MOMENTUM SOFTWARE OPERATIONS PTY LTD

Master Terms and Conditions

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between

Momentum Software Operations Pty Ltd
ABN 98 606 033 210

and

The Customer

GENERAL TERMS – PART 1

Parties

This is a legally binding agreement between:

1. Momentum Software Operations Pty Ltd A.B.N. 98 606 033 210 **(Momentum)**

and

2. The Customer as set out in the Proposal **(the Customer)**

1. Definitions

In this Agreement the following words shall have the corresponding meaning:

Agreement means this agreement and all annexures and schedules that form part of it.

Business day means any day other than a Saturday, Sunday, or gazetted public holiday applicable at the registered office of Momentum.

Contract means this binding agreement between the Customer and Momentum and includes:

(a) the General Terms (Part 1); and

(b) the Proposal signed and/or accepted by the Customer and the Support Plan; and

(c) the EULA (Part 2)

EULA means the End User Licence Agreement or Terms and Conditions between the Customer and the Software Vendor and accepted by the Customer.

General Terms means the General Terms contained in Part 1 and accepted by the Customer pursuant to the Proposal.

Intellectual Property Rights means any patent, copyright, design right, registered design, trademark, service mark, database right, and all other intellectual property rights of a similar nature in any jurisdiction and all applications and rights to apply for the protection of the same.

Proposal means the 'Proposal MYOB EXO Business Software' or 'Proposal MYOB Advanced Software' 'Proposal Wiise / MS 365 Business Central' and/or the 'Momentum Software Solutions Proposal' and/or such other proposal document provided by Momentum for the customer that has been executed and accepted by the Customer and that includes, without limitation, Terms of Proposal, Payment terms, Scope of Services, Hardware and Network specifications and the Support Plan and also includes an acceptance by the Customer of the General Terms and EULA.

Minimum term is a period of 12 months.

MYOB means MYOB Australia Pty Ltd ABN 13 086 760 198.

Software Licence Fee means any licence fees payable for the provision of or ongoing use of the Software.

The Software means the software developed by the Software Vendor referred to in the Proposal and as defined in in the Business Partner or Reseller Agreement between Momentum Software Solutions PtyLtd and the Software Vendor.

Wiise means Wiise Software Pty Ltd (ABN 84 169 685 509)

Registration Codes means any codes required to access and use the Software.

Representatives of either party means that party's staff, contractors or agents.

Service means the services as outlined in the Proposal, including the Support Plan.

Software Vendor means the developer of the software used by the Customer and supported by or implemented by Momentum. Most commonly the Software Vendor is MYOB or Wiise.

Support Plan means the Momentum Support Plan referred to in the Proposal.

2. Interpretation

2.1   Reference to person includes reference to person, corporation, firm or other legal entity.

2.2   Singular includes the plural and vice versa.

2.3   Headings are used for convenience only and do not form part of or affect the interpretation of this agreement.

2.4   Different grammatical forms of the same word have the same corresponding meaning.

2.5   A reference to a clause or schedule is a reference to a clause or schedule in this Agreement.

2.6   A reference to an Act or legislation includes reference to subordinate and associated legislation, regulations and determinations.

2.7   References to a party include references to their permitted assigns, successors in title and novatees.

2.8   A clause or condition in this Agreement will be deemed to be an essential term if breach of that clause or condition by either party would make it impossible or impractical for the other party to continue to provide or receive the Service, for example a continuing failure to pay bills or to provide the Service.

2.9 In the event of an inconsistency between a provision in the General Terms and a provision in the Proposal, the provision in the Proposal shall prevail.

2.10 In the event of an inconsistency between a provision in the General Terms or a provision in the Proposal and a provision in the EULA, the provision in the EULA shall prevail.

3. Term of Contract

3.1 This contract will commence on the earliest of the following:
    (a) the date that Momentum commences services pursuant to the Contract;
    (b) the date that Momentum accepts the proposal submitted and executed by the Customer.

3.2 This contract will continue until the earliest of the following occurrences:-
    (a) the end of the minimum term of the contract;
    (b) the date upon which the Contract is validly terminated by either party pursuant to clause 9;
    (c) the date that Momentum in its absolute discretion determines that the provision of the Service is no longer commercially viable or is impracticable.

3.3 If the Customer continues to use the service following the end of the minimum term in accordance with clause 3.4 the contract will continue until terminated in accordance with clause 9.

3.4 If at the end of the minimum term neither party cancels this contract, Momentum will continue to supply the service to the Customer on a month-to-month basis.

3.5 The Customer may, at the end of the minimum term, cancel this contract in accordance with clause 9.

3.6 Momentum may, at the end of the minimum term, cancel this contract by giving the Customer 30 days written notice.

4. Services

4.1 The Customer may apply for the provision of a Service by Momentum and the Service that will be provided to the Customer is set out in the Proposal or will be the service that has been requested by the Customer and agreed to by Momentum on terms acceptable to Momentum.

4.2 The Customer's application for the provision of Services by Momentum can be rejected by Momentum before acceptance in the following circumstances:

    (a) the Customer's credit status is not acceptable to Momentum;

    (b) the Customer has amended any part of the Proposal without Momentum's consent;

    (c) another supplier changes the terms offered to Momentum that

Momentum based the Customer's quotation on;

(d)   the Customer provides incorrect or false information to Momentum;

(e)   Momentum withdraws its offer for any reason; or

(f)   where Momentum determines (in it's absolute discretion) that the provision of the Service is uncommercial or unviable in the circumstances.

4.3   Momentum does not represent or warrant that it will deliver the Service by the estimated delivery date and time shall not be of the essence with respect to the time for delivery.

4.4   Subject to the preceding clause, Momentum will use it's reasonable endeavours to meet the estimated delivery date.

4.5   The Customer acknowledges and agrees that Momentum shall not be liable to the Customer for any delay in the installation and time for delivery of the Service.

If a Project is delayed by the client this can result in additional charges due to a change of consultant, additional project management and resource scheduling, re-familiarisation with the project or re-testing.

If a Project is delayed by the client for 30 days Momentum may at its discretion cancel the project. If the client wishes to re-start the project a new proposal would be issued for the completion of the project.

4.6   The Customer must use its best endeavours to allow Momentum to: -

(a)   establish and supply the Service safely and in a timely manner, including but not limited to, assisting Momentum to obtain access to any applicable premises and assist Momentum to liaise with any parties to comply with same;

(b)   establish and supply the Service, where any software or databases installed or supported by Momentum pursuant to the Service is located via 'Remote Access' to the Customer's server or other remote storage device or drive, and use its best endeavours to allow and authorize Momentum to access such software and databases, from time to time;

(c)   provide any necessary authorization and access to the Customer's database and where required make copies or duplicates of such database and its data whether in whole or in part, where the provision or access to the database is required by Momentum to provide the Service.

4.7   The Service will be deemed to be delivered on the earlier of the date that Momentum notifies the Customer of successful installation and testing of the Service or the date that the Customer commences using the Service.

4.8   The minimum term shall commence on the date of delivery of the Service as determined in accordance with the preceding clause.

4.9   Momentum will provide the Service to the Customer with due care and skill and: -

(a)   the Customer acknowledges and agrees that Momentum makes no warranty in relation to the performance or characteristics of any software

supplied in connection with the Service other than those warranties contained in this agreement or the Proposal; and

(b) In the event of unexpected faults outside of Momentum's control, Momentum will use all reasonable endeavours to rectify the fault and restore the Service (as far as possible) as soon as possible. This may include escalation with the Software Vendor and installation of a hotfix / patch or upgraded version of the software. The Customer acknowledges that Momentum is not the developer of Software. The customer must not make any claim, withhold any monies or refuse to perform the Customer's obligations under this contract in such event;

(c) In the event that the Customer attempts to self-implement the software including activation of new or unused features the Customer accepts the risk of doing so, and accepts that any assistance provided by Momentum for any reason is provided on a commercial basis.

(d) In the event that the Customer requests support for an issue with the Software and that issue in Momentum's opinion has existed for more than three (3) months prior to the request, Momentum shall not be obliged to rectify the issue that shall not be covered by the Support Plancontained within the Proposal.

4.10 The Customer, when using or attempting to use the Service, must:

(a) comply with all laws, all directions by a regulator and reasonable directions given by Momentum;

(b) not break any law or infringe any other person's rights;

(c) not expose Momentum to any liability;

(d) use or attempt to use the Service in any way that may be likely to damage any property or injure or kill any person;

(e) use or attempt to use the Service in any other way that contravenes the EULA (in Part 2 of this contract).

5. Variations to Contract and Services

5.1 Momentum shall not make any changes to this contract that are to the Customer's detriment unless Momentum:

(a) is required to by law; or

(b) provides the Customer with written notice detailing the change and a period of at least 30 days in which the Customer may terminate the contractwithout incurring any additional termination costs or charges.

5.2 The Customer may request a variation or change be made to this contract and Momentum may accept or reject the variation or change in its absolute discretion.

5.3 If the Customer requests a variation or change that is agreed to by Momentum, Momentum will advise the Customer of any additional charge that will be incurred and the contract will also be varied and amended to provide for the new charge. Any variation must be accepted by Momentum in writing.

6. Equipment and Software

6.1   To use the Service, the Customer may be provided with equipment and software owned, leased, licenced or authorised to be used and/or loaned by Momentum and this equipment and software is provided by way of loan and held on Momentum's behalf only and does not constitute any transfer of title.

6.2   The Customer must take reasonable care of all equipment and software supplied by Momentum, including the provision of adequate and suitable space, power supply and environment.

6.3   The Customer must ensure that all equipment used by the Customer in connection with the Service, and the way that equipment is used, complies with all laws, as well as directions by a regulator and reasonable directions given by Momentum, failing which Momentum may disconnect that equipment or software from the Service immediately and without notice.

6.4   With the exception of fair wear and tear, the Customer will be responsible for the repair or replacement costs of all equipment or software that is supplied by Momentum and that is lost, stolen or damaged.

7. Charges and Payment

7.1   Charges

The Customer agrees to:

(a)   pay all charges incurred in respect of the Service;

(b)   pay the charges and make the payments in conformity with the rates and charges as set out in the Proposal;

(c)   pay any Software Licence Fees as invoiced by Momentum or the Software Vendor for the Software.

(d)   pay the charges and make the payments at the times and on the terms set out in the Proposal;

(e)   pay any charges payable to any other facilities provider or any other third party supplier whose services are required for Momentum to provide the Service (Third Party Charges), provided however that Momentum will use it's reasonable endeavours to ensure that the Customer is advised of any Third Party Charges prior to the Customer acquiring the Service;

(f)   pay any Third Party Charges, where such charges apply, to the third party supplier directly and the Customer indemnifies Momentum from and against any claim, action or demand made by a third party supplier against Momentum in respect to the Third Party Charges;

(g)   pay interest at the rate of 3% above the prevailing base rate charged by

Momentum's bank on overdue charges for bill that is not paid by the Customer from the due date until paid;pay all reasonable expenses incurred by Momentum (including all reasonable legal and other costs) in relation to the recovery of anypayments due by the Customer and not paid; and

(h)   pay an equal amount to recover any bank or financial institution fees incurred as a result of the dishonouring of any cheque, credit card payment or direct debit made by the Customer.

7.2   Variation of Charges

At any time after the expiry of the minimum term for a Service, Momentum may on not less than 30 days written notice vary the charges for that Service.

7.3   Payment

(a)   The Customer must provide to Momentum and keep Momentum informed of their most up to date billing address.

(b)   The Customer agrees to Momentum providing invoices via email transmission to the email address provided by the Customer in the Proposal (if any).

7.4   Disputes Relating to Invoices

(a)   If the Customer disputes an invoice, the Customer must notify Momentum in writing and such notice must include detailed reasons of the dispute and must issue such notice within 14 days of the date of the invoice.

(b)   The Customer must not withhold any monies due and owing to Momentum in the event of a dispute unless the Customer notifies Momentum of the disputed invoice prior to the date for payment.

(c)   Momentum will use its reasonable endeavours to resolve any dispute quickly.

(d)   Where a dispute has been determined by Momentum to be baseless, the Customer must pay the disputed amount within 7 days of such determination, and where a dispute is determined to be valid and the Customer has already paid the disputed amount, Momentum must refund the relevant amount within 7 days of such determination.

(e)   In the event that a Customer does not pay any monies owing to Momentum by the due date for payment, other than where a dispute has been notified to Momentum prior to the date for payment, Momentum may:

(i)   charge additional fees as detailed in clause 5.3; and

(ii)   take any additional actions as allowed under this contract, including but not limited to suspension or termination of the Service.

7.5   GST and Other Taxes

(a)   Unless otherwise expressly noted, all charges for the Services are exclusive of GST.

(b)   The Customer must pay to Momentum, at the same time when any part of the charges for the Service is payable, an amount equal to any GST payable on supply of that Service.

(c)   Momentum will issue a tax invoice to the Customer for any supply on which GST is imposed.

(d)   If any additional tariffs or government imposts become payable by Momentum in relation to or in connection with this contract Momentum will charge and the Customer will pay an additional amount equal to the amount of the tariffs or impost payable.

7.6   Credit Policy

(a)   Momentum may require credit approval for the Customer to ensure Momentum is satisfied with the Customer's credit rating, from time to time.

(b)   The Customer acknowledges and agrees to:

(i)   Momentum disclosing to a credit reporting agency personal information relating to the Customer that is in Momentum's possession;

(ii)   provide additional information if requested by Momentum to properly assess the Customer's credit rating.

(c)   If Momentum is at anytime not satisfied with the Customer's credit rating, Momentum may require the Customer to pay a security deposit or an addition to an existing security deposit to limit the financial risk to Momentum in providing the Service.

(d)   If requested by Momentum a security deposit must be paid by the Customer within 14 days of such request.

(e)   The value of the security deposit shall be the amount that Momentum reasonably believes is necessary to secure it's exposure under the contract.

(f)   Momentum may utilise the Customer's security deposit to recover any amounts payable by the Customer to Momentum under this contract or to compensate itself for any loss, liability or expense suffered or incurred by it as a result of any breach of the contract by the Customer.

8. Complaints and Dispute Resolution

8.1 Any complaints by the Customer in connection with the Service provided by Momentum should be raised with Momentum to enable Momentum to resolve the dispute.

9. Termination of Contract and Services

9.1 The Customer may cancel the Services by notice to Momentum without incurring additional charges in the following circumstances:

(a) Immediately if:

(i) Momentum breaches an essential clause of this contract which is not resolved within 21 days of the Customer requesting Momentum to do so in writing or which is unable to be resolved;

(ii) Momentum becomes insolvent, bankrupt or unable to pay its debts when due;

(iii) The Service has been suspended for 14 days, where there is no fault on the Customer's part.

(b) By giving 30 days written notice if the minimum term of Service has ended and the Customer has continued to use the Service.

9.2 The Customer may cancel the Services by notice to Momentum at any time but may incur a cancellation fee if such cancellation is prior to the minimum term.

9.3 Subject to any provision to the contrary in the proposal, the cancellation fee shall be the aggregate of:

9.3.1 The cancellation fee set out in the Momentum Support Plan; and,

9.3.2 Any pro rata portion of the Software Licence Fees due and payable.

9.4 In accordance with clause 3.6, Momentum may cancel the Service at the end of the contract period by informing the Customer at least 30 days before the termination date. In this case, termination will be effective at the end of the minimum contract period as specified in the Proposal. In addition, Momentum may cancel the Customer's Service in the following circumstances:

(a) Immediately if:

(i) Momentum reasonably suspect fraud by the Customer or anyone using the Service;

(ii) Momentum are required to cancel the Service to comply with a

direction from a law enforcement agency, or a regulatory authority;

(iii)　　the Customer have failed to make a payment by the due date (including a payment pursuant to clause 7.1(c)) and the Customer fails to make such payment within 5 business days of receipt of a notice requiring the Customer to do so, except where an amount is permitted to be withheld pursuant to a billing dispute;

(iv)　　the Customer have failed to provide the security deposit requested (if any);

(v)　　the Customer fails to comply with a statutory demand issued by Momentum under the *Corporations Act 2001* (Cth);

(vi)　　Momentum determines that the Customer is in breach of the confidentiality provisions of this contract;

(vii)　　the Customer becomes insolvent, bankrupt or unable to pay the Customer's debts when due;

(viii)　　the Customer is in breach of an essential clause of this or any contract with Momentum that is not resolved within 14 days of us requesting the Customer to do so in writing or which is unable tobe resolved; or

(ix)　　 Momentum exercises its rights pursuant to clause 3.2(c).

(b)　　 Upon 30 days written notice to the Customer in any of the following events:

(i)　　the minimum period on the Proposal has ended and Momentum have continued to supply the Service;

(ii)　　Momentum is unable to supply the Service to the Customer because a supplier has terminated its agreement with Momentum and Momentum cannot provide the Service to the Customer by using an alternative supplier; or

(iii)　　Momentum is unable to supply the Service to the Customer because of a continuing event that is reasonably out of its control; for example, earthquake, explosion, natural disaster, sabotage or war.

9.5　　If Momentum cancels the Service, the written notice will contain:

(a)　　the effective date on which cancellation takes effect;

(b)　　the reasons for the cancellation;

(c)　　details of all charges for the use of the Service up to the date of cancellation;

(d)   how these charges are calculated;

(e)   when the charges are due;

(f)   details of any applicable refunds or rebates and how these refunds or rebates are calculated; and

(g)   details of any cancellation fee and how it is calculated.

9.6   Where the Service is cancelled:

(a)   the Customer will not be able to use the Service after the cancellation date;

(b)   the Customer agrees to pay for any charges for the Customer's use of the Service until the cancellation date;

(c)   any credits on the Customer's account will be applied to pay for any undisputed, outstanding charges at the cancellation date;

(d)   Momentum will refund to the Customer any used portion of any security deposits Momentum holds;

(e)   Momentum will refund to the Customer any money that the Customer has paid in advance for that part of the Service that is being cancelled on a pro-rata basis;

(f)   the Customer will return all of Momentum's equipment and software to Momentum within 30 days;

(g)   if the Customer cancels the contract before the end of the contract period, except where cancellation occurs in the circumstances set out in clause 9.3, the Customer will have to pay the cancellation fee set out in that clause;

(h)   if Momentum cancels the Service before the end of the contract period pursuant to clause 9.4(a), the Customer will have to pay the cancellation fee set out in clause 9.3.

Upon completion of the matters referred to in clause 9.6 neither party shall have or maintain any claim against the other.

10. Suspension of Service

10.1   Momentum may suspend the Services by giving the Customer reasonable prior notice where:

(a)   it is necessary to do so to maintain or restore any part of the network;

(b)   Momentum reasonably suspects fraud by the Customer or anyone using the Service;

(c)   Momentum is required to suspend the Service to comply with a direction from a law enforcement agency, or a regulatory authority, or a supplier;

(d)　　the Customer fails to make a payment by the due date (including a payment pursuant to clause 7.1(c)) and fails to make such payment within 5 business days of receipt of a notice requiring the Customer to do so, except where an amount is permitted to be withheld pursuant to a billing dispute;

(e)　　the Customer fails to provide a security deposit as requested (if any);

(f)　　the Customer fails to comply with a statutory demand issued by Momentum under the *Corporations Act 2001* (Cth);

(g)　　Momentum determines that the Customer is in breach of the confidentiality provisions of this contract;

(h)　　Momentum is temporarily unable to supply the Service to the Customer because a supplier has temporarily withdrawn its service from or authority to Momentum;

(i)　　Momentum is temporarily unable to supply the Service because of a continuing event that is reasonably out of the control of Momentum; for example, earthquake, explosion, natural disaster, sabotage or war;

(j)　　the Customer breaches an essential clause of this contract or any other contract with Momentum; or

(k)　　the Customer breaches the EULA.

10.2　　Momentum will only suspend the Services for periods that are reasonable in the circumstances.

10.3　　If the Services are suspended by Momentum, the notice of suspension must contain relevant information including the dates on which the suspension will take effect and the reasons for the suspension.

10.4　　When the Service is suspended:

(a)　　the Customer will not be able to use the service;

(b)　　the Customer will be liable to Momentum for any charges for access to or use of the Service during the period of suspension; except where the suspension was a result of an event that was reasonably out of the Customer's control.

10.5　　Where the Customer fails to pay any Charges due under this Agreement and/or the Software Licence Fees, without limitation, the Customer acknowledges that it will be in breach of this Agreement and the EULA and Momentum may, in addition to any other rights under this Agreement, refuse and cancel the provision of any Registration Codes for Software.

11. Privacy and Personal Information

11.1   Momentum will only collect, use and disclose personal information that is reasonably necessary to provide the Service. The Customer may at any time contact Momentum to access and if required correct any stored personal information. Any complaints about Momentum's use of personal information should be addressed to Momentum via it's contact details set out in this Contract.Any complaints that cannot be resolved by Momentum may be referred to the Office of the Federal Privacy Commissioner. The Customer agrees and consentsto the use of personal information in accordance with the provisions of this Agreement.

12. Liability

12.1   The Customer is liable to Momentum for:

(a)   all charges for Momentum's Service; and

(b)   any damage to Momentum's equipment and software lent to the Customer, which is not the result of fair wear and tear or the fault or negligence of Momentum, or its Representatives.

12.2   The Customer is entirely responsible for implementing and maintaining the security of the Customer's network. The Customer will be liable to pay for any and all charges included on the Customer's bill that were incurred as a result of a breach of the Customer's network security including but not limited to where there is any unauthorised use of the Customer's network. Unauthorised use could includeany use of the Customer's Services which is not authorised by the Customer, use resulting from a viral infection of any computers or related equipment on the Customer's network, attacks from the internet, a denial-of-service attack, spam and misuse of the Customer's Services by third parties including the Customer's employees.

12.3   Nothing in this contract limits or removes any rights, responsibilities, or obligations that Momentum has under the *Trade Practices Act 1974* (Cth) and other laws where it would be illegal to do so.

12.4   The parties agrees to exclude all conditions and warranties implied into the contract and limits its liability for any non-excludable conditions and warranties, where permitted to do so by law (at Momentum's option) to:

(a)   repairing or replacing relevant goods;

(b)   resupplying the relevant or equivalent services; or

(c)   in either case, paying the Customer the cost of doing so.

12.5   Momentum is liable to the Customer for:

(a)   any damage to the Customer's property caused by the fault or negligence of Momentum or its representatives during installation, repair or

maintenance;

(b) interruptions in the Customer's use of the Service as a result of the negligence of Momentum or its representatives to the extent of any charges payable by the customer for the period of interruption unless this contract is terminated and this is the sole and exclusive remedy for any interruption to the Service and for Momentum's acts or omissions leading up to the interruption;

(c) death or personal injury caused by Momentum and its representatives.

12.6 Momentum is not liable to the Customer for:

(a) consequential loss, including but not limited to:

(i) indirect loss, loss of profits of any kind;

(ii) loss or corruption of data;

(iii) interruption to business;

(iv) loss of customers or customer losses; and/or,

(v) loss of revenue and economic loss of any kind.

12.7 To the extent permitted by law, Momentum's total liability to the Customer in any 12-month period in respect of all claims arising out of or in connection with this contract in any circumstances be the lesser of:

(a) the total amount paid or payable by the Customer to Momentum under this contract in the preceding 12-month period; or

(b) $.100,000.00

12.8 Notwithstanding the provisions of clause 12.7, Momentum's liability for the Customer's loss under or in connection with the contract or the Service is reduced to the extent that the Customer's acts or omissions or the Customer's equipment or software (or the acts, omissions or equipment or software of a third person, including a supplier) cause or contribute to that loss.

13. Indemnity

13.1 The Customer shall indemnify Momentum against all loss arising from or in relation to:

(a) a claim against Momentum arising out of the death of or personal injury to Momentum's Representatives, to the extent that such damage or loss is caused by a negligent act or omission, or an act or omission intended to cause death or personal injury, by the Customer or any of the Customer's Representatives;

(b) any damage to or loss of any equipment, software, network or other tangible property of Momentum's or any third party to the extent that such loss is caused by a negligent act or omission, or an act or omission intended to cause loss, by the Customer or any of the Customer's Representatives;

(c) a claim by a third party against Momentum to the extent that the claim relates to any negligent or wilful act or omission of the Customer or any of the Customer's Representatives in relation to this contract;

13.2 all loss (including consequential and indirect loss or damage) arising from any breach by the Customer or the Customer's Representatives of clause 4.10; If Momentum uses another supplier in providing the Services, the Customer shall indemnify Momentum for all loss suffered by Momentum as a result of a claim by the Customer or a third party against the other supplier (excluding claims for death, personal injury or physical damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services. The total loss for which the Customer may be liable is capped at $1 million dollars;

13.3 The Customer shall indemnify Momentum for all loss suffered by Momentum as a result of a third-party claim against Momentum (excluding claims for death, personal injury or damage to tangible property) arising from or in connection with the supply or cessation of supply of the Services. The total loss for which the Customer may be liable is capped at $1 million dollars;

13.4 Without limiting any other term of this contract, the Customer will release Momentum from any and all loss to the extent that such loss or liability is caused by a negligent act or omission of the Customer or any of the Customer's Representatives.

14. Confidentiality

14.1 The Customer agrees to keep in confidence and not to use or disclose any of Momentum's confidential information. The Customer may only disclose confidential information to the extent necessary:

(a) to the Customer's legal advisers in relation to its rights under this Agreement;

(b) to the Customer's Representatives;

(c) to abide by any law, binding directive of a regulator or a court order;

(d) to abide by the listing rules of any stock exchange on which its securities are listed.

14.2 The Customer acknowledges that a breach of this confidentiality clause may cause Momentum irreparable damage for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, Momentum may seek and obtain injunctive relief against such a breach or threatened or

suspected breach. The Customer's obligations with respect to the confidential information survive termination of this contract. The Customer must return Momentum's confidential information immediately upon request.

15. Intellectual Property

15.1   Momentum must not use the Customer's Intellectual Property without the Customer's prior written consent.

15.2   The Customer acknowledges that Momentum's Intellectual Property and

all goodwill associated with Momentum's Intellectual Property remains Momentum's sole property and no rights are conferred on the Customer with respect to our Intellectual Property except as specifically expressed in this contract. All Intellectual Property Rights created in delivering the Service to the Customer remains the sole property of Momentum.

16. Costs

16.1   Each party must pay its own costs in respect of this contract.

17. Assignment

17.1   The Customer may not assign, novate, mortgage, charge, sublicense, or subcontract or otherwise delegate any of the Customer's obligations under this contract without Momentum's prior written consent (such consent not to be unreasonably withheld). Momentum may assign, novate, or otherwise delegate all or any of Momentum's rights and obligations under this contract to a related body corporate or any other person or entity without the Customer's consent and in the sole discretion of Momentum.

18. Waiver

18.1   A waiver by a party of a provision of or of a right under this contract is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver. A waiver is effective only in the specific instance and for the specific purpose for which it is given. A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right. Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

19. Severability

19.1   If the whole or any part of a provision of this contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction and the remainder of this contract otherwise has full force and effect. This clause has no effect if the severance alters the basic nature of this contract or is contrary to public policy.

20. Entire agreement

20.1   This contract constitutes the entire agreement of the parties about its subject matter and any previous contracts, understandings, negotiations, and representations on that subject matter cease to have any effect.

21. Jurisdiction

21.1   This contract is governed by the laws from time to time in force in Queensland.

22. Notices

22.1   A notice, approval or consent, to be issued under this contract must be in writing and in the absence of evidence to the contrary will be taken to be received:

(a)   if left at the address of the addressee, at the time it was left;

(b)   if sent by ordinary post, on the third day after posting;

(c)   if sent by express post, on the next day;

(d)   if sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent; and

(e)   if sent by electronic email, at the time the sending party receives a "return receipt" confirmation of successful transmission.