on the Supplier's behalf that uses, creates, stores, accesses, processes or transmits Customer Data or that is connected to or otherwise interacts with the Customer's Systems.

**Included Additional Modules** means:

- (a) as at the Commencement Date, each of the Additional Modules that is specified as an included module in Schedule 1 (if any); and
- (b) otherwise, each of the other Additional Modules which the Supplier agrees to supply from time to time pursuant to this Agreement (if any).

**Included Additional Services** means:

- (a) as at the Commencement Date, each of the Additional Services that is specified as an additional service in Schedule 1 (if any); and
- (c) otherwise, each of the other Additional Services which the Supplier agrees to supply from time to time pursuant to this Agreement (if any).

**Included Customisations** means the customisation services included in the Standard Services (identified in Schedule 3) and any customisations services included in Schedule 1.

**Included Goods** means:

- (a) as at the Commencement Date, each of the Goods specified in Schedule 1 (if any); and
- (d) otherwise, each of the other Goods which the Supplier agrees to supply from time to time pursuant to this Agreement (if any).

**Included Modules** means the Standard Modules and each of the Included Additional Modules.

**Included Services** means the Standard Services and each of the Included Additional Services.

**Industry Standards** means industry standards, guidelines, rules, policies, regulations, procedures, and codes of practice applicable to the Supplier or the Customer, and their respective industries including, without limitation, ISO 27001 Information Security Management, where applicable to the Services provided by or on behalf of the Supplier.

**Interest Rate** means the penalty interest rate fixed from time to time pursuant to section 2 of the *Penalty Interest Rate Act 1983 (Vic)*.

**Initial Customer Data** means historical data in the possession of the Customer relating to its student residents, including the resident's name, mobile phone number and such other data as the parties may agree in writing. As at the Commencement Date, Initial Customer Data refers to historical data for the 12 month period up to the Commencement Date.

**Intellectual Property** means all intellectual property rights, including any:

- (a) copyright;
- (b) designs (as embodied in but not limited to drawings, computer software, solid models and algorithms), patents, patentable ideas, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name;
- (d) know-how, inventions, processes, research materials including biological materials, and confidential information (whether in writing or recorded in any form); and
- (e) any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields, whether registrable or not,

that presently exists or may arise in the future anywhere in Australia or anywhere else in the world, whether registered or unregistered, including any application or right to apply for registration of any of those rights.

**Law** means all local, state and federal laws, statutes and regulations, and all proclamations, orders, ordinance, by-laws, rules, procedures and codes of practice issued by any Regulator or industry body, as amended or replaced from time to time, applicable to the Supplier or the Customer in any jurisdiction.

**Module** means a module of the IDS Visitor Management System.

**Notice** includes a notice, consent, request, waiver, demand or other communication by a Party to another Party in connection with this deed

**Particulars** mean the particulars of this Agreement set out in Schedule 1.

**Parties** mean the parties to this deed, and Party means any one of them.

**Personal Information** means information or an opinion about a person whose identity is apparent or can reasonably be ascertained from that information or opinion, which is contained in the Customer Data or which is otherwise accessed or made available under or in connection with this Agreement

**Personnel** means any officer, employee, agent or sub-contractor of a party.

**Privacy and Security Laws** means all Laws which relate to the security, confidentiality, protection, privacy, or secrecy of the Customer Data, including without limitation, the *Privacy Act 1988* (Cth) and the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

**Regulator** means any competent governmental, statutory, legal, regulatory or enforcement authority, regulator, body, or agency concerned with Privacy and Security Laws, or any activities carried on by the Customer or the Supplier pursuant to this Agreement including, without limitation, the NSW or Australian Privacy Commissioner or other data protection authority, insurance regulator or financial services regulator.

**Security** means the Supplier's technological, technical, physical, administrative, organisational and procedural safeguards including, without limitation, policies, procedures, guidelines, practices, standards, controls, hardware, software and firmware, the function or purpose of which is, in whole or part, to:

- (a) protect the confidentiality, integrity or availability of Customer Data and the IDS Visitor Management System ;
- (b) prevent the unauthorised use of, unauthorised interference with, or unauthorised access to, Customer Data and the IDS Visitor Management System ;
- (c) prevent the loss, theft or damage of Customer Data;
- (d) prevent a breach, damage or infection of the IDS Visitor Management System and the Customer Access Facilities; or
- (e) comply with Privacy and Security Laws.

**Security Breach** means any actual or reasonably suspected:

- (a) act or omission that adversely affects the Security relating to Customer Data, the IDS Visitor Management System or the Customer Access Facilities;
- (b) unauthorised use of, unauthorised interference with, or unauthorised access to, the IDS Visitor Management System or the Customer Access Facilities used by or on behalf of the Supplier;
- (c) damage to, or inability to access, Customer Data or the IDS Visitor Management System due to malicious use, attack or exploit of such Customer Data or the IDS Visitor Management System ;
- (d) unauthorised access to, theft of or loss of Customer Data;
- (e) unauthorised use of Customer Data for purposes of actual or reasonably suspected theft, fraud, identity theft or another misuse;
- (f) breach of, or transmission of malicious code to the Customer Access Facilities arising from, in whole or part, an act, error, or omission of the Supplier, or third parties acting on behalf of the Supplier; or
- (g) the unauthorised disclosure of Customer Data.

**Registration** means recording the issue or cancellation of any Visitor Identification Card on the IDS Visitor

Management System.

**Schedule** means a schedule of this Agreement.

**Service Level** means an availability percentage of 99.9% and in respect of the Support Services and each Included Service, the level of service specified (if any) for the relevant Included Service in Schedule 3.

**Services** mean the Standard Services and the Additional Services.

**Setup Services** means the IDS Visitor Management System Setup Services specified in Schedule 3 or such of them as are necessary to enable the Customer to access and use the Included Modules of the IDS Visitor Management System in accordance with this Agreement. Setup Services do not include services in relation to Customer Access Facilities. The Customer is responsible for ensuring that the Customer Access facilities comply with the System Requirements.

**Standard Modules** means modules 1 and 2 of the IDS Visitor Management System as described in the *IDS Visitor Management System SaaS Product Specifications* in effect from time to time.

**Standard Services** means:

- (a) as at the Commencement Date, the Services specified under the heading 'Standard Services' in Schedule 3; and
- (b) otherwise, means the services that the Supplier actually supplies as standard services from time to time pursuant to this Agreement.

**Subscription** means the annual subscription specified in Schedule 1 or otherwise agreed from time to time.

**Subscription Fee** means the annual fee specified in Schedule 2 in for the Subscription.

**Subscription Period** means whichever of the periods described below is the period in respect of which the Subscription Fee has been paid by the Customer in accordance with this Agreement:

- (a) the first such payment of the Subscription Fee is made in respect of the period from the Commencement Date until the next anniversary of the Commencement Date or the end of the Term (whichever is earlier); or
- (b) the second such payment of the Subscription Fee is made in respect of the period from the first anniversary of the Commencement Date until the end of the Term.

**Support Services** means the following services specified in Schedule 3, to the extent that they are Included Services:

- (a) Training;
- (c) Online ticket support process; and
- (d) Telephone support,

but does not include rectification of any Customer Access Facilities.

**System Requirements** means the requirements contained in the IDS Visitor Management System SaaS Product Specifications and any variations notified by the Supplier and agreed to by the Customer from time to time.

**The term** means the period specified in item 4 of Schedule 1.

**Upgrade** means a change to the IDS Visitor Management System (or any Module) that the Supplier considers necessary or desirable, including any update, change to functionality, patch or bug-fix.

**Workstation** means:

- (a) as at the Commencement Date, each of the workstations that are specified as a Premises workstation or an approved Subtenant workstation in Schedule 1 (if any); and
- (b) otherwise, each of the gates or entry points which the Customer designates as a Workstation (whether a tenant workstation or an approved Subtenant workstation) in accordance with this Agreement.



**Workstation Subscription Fees** means:

- (a) as at the Commencement Date, the fee included in Schedule 2 in respect of the Workstations specified in Schedule 1; and
- (d) otherwise, means the subscription fee in respect of each additional Premises Workstation, as specified in the *IDS Visitor Management System SaaS Price List* in effect from time to time.

## **2. Interpretation**

2.1 In this Agreement, unless the contrary intention appears:

- (a) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender;
- (b) a reference to a person includes any company, trust, partnership, joint venture, association, corporation, a body corporate or governmental agency;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to this Agreement includes the Schedules of this Agreement;
- (e) a reference to a clause, subclause, part or Schedule is a reference to a clause, subclause or Schedule of this Agreement;
- (f) a reference to any agreement, document or schedule is to that agreement, document or schedule as amended, supplemented, replaced or in effect from time to time;
- (g) a reference to a Schedule includes a reference to any part of that Schedule which is incorporated by reference;
- (h) the recitals to this Agreement do not form part of the Agreement;
- (i) all references to dollars or '\$' are references to Australian currency and all amounts payable are payable in Australian dollars;
- (j) a reference to the word 'include' or 'including' is to be interpreted without limitation;
- (k) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision; and
- (l) no clause will be construed to the disadvantage of a party because that party was responsible for the preparation of this Agreement or that clause or the inclusion of the provision in the Agreement.

## **3. Duration**

3.1 This Agreement starts on the Commencement Date and ends upon expiry of the Term or when it is terminated in accordance with this Agreement. The Customer may extend this Agreement for up to two further periods of 12 months each by providing written notice to this effect to Supplier prior to the expiry of the Term. Thereafter this Agreement may be extended by mutual written agreement between the parties.

## **4. Access to IDS Visitor Management System**

4.1 Subject to this Agreement, the Supplier:

- (a) agrees to supply the Included Services to enable the Customer to access and use the Included Modules for each Subscription Period;
- (b) agrees to supply the Included Goods;
- (c) agrees to supply Support Services to the Customer on request during each Subscription Period;
- (d) agrees, subject to clause 7, to:

- (i) supply Included Services to enable Approved Subtenants to access and use the Included Modules for each Approved Subtenant Subscription Period (including Setup Services to configure a Workstation for each Approved Subtenant, subject to request); and
- (ii) supply Support Services on request to Approved Subtenants during each Approved Subtenant Subscription Period.

4.2 The Supplier will provide the Services in accordance with the applicable Service Levels.

4.3 If in any month following the Acceptance Date, the Services do not comply with the applicable Service Levels, then, without prejudice to the Customer's rights and remedies under this Agreement or at law, the Supplier will provide Customer with a service credit as follows:

Monthly Uptime Percentage	Service credit percentage (based on annual fee divided by 12)
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Less than 99.99% but equal to or greater than 99.0%	10%
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The service credit will be applied to Customer's next annual invoice. Service credits do not apply where the IDS Visitor Management System was not available due to any fault in the Customer Access Facilities, which was not caused by the Supplier.

4.4 Nothing in this Agreement requires the Supplier to supply any Service:

- (a) to the Customer except during the Subscription Period;
- (b) to or in respect of any Approved Subtenant except during a period that is both:
  - (i) a Subscription Period; and
  - (ii) an Approved Sub Tenant Subscription Period in respect of the relevant Approved Subtenant.

4.5 Access to the Included Modules will not be activated until completion of the Setup Services. Unless otherwise agreed:

- (a) the Supplier will supply all necessary Setup Services in respect of each Workstation, and
- (b) the Supplier will complete the supply of Setup Services for the Standard Modules before supplying Setup Services for any other Included Modules. Further information about Setup Services may be found in the *Administrator Set Up Guide*.

4.6 The Supplier may perform any Upgrade to the IDS Visitor Management System from time to time,. The Supplier must ensure that Upgrades are performed in a manner and at times which will cause the Customer least inconvenience or disrupted access to or use of the

IDS Visitor Management System. The Supplier will provide the Customer with at least 24 hours' notice of its intention to perform an Upgrade. Unless the Customer otherwise agrees in writing, Upgrades will only be installed from Monday to Friday, 9 am to 5 pm.

4.7 The Supplier may from time to time make or change any:

- (a) System Requirements; or
- (b) policies and procedures in relation to the IDS Visitor Management System,
 

provided that such change does not result in a loss of functionality or reduction in performance of the Services or impose an unreasonable cost or inconvenience on the Customer and provided also that the Customer has been given at least 14 days prior notice of such change.

4.8 The Supplier may discharge its obligations under this Agreement in person or by arrangement with one or more third parties, provided the Customer has approved of the third party in writing in advance, which approval may be subject to the Customer's reasonable confidentiality, privacy and other reasonable requirements.

## **5. Additional Goods, Services and Additional Modules**

- 5.1 The Customer may from time to time request that the Supplier:
- (a) supplies Additional Services (other than Customisation Services);
  - (b) enables the Customer (and Approved Subtenants, if applicable) to access and use any Additional Modules (other than Included Modules) by supplying Services in relation to those Additional Modules; and/or
  - (c) supplies any further Goods.
- 5.2 The Supplier may, acting reasonably, but is not obliged to, agree to any request made by the Customer in accordance with clause 5.1 clause 5.3 applies.
- 5.3 If and to the extent that the Supplier agrees to any request made by the Customer in accordance with clause 5.1, the Customer must pay to the Supplier in accordance with this Agreement:
- (a) the Additional Fees applicable to the supply of the Additional Services (other than Customisation Services); and/or
  - (b) the Additional Fees applicable to the supply of Services to enable the Customer to access and use the Additional Modules (other than Included Modules);
  - (c) the Additional Fees applicable to the supply of the Goods.
- 5.4 The Customer acknowledges that:
- (a) the Additional Services specified in Schedule 3 are those available as at the Commencement Date and that the availability of Additional Services (other than Included Additional Services) is subject to change from time to time in the Supplier's discretion;
  - (b) the availability of access to any Additional Modules (other than Included Additional Modules) is subject to change from time to time in the Supplier's discretion;
  - (c) the Goods specified in Schedule 3 are those available as at the Commencement Date and that the availability of Goods is subject to change from time to time in the Supplier's discretion.

## **6. Customisation Services**

- 6.1 The Customer may request that the Supplier supplies Customisation Services from time to time.
- 6.2 The Supplier may, acting reasonably, but is not obliged to agree to any request from the Customer to supply Customisation Services.
- 6.3 Agreement to supply any Customisation Services is not effective unless it is recorded in writing (which may be in more than one document) and specifies:
- (a) the applicable fees and charges; and
  - (b) the applicable planning, design, coding, testing and timing requirements,

the **(Customisation Agreement)**.

- 6.4 The fees and charges specified in the Customisation Agreement are Fees payable under and in accordance with this Agreement.
- 6.5 This Agreement applies with full force and effect to the supply of Customisation Services, except to the extent that the Customisation Agreement expressly provides for any of specific, identified terms to prevail over specific, identified terms of this Agreement.

## **7. Acceptance Testing**

- 7.1 Within 7 days after the Supplier provides each Deliverable to the Customer, the Customer will commence Acceptance Testing in relation to the Deliverable.
- 7.2 Prior to conducting Acceptance Testing of a Deliverable, the Customer will work in consultation with Supplier to create a set of criteria based on the IDS Visitor Management System SaaS Product Specifications against which the relevant Deliverable will be tested (the Acceptance Testing Criteria). In creating the Acceptance Testing Criteria the parties will consider:
- (a) the nature of the Acceptance Testing to be undertaken in relation to that Deliverable which will include tests to confirm that the Deliverable together with the Environment exhibits the levels of functionality, compatibility (including compatibility with the Software) and performance described in the IDS Visitor Management System SaaS Product Specifications and Design;
  - (b) the plan and timetable for undertaking that Acceptance Testing;
  - (c) the Customer business areas in which the Deliverable will be utilised by the Customer or the Customer Entities and the relevant user requirements; and
  - (d) the expected results of that Acceptance Testing.
- 7.3 The Acceptance Testing Criteria will be agreed and signed by the parties..
- 7.4 To assist with Acceptance Testing and ensure that the Customer obtains a thorough understanding of each Deliverable, Supplier must provide, prior to commencement of Acceptance Testing and at no extra cost, training that will enable effective testing, use and operation of the Deliverable by the Customer Personnel participating in the Acceptance Testing and any other Personnel reasonably specified by the Customer.
- 7.5 Testing of any Deliverable following the first Deliverable will encompass testing to ensure that all previously tested Deliverable(s) continue to operate correctly with the Deliverable currently being tested.
- 7.6 If agreed between the parties, the Supplier will attend Acceptance Testing and co-operate and assist in the conduct of such Acceptance Testing.
- 7.7 If the Customer notifies Supplier that any Deliverable fails to comply with any part of the Specifications or Acceptance Testing Criteria, Supplier will promptly remedy all errors, deficiencies or omissions, and the Customer will re-test the relevant Deliverable. Subject to clause 7.9 this process may be repeated as necessary.
- 7.8 Each Deliverable will be deemed to be Accepted by the Customer on the earlier of:
- (a) the Customer issuing an Acceptance Certificate for it; or
  - (b) 30 days from the date on which Acceptance Testing of the relevant Deliverable is to be completed by the Customer, provided that the Customer has not notified Supplier during that time of any non-compliance of the relevant Deliverable with the Specifications or Acceptance Testing Criteria.
- 7.9 If a Deliverable fails to comply with the Specifications or Acceptance Testing Criteria after the third sequence of Acceptance Testing, the Customer may, at its option, reject and return the Deliverable, and will not be liable to make any payment to Supplier in respect of the Deliverable, its delivery, installation, implementation or modification. The supplier will refund to the Customer all amounts (if any) already paid by the Customer to Supplier in respect of the Deliverable.

## **8. Approved Subtenants and Workstations**

- 8.1 The Customer must not permit or allow any unauthorised person to access or use the IDS Visitor Management System and must use its best endeavours to prevent unauthorised access and use of the IDS Visitor Management System.
- 8.2 The Customer may appoint any tenant at the Premises as an Approved Subtenant from time to time, and is not entitled to appoint any other person as an Approved Subtenant. The Customer must notify the Supplier in writing of each appointment and provide such details to the Supplier as the Supplier reasonably requests (including details of any Approved Subtenant Workstation to be set up). Clause 7 applies in respect of each such appointment.
- 8.3 Despite clause 7.1, the Customer may permit its Approved Subtenants:
- (a) access and use the Included Modules during the Term, subject to this clause 7; and
  - (b) use the Support Services.
- 8.4 The Customer must pay the Approved Subtenant Subscription Fee to the Supplier for each Approved Subtenant in respect of each Approved Subtenant Subscription Period.
- 8.5 The Supplier will accept full payment of any Approved Subtenant Subscription Fee directly from the Approved Subtenant in respect of whom it is payable, in satisfaction of the Customer's obligation to pay the relevant Approved Subtenant Subscription Fee.
- 8.6 Without limiting clause 4.3(b), unless and until the Approved Subtenant Subscription Fee has been paid in full to the Supplier in respect of any particular Approved Subtenant for an Approved Subtenant Subscription Period:
- (a) that Approved Subtenant is not entitled to access or use the Included Modules or to use the Support Services;
  - (b) the Supplier may disable access to and use of the Included Modules in respect of that Approved Subtenant; and
  - (c) the Supplier is not required to provide any Services to or in respect of that Approved Subtenant (including supplying Services to enable that Approved Subtenant to access or use the Included Modules or to supply Support Services to that Approved Subtenant).
- 8.7 The Customer may withdraw the appointment of any particular person as an Approved Subtenant and must immediately notify the Supplier in writing that the appointment has been withdrawn. Upon receipt of such notice, the Approved Subtenant Subscription Period ends in respect of the Approved Subtenant. Thereafter, Approved Subtenant is not entitled to access or use the Included Modules or to use the Support Services. The Customer is not entitled to a refund of any Fees paid in respect of an Approved Subtenant for any period following the withdrawal of the appointment.
- 8.8 Unless otherwise specified in this Agreement, the Customer:
- (a) must, at the request of the Supplier, notify its Approved Subtenants of any terms and conditions, policies and procedures affecting access to or use of the IDS Visitor Management System;
  - (b) is liable to the Supplier for the acts and omissions of its Approved Subtenants in relation to the IDS Visitor Management System as if they were acts and omissions of the Customer.
- 8.9 The Customer may from time to time designate any additional or replacement gate or entry point at the premises as a tenant Workstation, by notice in writing to the Supplier.

## **9. Work Health and Safety**

- 9.1 The Supplier must:
- (a) comply with its work health and safety obligations at law;

- (b) ensure the health and safety of its Personnel;
- (c) to the extent it is reasonably practicable, ensure the health and safety of all Customer workers, students and other persons;
- (d) ensure its Personnel are properly trained and supervised; and
- (e) comply with all reasonable directions of the Customer in relation to work health and safety; and
- (f) co-operate with any reasonable policy or procedure of the Customer relating to work health and safety,

and must ensure its Personnel do the same.

9.2 The Supplier must, if the Customer reasonably requests the removal or evacuation of the Supplier or its Personnel from the Customer's premises, comply with, and ensure that its Personnel comply with, such request as soon as reasonably practicable.

## **10. Sanctions and defence trade controls**

10.1 The Supplier warrants that:

- (a) neither the Supplier nor any of its Personnel is a 'designated person or entity' for the purposes of an Australian Sanctions Law; and
- (b) unless the Supplier has informed the Customer otherwise in writing, neither the Supplier nor any of its Personnel is or has been, a citizen or resident of, or otherwise connected with, a country in respect of which sanctions apply under an Australian Sanctions Law.

10.2 If the Customer determines, acting reasonably and after conducting any necessary investigations, that the Customer is or may be exposed to a risk of breaching an Australian Sanctions Law or Defence Trade Controls Law as a result of any activity in which the Supplier is or will be engaged in connection with the provision of the Services, the Customer may, at its absolute discretion:

- (a) require the Supplier to comply with any reasonable directions issued by the Customer in order to mitigate the risk, including a direction to cease undertaking the activity or to cease the involvement of any of its Personnel in the provision of the Services; or
- (b) terminate this Agreement immediately without notice.

## **11. Customer Obligations**

11.1 The Customer is solely responsible for the Customer Access Facilities and for ensuring that the Customer Access Facilities comply with the System Requirements at all times. Failure to comply may limit or prevent the Customer from accessing and using the IDS Visitor Management System.

11.2 The Customer must comply, and ensure that its Approved Subtenants comply, with all policies and procedures contained in the Administrator Set Up Guide and the IDS Visitor Management System SaaS Product Specifications.

11.3 The Customer is permitted to affect the maximum number of Registrations specified in the Annual Subscription. Additional Fees (as specified in the *IDS Visitor Management System SaaS Price List* in effect from time to time) will apply to any further Registrations.

11.4 The Customer may use the IDS Visitor Management System for visitor management purposes and to assist in complying with its legal obligations, but may not use the IDS Visitor Management System for any other purpose.

11.5 The Customer must ensure that the access code(s) of any employee, Subtenant or representative of

the Customer who is permitted by the Customer to access and use the IDS Visitor Management System, are held in confidence and are not shared. However, the Customer may reassign that access code to any replacement employee, Subtenant or representative.

11.6 The Customer must not to make or permit any use of the Services which is not consistent with the purpose for which the IDS Visitor Management System is made available by the Supplier. Merely by way of example, users would be unacceptable if:

- (a) it contravenes the rights of any third party (including intellectual property rights); or
- (b) it contravenes any law.

## **12. Customer Data**

12.1 As between the Customer and the Supplier, the Customer is the owner of any and all intellectual property or other rights and interests in the Customer Data. The Supplier will have no intellectual property rights or any other ownership rights or interest in the Customer Data.

12.2 The Customer must provide Initial Customer Data to the Supplier, by the time and in the format specified or requested by the Supplier.

12.3 The Customer acknowledges that the conversion of Customer Data by the Supplier into a useable format is an Additional Service for which the Supplier is entitled to be paid Additional Fees. The Supplier acknowledges that it has inspected the format of the Initial Customer Data and no conversion is required.

12.4 The Customer is solely responsible for the accuracy, quality, integrity, legal compliance, reliability, appropriateness and rights ownership in all Customer Data.

12.5 To ensure the Customer can comply with its obligations under the *State Records Act 1998* (NSW) and other regulatory requirements, the Supplier must ensure that it stores and maintains all Customer Data in a format agreed with the Customer in writing and in accordance with this Agreement for a minimum period of 7 years from the date each Registration or new item of Customer Data is entered into the IDS Visitor Management System or until the Customer Data is returned to the Customer under clause 26.6 (whichever occurs first).

12.6 The Customer warrants that:

- (a) the Customer and Approved Subtenants have all authorisations and consents needed to enable the Customer and Approved Subtenants to lawfully use the IDS Visitor Management System, including but not limited to authorisations and consents to collect, use, store and disclose Personal Information of third parties; and
- (b) while the Customer will be reliant on its ability to access to and use of the IDS Visitor Management System to collect, maintain and use Customer Data for the lawful and efficient operation of its business, Customer acknowledges that it is responsible for any Customer Data that it has manually deleted and it is not reliant upon access to and use of the IDS Visitor Management System to retrieve Customer Data that Customer has manually deleted.

12.7 The Customer holds the Supplier harmless from, and indemnifies the Supplier against, any loss and damage arising as a result of a breach of clause 11.6, except to the extent that the loss and damage was directly caused by the Supplier or its Personnel or subcontractors, or arose from a breach of the Supplier's obligations under this Agreement.

## **13. Payment and Terms**

13.1 The Customer must pay:

- (a) the Fees specified in Schedule 2;
- (b) the Additional Fees which become payable under this Agreement (such as Fees for the supply of Additional Services, Additional Modules, Customisation Services, additional Workstation Subscription Fees, additional Approved Subtenant Subscription Fees and Goods); and
- (c) the Credit Card Surcharge on each payment that is made by credit card, at the time payment by credit card is tendered.

- 13.2 Any payment of Fees (including Additional Fees):
- (a) that is expressed in this Agreement (including Schedule 2) to be payable at a particular time or upon the occurrence of a particular event, is due and payable at that time or upon the occurrence of that event (as the case may be);
  - (b) that is expressed to be payable on a monthly basis (if any), is due and payable on the Commencement Date in respect of the first month, and thereafter on the corresponding date in each successive calendar month;
  - (c) that is expressed to be payable on an annual basis (if any), is due and payable:
    - (i) 14 days after the Commencement Date; and thereafter
    - (ii) 14 days after each anniversary of the Commencement Date; and
  - (d) in respect of which no time for payment is specified in the Agreement, is due and payable fourteen (14) days after the Supplier sends an invoice in respect of those Fees, or such other time as is specified in the invoice.

13.3 If the Customer disputes liability to make any payment to any extent:

- (a) the Customer must make payment to the extent the amount is not in dispute;
- (b) the Customer must notify Supplier of the legal and factual basis for the dispute in writing within seven (7) days of the due date for payment.

13.4 If and to the extent that the Customer provides notice in accordance with clause 12.3(b):

- (a) the dispute resolution provisions of this Agreement apply;
- (b) the Customer is not taken to be in default of a payment obligation in relation to the disputed amount.

13.5 If it is agreed or determined that some or all of the amount in dispute ought properly to have been paid by the Customer, then the Customer shall pay that amount together with interest calculated on that amount in accordance with this Agreement.

13.6 Time is of the essence in relation to all payment obligations.

#### **14. GST**

14.1 All payments to be made by the Customer under or in connection with this Agreement are expressed on a GST exclusive basis.

14.2 If all or part of any such payment is the consideration for a taxable supply for GST purposes then, when the Customer makes the payment:

- (a) it must pay to the Supplier an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST; and
- (b) the Supplier must provide the Customer with a tax invoice which complies with the relevant GST legislation.

14.3 Where under this Agreement any party is required to reimburse or indemnify the other party ("recipient") for an amount, the indemnifying party must pay the relevant amount (including any sum in respect of GST) to the recipient less any GST input tax credit the recipient determines that it is entitled to claim in respect of that amount.

#### **15. Interest on unpaid amounts**

15.1 A party must pay interest to the other party on any amount of money that is due and payable to the other party pursuant to this Agreement and that has not been paid. Interest under this clause:

- (a) accrues at the Interest Rate;
- (b) accrues for the period from and including the date on which the unpaid amount fell due for payment to but excluding the date on which the unpaid amount and any Interest thereon are paid in full;



- (c) accrues daily;
- (d) is calculated on the basis of the actual number of days on which interest has accrued and a 365 day year; and
- (e) is due and payable on the day on which it accrues.

**16. Effect of Payments and demands**

- 16.1 A payment received pursuant to this Agreement must be applied by the receiving party:
- (a) first, to any interest due and payable under this Agreement; and
  - (b) second, to any other amount due and payable under this Agreement.
- 16.2 Payment of Fees following the provision of any Services constitutes an acknowledgement that those Services have been provided in accordance with the Agreement.
- 16.3 A demand for, or acceptance of, payment by the Supplier is made without prejudice to the Supplier's rights, powers or remedies under this Agreement or at law.

**17. Privacy and data security**

- 17.1 The Supplier will collect, use, store and disclose Personal Information contained in the Customer Data in accordance with this Agreement and its legal obligations.
- 17.2 The Customer must obtain all consents required for the lawful collection, use, disclosure and storage of any Personal Information that the Customer and/or its Approved Subtenants disclose to the Supplier or enter into the IDS Visitor Management System.
- 17.3 The IDS Visitor Management System is hosted at one or more data service centre(s) in Australia by arrangement between the Supplier and third parties. The hosting and security services (including data security) which the Supplier agrees to supply are specified in Schedule 3. These hosting and security services (including data security) specified in Schedule 3 may not be varied without the Customer's prior written consent.

**17.4 Compliance with Privacy and Security Laws**

- (a) In relation to any Personal Information which the Supplier or its Personnel receive during the Term under or in connection with this Agreement, the Supplier must ensure that it and its Personnel comply with all obligations regarding the collection, use and disclosure of such information imposed on the Customer by the Privacy and Security Laws, and all privacy policies, procedures instruments and directives which the Customer may adopt or vary from time to time, in its absolute discretion.
- (b) The Supplier acknowledges that as at the date of this Agreement, the relevant policies, procedures instruments and directives are published on the Customer's website.
- (c) Without limiting any other provision of this, the Supplier must:
  - (i) ensure that the IDS Visitor Management System kiosks contain a privacy notice in a form and position approved by the Customer;
  - (ii) only collect Personal Information under or in connection with this Agreement on behalf of the Customer and not separately for the benefit of the Supplier and only to the extent necessary to perform its obligations under this Agreement;
  - (iii) use, hold, store, transfer and disclose Personal Information only to the extent required for the performance of this Agreement, and ensure that the Supplier's Personnel who have access to such Personal Information, use, hold, store, transfer and disclose such Personal Information only to the extent required for the performance of this Agreement, unless the Supplier has the prior written consent of the Customer or is otherwise required by applicable Law;
  - (iv) take all necessary steps to ensure that the Personal Information held or accessed by the Supplier under or in connection with this Agreement is protected against misuse,

interference and loss, and from unauthorised access, modification and disclosure;

- (v) ensure that the Personal Information is treated as confidential information of the Customer;
- (vi) provide reasonable assistance to the Customer to enable to comply with its obligations under Law (including Privacy and Security Laws), including by providing the Customer with information about the storage, management and disclosure of the Personal Information, access to the Personal Information or modifying, de-identifying or erasing the Personal Information as requested by the Customer;
- (vii) cooperate with any reasonable requests or directions of the Customer relating to the security, use, disclosure, transfer, de-identification and erasure of Personal information, or the rights of individuals to access and correct Personal Information;
- (viii) comply with any request by the Customer, the NSW or Australian Privacy Commissioner or any other Regulator relating to an enquiry or investigation any of them relating to the Customer's regulatory obligations under any Law relating to the security, use, disclosure, transfer, de-identification and erasure of Personal information, or the rights of individuals to access and correct Personal Information;
- (ix) as soon as reasonably practicable, notify the Customer if it becomes aware that disclosure of Personal Information by the Supplier may be required to comply with any applicable Law or a breach of this clause 17;
- (x) if requested by the Customer, produce to the Customer, evidence of the Supplier's compliance with its obligations under this clause 17;
- (xi) on receiving any complaint relating to Personal Information held, used, disclosed or transferred by the Supplier in connection with this Agreement, immediately provide details of the complaint to the Customer together with such other information and assistance that the Customer may require in order to investigate and resolve the complaint. the Customer will be responsible for dealing with the complaint and, except where required by applicable Law, the Supplier must not deal directly with the maker of the complaint; and
- (xii) on receiving any request from an individual to access, correct or complete any Personal Information held by or on behalf of the Supplier in connection with this Agreement, or any request from an individual to opt out of receiving communications from the Supplier, the Supplier must immediately provide details of the request to the Customer, together with such other information and assistance that the Customer may require in order to evaluate and comply with the request. The Customer will be responsible for dealing with the request and, except where required by applicable Law, the Supplier will not deal directly with the maker of the request.

#### 17.5 Security and compliance

- (a) The Supplier represents that the information provided by or on behalf of the Supplier in response to the Customer's Security Assessment Questionnaire, a copy of which is attached as Attachment "A" to Schedule A of this Agreement, and any other information provided with respect to the IDS Visitor Management System and Security is complete, current and accurate.
- (b) The Supplier is responsible for the Security and the prevention of Security Breaches relating to the IDS Visitor Management System and the Customer Data.
- (c) The Supplier agrees that from the earlier of:
  - (i) the Commencement Date;
  - (ii) when Services commence under this Agreement; or
  - (iii) when the Supplier has access to Customer Data,

and continuing for as long as the Supplier controls, accesses, possesses, stores, transmits or otherwise processes Customer Data, the Supplier must employ and maintain reasonable, appropriate and adequate Security to:

- (iv) protect all Customer Data from unauthorised use, alteration, access, interference or disclosure, and loss, theft, and damage, and to protect and ensure the confidentiality, integrity and proper availability of Customer Data; and
  - (v) prevent a Security Breach.
- (d) The Supplier must at all times in the performance of its obligations under this Agreement comply with and meet or exceed all Industry Standards and applicable Law including, without limitation, Privacy and Security Laws.
- (e) If there is any conflict between the Supplier's obligations in clause 16.5(c), its obligation to meet Industry Standards for Security in accordance with clause 16.5(d) or any other security-related obligation in the Agreement, the Supplier must comply with the obligation that provides the most protective and rigorous Security.
- (f) The Security that the Supplier is required to employ and maintain pursuant to clause 17.5(c), includes, but is not limited to, the safeguards and controls listed in Attachment B to Schedule A of this Agreement (Specific Security Controls and Additional Safeguards).
- (g) The Supplier must not, without prior written approval from the Customer, make any changes to its Security which may adversely affect its ability to comply with this Agreement. If the Supplier wishes to make a change which may adversely affect its ability to comply with this Agreement, the Supplier must provide the Customer with written notice of such change, including a reasonable description of the anticipated effects of the change, within a reasonable timeframe prior to the anticipated implementation of the change.

#### 17.6 Use of Third Parties

- (a) The Supplier must not provide any service provider, cloud computing company (including without limitation, any Software-as-a-Service vendor, Infrastructure-as-a-Service vendor or vendor), subcontractor, vendor, or other third party (**IT Subcontractor**) with access to Customer Data, or allow any IT Subcontractor to transmit, store or process Customer Data, unless it has received prior written consent from the Customer, which consent may be withheld for any reason or may be given subject to conditions.
- (b) If the Customer provides consent in accordance with clause 16.6(a), prior to providing any IT Subcontractor with such access, or allowing such transmission, storage or processing, the Supplier must contractually impose upon such IT Subcontractor the same or substantially similar contractual duties imposed on the Supplier as in this clause 16 and in this Agreement with respect to the security, and confidentiality, integrity or availability of Customer Data and the Customer Systems.

#### 17.7 Customer Data Processing Location

The Supplier must not disclose Customer Data to anyone in Australia, allow anyone other than a client in Australia to have access to it, or otherwise store, process or transmit such Customer Data outside Australia, without the prior written approval of the Customer.

#### 17.8 Monitoring and Reporting

- (a) The Supplier must, in accordance with Industry Standards, any applicable Law (including without limitation any Privacy and Security Laws) and this Agreement, collect and record information, and maintain logs, planning documents, audit trails, records and reports, concerning its Security, the roles, responsibilities and activities of the Supplier's Personnel, its compliance with this Agreement, Security Breaches, its storage, processing and transmission of Customer Data and the accessing and use of the IDS Visitor Management System .

- (b) The Supplier must provide the Customer with any reports or information requested by the Customer concerning Security, the Supplier's compliance with this Agreement, Security Breaches, its access to, and creation, storage, processing, transmission and destruction of, Customer Data, and the accessing and use of the IDS Visitor Management System and the Customer Systems, provided that such request is reasonable or required for the Customer to comply with any applicable Law (including without limitation any Privacy and Security Laws).

#### 17.9 Security Assessments

- (a) On written notice to the Supplier, not more than once per year during the term of the Agreement, or more than once per year if there has been a Security Breach or at the request or direction of a Regulator, the Customer, or any third party nominated by the Customer, may undertake an investigation and assessment of Security, the Supplier's compliance with this clause 16 and with Privacy and Security Laws, the Supplier's storage, processing and transmission of Customer Data, accessing and use of the IDS Visitor Management System and/or any Security Breach (as applicable).
- (b) The Supplier must cooperate fully with any investigation and assessment conducted in accordance with clause 16.9(a) and provide the Customer, or a third party nominated by the Customer, with any documents and information reasonably requested by the Customer, or its nominated third party, including without limitation, any security assessments and any security control audit reports performed by the Supplier or an entity on its behalf.
- (c) An investigation or assessment conducted in accordance with clause 16.9(a) must be conducted during normal business hours unless otherwise agreed to by the parties. The parties will not unreasonably withhold their agreement, having regard to the circumstances giving rise to the relevant investigation or assessment. The parties will endeavour to conduct the investigation and assessment in a manner that limits the non-availability of the IDS Visitor Management System.
- (d) If an investigation or assessment conducted in accordance with clause 16.9(a) reveals that the Supplier has failed to comply with any of its obligations under this clause 16 then, without prejudice to any other rights or remedies the Customer may have in relation to such failure:
  - (i) the Supplier must immediately rectify the failure; and
  - (ii) the cost of the investigation or assessment will be borne by the Supplier.

#### 17.10 Security Breach Response Actions

- (a) If a Security Breach occurs or is suspected to have occurred, the Supplier must:
  - (i) immediately conduct a reasonable investigation of the reasons for and circumstances of such Security Breach;
  - (ii) use reasonable efforts and take all necessary actions to prevent, contain, and mitigate the impact of, such Security breaches, and remediate such Security breaches, without delay;
  - (iii) provide notice to Customer immediately and in any event within 12 hours after the Supplier discovers the actual or suspected Security Breach. After that initial notice, the Supplier will continuously update Customer in respect of the Security Breach;
  - (iv) promptly, and in no event, more than 2 business days after the date the Supplier discovered a Security Breach, provide a written report to Customer providing all relevant details concerning such Security Breach;
  - (v) collect and preserve all evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Security breaches, which must meet

reasonable expectations of forensic admissibility;

- (vi) document the incident response and remedial actions taken in detail, which must meet reasonable expectations of forensic admissibility;
- (vii) if requested by Customer, provide notice to individuals or entities whose Customer Data was affected by the Security Breach, or may have reasonably been exposed or put at risk of exposure, and Regulators, public authorities and the media, in the timeframes and in a manner and format specified by Customer; and
- (viii) keep the fact and details of the Security Breach confidential, to the extent permitted by Law, during the investigation and remediation of the Security Breach and limit communications about the Security Breach to those necessary to fulfil the requirements of this clause 16.10.

#### **17.11 Security Breach Notice**

The Supplier hereby authorises the Customer to provide third parties with notice of, and reasonable information and documents concerning, any Security Breach, including, without limitation, individuals or entities that may have been impacted by the Security Breach.

#### **17.12 Reporting and Document Production Obligations**

Upon request by Customer, the Supplier must promptly provide Customer with a written report containing information reasonably requested by Customer relating to:

- (a) any Security Breach; or
- (b) actual or suspected non-compliance with this clause 16. In addition, the Supplier must provide Customer with any documents requested by Customer related to the foregoing including, without limitation, any security, risk or compliance assessment and security control audit reports.

#### **17.13 Indemnification**

The Supplier agrees to indemnify, defend and hold harmless, on demand, the Customer and its Personnel from and against any and all actual or threatened claims, losses, demands, liabilities, damages, settlements, fines, Regulator actions or investigations, assessments, penalties, expenses and costs (including without limitation solicitors' fees and legal costs, expenses and costs incurred in response to any assessment or investigation or action by any Regulator or other government authority) arising from, in connection with, or based on allegations of, any Security Breach or any breach of this clause 16 by the Supplier.

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#### **17.14 Supplier's Expense**

The Supplier's compliance with this clause 16 including, without limitation, compliance with any Customer requests in accordance with this clause 16 will be at the Supplier's sole and exclusive expense and are included as part of the Services Fees and at no additional cost to the Customer.

#### **17.15 Survival**

This clause 16 continues to apply after this Agreement ceases for any reason.

### **18. Confidentiality**

18.1 A party must not, without the prior written approval of the other party:

- (a) disclose the other party's Confidential Information; or
- (b) use the other party's Confidential Information except to perform this Agreement,

and a party must procure compliance with these requirements by the party's directors, officers, employees and contractors (including in the case of the Customer, compliance by its Approved Subtenants).

18.2 A party may use or disclose Confidential Information:

- (a) which is or comes into the public domain other than by a breach of this Agreement;
- (b) to obtain professional advice about its rights and obligations; or
- (c) as required by, or pursuant to any requirement of law.

**19. GIPA and Access to Information**

19.1 The Supplier acknowledges that the Customer may be required to publish details of this Agreement, or this Agreement in whole, on its website, pursuant to the *Government Information (Public Access) Act 2009 (GIPA Act)*.

19.2 The Supplier must, within 7 days of receiving a written request by the Customer, and at the Supplier's own expense, provide the Customer with immediate access to the following information contained in records held by the Supplier or its Personnel:

- (a) information that relates directly to the performance of the Services;
- (b) information collected by the Supplier or its Personnel from members of the public to whom it provides, or offers to provide, the Services;
- (c) information received by the Supplier or its Personnel from the Customer to enable it to provide the Services; and
- (d) any other information reasonably requested by the Customer.

19.3 For the purposes of clause 18, information does not include information:

- (a) that discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
- (b) that the Supplier is prohibited from disclosing to the Customer by the provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- (c) that, if disclosed to the Customer, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Customer, whether at present or in the future.

19.4 the Customer will take reasonably practicable steps to consult with the Supplier before providing any person with access to information relating to this Agreement, in response to an access application under the *Government Information (Public Access) Act 2009 (GIPA Act)*, if it appears that:

- (a) the information:
  - (i) includes personal information about the Supplier or its employees;
  - (ii) concerns the Supplier's business, commercial, professional or financial interests; or
  - (iii) concerns research that has been, or is intended to be, carried out by or on behalf of the Supplier; or
  - (iv) concerns the affairs of a government of the Commonwealth or another State (and the

Supplier is that government),

- (b) the Supplier may reasonably be expected to have concerns about the disclosure of the information; and
  - (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- 19.5 If, following consultation between the Customer and the Supplier, the Supplier objects to disclosure of some or all of the information, the Supplier must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 days of the conclusion of the consultation process.
- 19.6 In determining whether there is an overriding public interest against disclosure of government information, the Customer will take into account any objection received by the Supplier.
- 19.7 If the Supplier objects to the disclosure of some or all of the information but the Customer nonetheless decides to release the information, the Customer must not provide access until it has given the Supplier notice of the Customer's decision and notice of the Supplier's right to have that decision reviewed.
- 19.8 Where the Customer has given notice to the Supplier in accordance with clause 18.6, the Customer must not provide access to the information:
- (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
  - (b) where any review of the decision duly applied for is pending.
- 19.9 The reference in clause 18.7 to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

## **20. Intellectual Property**

- 20.1 Supplier warrants that it owns all rights, including Intellectual Property rights, in the IDS Visitor Management System and anything supplied, developed or delivered by the Supplier pursuant to this Agreement or any Customisation Agreement and that the use of the foregoing by the Customer in accordance with this Agreement does not and will not infringe the Intellectual Property rights of any third party.
- 20.2 The Supplier grants the Customer a licence for the Term of this Agreement to use the IDS Visitor Management System for the purposes contemplated by this Agreement and anything supplied, developed or delivered pursuant to this Agreement or any Customisation Agreement.
- 20.3 Other than as provided in clause 19.2, the Customer and Approved Subtenants have no interest whatsoever in or in relation to the IDS Visitor Management System or the Services.
- 20.4 The Customer must not, and must ensure that its directors, officers, employees, Subtenants, users and Approved Subtenants do not install, copy, decompile, reverse-engineer, alter, download, record or otherwise deal with the IDS Visitor Management System at any time.
- 20.5 The Customer hereby grants the Supplier an irrevocable, royalty-free licence to use the Supplier's trading name and logo for the Term in connection with the provision of the Services, including the use and reproduction of the Customer's trading name and logo on the website through which the Supplier delivers the Services, subject to the Customer's reasonable requirements.
- 20.6 The Supplier indemnifies and will keep indemnified the Customer and its agents, officers and employees against all damages, liability, claims, demands, proceedings, actions, penalties, expenses and costs (including but not limited to GST and legal fees on a client and solicitor basis and costs of defence or settlement) which is related to, arises out of, or is in any way associated with any claim

that the IDS Visitor Management System and anything supplied, developed or delivered by or on behalf of the Supplier pursuant to this Agreement or any Customisation Agreement infringes the Intellectual Property rights of any third party.

20.7 This clause continues to apply after this Agreement ceases for any reason.

## **21. Assurances and further assurances**

21.1 Each party represents and warrants to the other that:

- (a) it is solvent and not in liquidation, provisional liquidation or receivership, or under external administration;
- (b) it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this Agreement and has done everything required to enable it lawfully to enter into and perform this Agreement;
- (c) if the party is the trustee of a trust, that it:
  - (i) enters into this Agreement on its own behalf and as trustee of the trust;
  - (ii) has full and valid power under the trust deed governing the trust to enter into this Agreement;
  - (iii) has the right to be indemnified out of, and a lien over, the assets of the trust in respect of its obligations under this Agreement;
  - (iv) has been validly appointed as trustee of the trust and is the sole trustee of the trust and no action has been taken or is proposed to remove it as trustee of the trust; and
  - (v) no action has been taken or proposed to terminate the trust.

21.2 The Parties must do all such further acts, matters and things (including the execution of documents) as may be necessary to give full effect to this Agreement.

21.3 The representations and warranties set out in clause 20.1 and 20.2 survive the execution of this Agreement and are deemed to be repeated on an ongoing basis.

## **22. Parties undertakings**

22.1 Each party must notify the other in a timely manner of:

- (a) the occurrence of any event of default under this Agreement;
- (b) the occurrence of any event which either would or might adversely affect its ability to fully and promptly perform its obligations under this Agreement; and
- (c) any event or change in circumstances, the effect of which either would or might render any representation or warranty made in this Agreement untrue or incorrect in any respect.

## **23. Supplier Warranties**

23.1 The Supplier warrants represent and agrees that it and its Personnel:

- (a) must provide the Services in a proper, timely and professional manner, in compliance with applicable law, and with all due care, skill and diligence to the reasonable satisfaction of the Customer;
- (b) have the skills, qualifications, expertise and experience necessary to properly provide the Services;
- (c) have obtained all licences, permissions and authorisations necessary to provide the Services; and
- (d) in providing the Services, will not be in breach of any obligation owed to, or any right belonging to, any person.



- (e) in providing the Services it will comply with:
  - (i) all relevant laws;
  - (ii) the client Information Technology Security Policy;
  - (iii) the client Acceptable Use of Information Technology Facilities Policy;
  - (iv) the client Privacy and Protection of Personal Information Vice-Chancellor's Directive;
  - (v) and the client policy or procedure relating to compliance with an Australian Sanctions Law or Defence Trade,

as may be varied from time to time, and any other policies or reasonable requirements of the Customer's relevant to the Services that the Customer may notify to the Supplier in writing from time to time.

23.2 The Supplier acknowledges that access to the Customer's current policies and other instruments is available through the Customer's website.

23.3 The Supplier warrants that the IDS Visitor Management System and the Services will:

- (a) comply with the IDS Visitor Management System SaaS Product Specifications;
- (b) in the case of hardware or equipment forming part of the IDS VMS that is purchased from the Supplier, will comply with the relevant manufacturer's product documentation and specifications; and
- (c) not contain, and Supplier and its Personnel will not introduce into Customer's Access Facilities, any 'back door', 'time bomb', 'Trojan Horse', 'worm', 'drop dead device', 'virus' or any computer software code.

23.4 In addition to any warranties provided under clause 22.3, the Supplier will pass on to the Customer the benefit of any additional warranties provided by the manufacturers of the hardware or equipment that the Customer purchases from the Supplier.

23.5 The Supplier does not warrant or represent:

- (a) that the IDS Visitor Management System is suitable for any purpose other than the particular purpose for which it is customarily supplied;
- (b) that the IDS Visitor Management System will operate uninterrupted or error-free, or that access or use of the IDS Visitor Management System will be uninterrupted or error-free;
- (c) that use of the IDS Visitor Management System will not affect other software or applications or that other software or applications will not adversely affect access or use of the IDS Visitor Management System. Notwithstanding the foregoing, the Supplier warrants that the IDS Visitor Management System is compatible with and will not be adversely affected by the software and applications specified in the IDS Visitor Management System SaaS Product Specifications or in Schedule 3;
- (d) in any way as to the Customer's access to an uninterrupted internet connection, or as to the speed, performance or reliability of that connection;
- (e) except for the operating systems and web browsers specified in the IDS Visitor Management System SaaS Product Specifications or Schedule 3, that the IDS Visitor Management System is accessible through all operating systems or web browsers;

## **24. Liability of Supplier**

24.1 Clause 22 applies to the extent permitted by law.

24.2 The Supplier is not liable for any delay, failure or other loss or damage to the extent caused by or in relation to:

- (a) use of the IDS Visitor Management System that is not consistent with the purpose for which the Supplier enables access and use of the IDS Visitor Management System;
- (b) any fault or error in the Customer Access Facilities;
- (c) use of the internet or internet speed, performance or reliability;
- (d) any breach of this Agreement by the Customer;
- (e) the act or omission of any Approved Subtenant;
- (f) any event, occurrence, act or omission that is caused by a Force Majeure event.

24.3 The Customer acknowledges and agrees that

the Services are not acquired for personal, domestic or household use or consumption.

24.4 The Supplier's liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by sections 51–53 inclusive of the Australian Consumer Law), is limited:

- (a) in the case of goods, to any one of the following as determined by the Supplier:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired;
- (b) in the case of the Services, to any one of the following as determined by the Supplier:
  - (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.

24.5 Except in relation to:

- (a) liability for personal injury or death;
- (b) liability referred to in clause 23.4;
- (c) liability referred to in clause 19.6 (indemnity against third party Intellectual Property right infringement);
- (d) liability referred to in clauses 16 and 17 (privacy and data security and confidentiality); and
- (e) liability for the Supplier's breach of this Agreement (which the Customer agrees shall be limited, for all claims in aggregate, to paying an amount equal to all Fees and Additional Charges paid by the Customer prior to the date on which the claimed breach occurred),

the Supplier is not liable to the Customer in respect of any loss of profits, loss of goodwill, which may be suffered or incurred or which may arise directly or indirectly in any way in connection with this Agreement (including in respect of goods or services supplied pursuant to this Agreement).

## **25. Default**

25.1 A party is in default under this Agreement if:

- (a) the party is the Customer and any obligation to pay the Supplier any amount is not paid in full by the due date for payment of that amount pursuant to this Agreement (whether or not a demand has been made), except to the extent that the amount is subject to a notice of dispute provided in accordance with this Agreement;
- (b) a party breaches an Essential Term (other than a payment obligation) and, if the breach is capable of remedy, the breach is not rectified within 14 days of the other party delivering in accordance with this Agreement, a notice of breach to that party;
- (c) an order is made or a resolution is passed to wind up the party (except for a solvent reconstruction)
- (d) a resolution is passed that the party is not solvent;
- (e) the party goes into liquidation;

- (f) the party is placed under official management;
- (g) the Party has a receiver, including a provisional receiver, or receiver and manager appointed in respect of any of its assets, or has an administrator appointed;
- (h) the Party has an inspector appointed under the *Australian Securities and Investment Commission Act 2001* (Cth);
- (i) the Party fails to satisfy a judgment for \$5,000 or more within 30 days of it being ordered to make payment;
- (j) where the Party is a partnership, the partnership dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- (k) the Party ceases or decides to cease conducting its business in a normal manner.

## **26. Consequences of Default**

- 26.1 If a party is in default under clause 24.1(a), the other party must notify that party in writing of the default and, if the default is capable of remedy, the party in default will have 14 days to remedy the default.
- 26.2 If and for so long as the Customer is in default under clause 24.1, then subject to clause 25.1, the Supplier may do any one or more of the following (in addition to any other rights it otherwise has under this Agreement), unless the Customer disputes in good faith that it is in default:
- (a) restrict or disable access to the IDS Visitor Management System; or
  - (b) suspend the supply of Services.
- 26.3 No action taken by the Supplier under clause 25.2 releases the Customer from any obligation under this Agreement.

## **27. Termination**

- 27.1 The Supplier may terminate this Agreement by providing at least 6 months prior written notice to the Customer if the Supplier ceases to carry on the business of supplying Services to enable customers to access and use the IDS Visitor Management System. If the Supplier does so, the Supplier must refund the Fees paid by the Customer on a pro rata basis in respect of the period following the date of termination and compensate Customer for any costs reasonably incurred as a result of the Supplier's early termination, including but not limited to the costs of dismantling and replacing the kiosks, scanners and printers purchased under this Agreement (if found to be incompatible with the Customer's chosen replacement ID security systems) and Customer's reasonable internal costs of replacing the IDS Visitor Management System .
- 27.2 The Customer may terminate this Agreement at any time for its own convenience and without penalty, by providing at least 6 months prior written notice to the Supplier. If Customer exercises this right of termination, Customer will only be required to pay any Subscription Fees owing for the period up to the effective date of termination, calculated on a pro-rata basis if the effective date of termination occurs prior to the end of the Subscription Period.
- 27.3 A party (the first party) may terminate this Agreement immediately by providing written notice to the other party (the second party) if:
- (a) the second party is in default under clause 24.1 and, subject to clause 25.1, and does not rectify the default within 30 days;
  - (b) the second party is persistently in breach of this Agreement; or
  - (c) the second party, by act or omission, does anything calculated or likely to bring the first party into disrepute or diminish its reputation.
- 27.4 If a party validly terminated this Agreement under clause 26.3:
- (a) the party:

- (i) may, if it is the Supplier repossess any of its property in the possession, custody or control of Customer;
- (ii) may, if it is the Supplier, retain any and all money paid by the Customer;
- (iii) may, if it is the Supplier, invoice for Services provided up to the date of termination;
- (iv) is immediately discharged from any further obligations under this Agreement (other than under clause 26.6 (return of Customer Data)); and
- (v) may pursue any additional or alternative remedies provided by law.

27.5 Upon termination of this Agreement the Customer's rights in respect of the Services (including its right to access and use the IDS Visitor Management System) end and the Customer must cease (and procure that its Approved Subtenants cease) to access and use the IDS Visitor Management System.

27.6 The Customer may by written notice to the Supplier provided within thirty (30) days of the date of termination of this Agreement or at any other time during the Term, request an electronic file containing Customer Data. The Supplier shall, at the cost of the Customer, provide an electronic file containing Customer Data (in a format agreed between the parties) within 7 days after the request is delivered to the Supplier, subject to payment by the Customer of the Supplier's reasonable fees for the provision of the electronic file.

27.7 The Supplier must irretrievably delete all Customer Information after thirty (30) days from the date of termination of this Agreement, or upon the delivery to the Customer of the electronic file of the Customer Data (whichever occurs last), the following notice to the Customer. If requested by the Customer, the Supplier must promptly provide written certification by one of its senior officers that it has complied with all of its obligations under this Agreement in relation to the return, deletion and destruction of the Customer Data.

## **28. Force majeure**

28.1 A party is not liable for any delay or failure to perform its obligations under this Agreement if such delay is due to Force Majeure. If a delay or failure is caused or anticipated due to Force Majeure, the obligations of the parties will be suspended.

28.2 If a delay or failure by Supplier to perform its obligations due to Force Majeure exceeds sixty (60) days, either party may immediately terminate the Agreement on providing notice in writing to Customer.

28.3 If this Agreement is terminated pursuant to clause 26.3, the Supplier must refund the Fees paid by the Customer on a pro rata basis in respect of the period following the date of termination.

## **29. Insurance**

29.1 The Supplier must effect and maintain at its cost, on and from the date it commences providing the Services, the insurances specified below in a form and with an authorised, licensed and reputable insurer:

- (a) **Public liability insurance:** with a limit of indemnity of not less than \$ 5 million dollars. Such insurance must be maintained from the Commencement Date until the Supplier ceases to provide the Services.
- (b) **Workers compensation insurance:** as required by law; and
- (c) **Professional indemnity insurance:** with a limit of indemnity of not less than \$ 1 million dollars. Such insurance must be maintained from the Commencement Date until 7 years after the date the Supplier ceases to provide the Services.

29.2 The Supplier must immediately notify the Customer of any event that could affect the Supplier's insurance coverage or if any insurance required under clause 28.1 is cancelled, voided or allowed to lapse.

29.3 The Supplier must on request provide the Customer with satisfactory evidence that it has complied

with the requirements in this clause 28.

### **30. Disputes**

- 30.1 If a difference or dispute arises in relation to the subject matter of this Agreement, either party may deliver to the other a written notice of dispute giving details of the dispute (the dispute notice).
- 30.2 A representative of each party with authority to resolve the dispute must meet with the other (in person or by telephone) within ten (10) business days of the dispute notice being delivered, and the parties must work in good faith to resolve the dispute.
- 30.3 If the dispute has not been resolved by agreement within thirty (30) days of service of the dispute notice, the dispute shall be referred to mediation.
- 30.4 The mediation procedure is as follows:
- (a) a party may start mediation by delivering a notice in writing to the other party informing the other party of the first party's intention to refer to the dispute to mediation ("mediation notice");
  - (b) the mediation notice must state that a dispute has arisen and identified what the dispute is;
  - (c) the parties must agree to appoint a specific mediator and in default of agreement within 10 days of the mediation, the mediator shall be appointed by the President of the Law Society of NSW (or delegate);
  - (d) the parties must pay for the costs of premises and the mediator in equal shares and must otherwise bear their own costs of an incidental to mediation; and
  - (e) once the mediator has accepted the appointment the parties must comply with the mediator's instructions.
- 30.5 If the dispute is not resolved within thirty (30) days of the mediator being appointed, the mediation is deemed to end.
- 30.6 If the dispute remains unresolved after mediation ends, either party may then issue legal proceedings.

### **31. Notices**

- 31.1 Notices under this Agreement may be delivered by hand or pre-paid mail to the address of the recipient Party specified in Schedule 1, or by electronic communication to the information system of the recipient Party specified in Schedule 1 or by such other means and to such other address or information system as the recipient Party may from time to time notify the other Party for the purposes of this clause 30.
- 31.2 Notice is delivered by Supplier for the purposes of this Agreement
- 31.3 Subject to clause 30.4, notice is delivered for the purposes of this Agreement:
- (a) if delivery is by hand, when left at the address of the recipient;
  - (b) If delivery is by mail, three days after the day of dispatch;
  - (c) If delivery is by electronic communication to an information system, at the time when that electronic communication is sent from the information system of the sender (unless an error or undelivered) message is received.
- 31.4 Notice is deemed to be delivered on the next business day in the location of the recipient Party, if it is delivered on a day that is not a business day in the location of the recipient Party specified in Schedule 1, or is delivered by hand or electronic communication after 5.00pm on a business day in the location of the recipient Party specified in Schedule 1.

### **32. Supplier's consent**

- 32.1 The Supplier must act reasonably with respect to any matter for which its consent is required under this Agreement.

### **33. Costs**

33.1 Each party must bear

- (a) its own costs and expenses in relation to any variation of this Agreement sought by either party or any approval or consent sought under this Agreement from the Supplier.

### **34. Assignment**

34.1 Neither party may:

- (a) assign this Agreement or any of its rights or obligations under this Agreement without the other party's prior written consent which shall not be unreasonably withheld;
- (b) without the other party's written consent, allow a different person to take effective control of it as a result of:
  - (i) changes in the membership of the company or its holding company, where the party in question is a company;
  - (ii) changes in beneficial ownership of the shares in the company or its holding company, where the party in question is a company;
  - (iii) changes in beneficial ownership of its business or assets;
  - (iv) the appointment of any person as an additional or replacement trustee of the trust or any other change of trustee, where the party in question enters into this Agreement in its capacity as trustee of a trust.

but subclause 33.2(b) does not apply if the party is a public company listed on a recognised Australian public securities exchange or a subsidiary of one.

### **35. Entire Agreement**

35.1 The parties agree that this Agreement is the entire agreement between the parties.

35.2 The Customer acknowledges that:

- (a) it has not been induced to enter into this Agreement by any conduct, verbal or otherwise, made by or on behalf of the Supplier which is not set out in this Agreement; and
- (b) it has not relied on any representation made by Supplier which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications in any way relating to the Services including catalogues, website or publicity material produced by Supplier.

### **36. Severability**

36.1 Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down, for the purposes of that jurisdiction, if possible so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **37. Amendment**

37.1 This Agreement may only be amended or supplemented in writing signed by the Parties.

### **38. No waiver**

38.1 No failure or delay by the Supplier to exercise any power, right or remedy under this Agreement will operate as a waiver of that power, right or remedy. Nor will any single or partial exercise of any power, right or remedy under this Agreement preclude any other or further exercise of that power, right or remedy.

### **39. Governing law and jurisdiction**

39.1 This Agreement is governed by the law in force in the State of Vic. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of NSW and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

**40. Execution and counterparts**

40.1 This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. If this Agreement is executed in counterparts, this Agreement has no force and effect until the parties have exchanged counterparts.

**This document is executed as an agreement on the Date**

)  
**Executed** as an agreement by  
**Identity Security Pty Ltd** (ACN 153 244 707) )  
pursuant to section 127 of the *Corporations Act 2001* (Cth):

.....  
Director

Julie Stewart

**Print Name**

**Executed by**

)  
by its authorised representative in the presence  
of:

.....  
Signature of Witness

.....  
Print Name

.....  
Authorised Person

.....  
Print Name

