

GENERAL TERMS AND CONDITIONS

1. AGREEMENT

- 1.1 In subscribing to receive the Services, User acknowledges and agrees that—
- it has engaged MOVUS to provide the Services in accordance with this Agreement; and
 - it has the requisite power, and authority, to enter into, perform its obligations and discharge its liabilities under this Agreement.
- 1.2 This Agreement will continue for the Term, unless terminated earlier or extended.

2. ACCESS TO SERVICES

- 2.1 Notwithstanding any other provision in this Agreement, the System, Equipment and User Documentation remains the property of MOVUS.
- 2.2 MOVUS will use reasonable endeavours to ensure that the Services are provided in a manner that is substantially consistent with MOVUS' User Documentation.
- 2.3 MOVUS may, from time to time, make modifications to the Services, including modifications to the design, functionality and appearance of the System.
- 2.4 Unless otherwise agreed in writing, MOVUS is not obligated, or required, to provide User with access to any updated, or newer, version of the System. Any Fees associated with any updated, or newer, version must be paid in accordance with clause 5 prior to access being granted by MOVUS.
- 2.5 MOVUS may access the System, without notice to User, for any purpose associated with the overall management of the Services, including the application of software changes, the provision of training, education and support services to User.
- 2.6 MOVUS is under no obligation to ensure that persons accessing the System using User's security identifier have the authority to do so. MOVUS is entitled to assume that any person using User's security identifier to access the System is authorised to do so.
- 2.7 User is solely responsible for the confidentiality and use of any security identifiers relating to the System. If User become aware of any loss, theft or unauthorised use of any of its security identifiers, User must notify MOVUS immediately.

3. EQUIPMENT

- 3.1 User may, by written notice to MOVUS within 5 Business Days from the date of delivery, refuse to accept any Equipment that has been provided where—
- the Equipment is considered to be defective; or
 - the Equipment was not ordered by User.
- 3.2 Any Equipment returned to MOVUS in accordance with clause 3.1(a) will be replaced as soon as practicable at MOVUS's cost, unless the defect is the result of unreasonable neglect, use or damage by User.
- 3.3 User assumes all risk, and liability, for the Equipment from User's receipt of the Equipment until the Equipment is returned to MOVUS. User agrees that—
- it will ensure that the Equipment is operated in a secure area at all times;
 - it will not alter the Equipment (including by way of repair or servicing) or remove from the Equipment any attachment or fittings without the prior written consent of MOVUS;
 - should MOVUS (acting reasonably) consider that there is evidence of neglectful use, abuse or damage to the Equipment (beyond reasonable wear and tear), then, without prejudice to MOVUS's other remedies under this Agreement or at law, MOVUS may, at User's cost—
 - undertake any necessary repairs, or maintenance, to restore the Equipment to proper working order or to the condition the Equipment was in prior to the Equipment passing into User's possession; or
 - if such repairs are not possible, replace the Equipment; and
 - without limiting any other clause in this Agreement or MOVUS's rights at law, if any Equipment returned to MOVUS following expiry of the Term, or the termination of the Agreement, is damaged (beyond reasonable wear and tear), User will be responsible for the costs incurred by MOVUS to

restore the Equipment to proper working order or, if repairs are not possible, replace the Equipment.

4. SUPPORT SERVICES

- 4.1 User acknowledges that the Services may not be free from fault or interruption, and that the Services may be unavailable during scheduled, or unscheduled, outages or maintenance periods. MOVUS will take all reasonable steps to notify User of any scheduled outages or maintenance, or when the Services may be temporarily unavailable.
- 4.2 MOVUS agrees to provide User with access to a helpdesk on Business Days to provide User with all reasonable assistance, including, at MOVUS's sole discretion, the replacement, or repair, of Equipment, or to remedy any technical defects, or operational difficulties, in respect of the Services.
- 4.3 Notwithstanding clause 4.2, MOVUS shall not be liable to provide assistance to User if—
- User has not paid all Fees in accordance with clause 5;
 - User does not provide the necessary access, or assistance, to MOVUS to allow the assistance; or
 - a technical, or operational, defect is caused, or contributed to, by User's—
 - use of the System in combination with User's own software and/or hardware;
 - use of the System in a manner other than as reasonably contemplated, or approved, by MOVUS;
 - failure to maintain the supported operating environment;
 - use of the System in a manner that is not reasonably contemplated, or not expressly, authorised by this Agreement or in accordance with the User Documentation; or
 - use of the System that results in accidental damage.
- 4.4 MOVUS reserves the right to make any changes to the Services that it considers necessary, including updates and new releases. MOVUS will use reasonable endeavours to give User prior notice of any changes to the Services to the extent that there is any adverse effect on the functionality or performance of the Services. However, User acknowledges that prior notice may not be possible in respect of all changes, such as any urgent changes that are necessary to remedy errors or defects to the Services.

5. FEES AND PAYMENT

- 5.1 User must pay MOVUS all Fees in connection with the Services. MOVUS will issue invoices for the Fees in accordance with the Quotation.
- 5.2 User must pay invoices issued by MOVUS in accordance with clause 5.1 within 30 days from the date of invoice. All invoices will be Tax Invoices for GST purposes.
- 5.3 Unless otherwise specified, all Fees are exclusive of GST and any other applicable taxes and duties (which must be paid by User).
- 5.4 Failure of User to make the payments in accordance with clause 5.2 may cause MOVUS, at its discretion, to discontinue the Services and charge an administration fee for any overdue amounts at the rate of fifty Australian dollars (A\$50.00) (exclusive of GST), plus the application of an interest cost of one percent (1%) per month to the overdue amount.

6. USER OBLIGATIONS

- 6.1 In accepting the Services, User acknowledges and agrees that, at all times, it—
- will use the Services strictly in accordance with these Terms and Conditions for the purposes contemplated by this Agreement;
 - will not tamper with or modify, or attempt to tamper with or modify, the System;
 - will ensure that its use of the Services does not in any way infringe any third party's Intellectual Property Rights or other rights;
 - is responsible for ensuring compliance with all Applicable Laws and reasonable directions from MOVUS in relation to the Services, unless such directions breach any Applicable Laws; and

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- (e) is solely responsible for the collection and input of Data into the System, including its completeness, accuracy and correctness, and for obtaining all necessary licences and consents to its use, and that MOVUS assumes no responsibility for ensuring the correctness, accuracy, completeness or suitability of any part of the Services for any intended purpose.
- (f) will take reasonable precautions to prevent the transfer to the System of any material that contains any virus, trojan, worm or other malware that may damage, or interfere, with the operation of the System;
- (g) will not breach, or attempt to breach, the security of the System or otherwise interfere with, or attempt to interfere with, the normal operation of the System; and
- (h) will ensure that, except as expressly authorised by (and subject to any conditions prescribed under) any Applicable Law, User must not, in any form or by any means—
- (1) copy, adapt, reproduce, store, distribute or sell, print, display, perform, broadcast, publish, communicate to the public, make available to the public or create derivative works of the whole, or any part, of the Services or any User Documentation (including all trade-marks); or
 - (2) seek to disassemble, or reverse engineer, the System.
- 6.2 If MOVUS reasonably believes that User is, or is likely to be, in breach of this Agreement, MOVUS may by written notice—
- (a) suspend User's access to, or use of, the System without any liability to MOVUS; or
 - (b) discontinue the Services or the provision of any Output, access to the System or Equipment, Data, or output provided through, or associated with, the Services.
- ### 7. LIABILITY
- 7.1 To the maximum extent permitted by law, MOVUS's liability under any guarantee, condition or warranty (including any guarantee, condition or warranty of merchantability, acceptable quality, fitness for purpose or fitness for disclosed result), or any other right or remedy, under any legislation or implied into this Agreement by any legislation (**Statutory Warranties**) is hereby excluded. If any Statutory Warranties are found to be applicable, MOVUS's liability for any breach of such Statutory Warranties will be limited to the refund of any Fees paid for the Services.
- 7.2 Without limiting clause 7.1—
- (a) MOVUS does not represent, or warrant, that the Data, Output or any other information made available through the Services will be available at any particular time or that the System, or Output Data, will be free from error or interruption;
 - (b) User agrees that MOVUS is not liable for problems caused by User or a third party, including wireless carriers, data centres, network congestion or blackouts, weather, accidents, any act of God or other factors outside of MOVUS's control; and
 - (c) MOVUS specifically disclaims any, and all, liability and warranties, implied or expressed, for uses requiring fail-safe performance.
- 7.3 To the maximum extent permitted by law, MOVUS excludes all liability (whether arising in contract, tort or otherwise) that it may have for any Loss arising from—
- (a) the use of, or reliance on, any aspect of the Services, Equipment, Output or Data;
 - (b) any third party which integrates, in any way, with the Services, System or any Equipment; or
 - (c) any support services, documentation, or other services provided by MOVUS in respect of the Services,
- whether that Loss is direct, indirect or Consequential Loss.
- ### 8. INDEMNITY
- User agrees to indemnify MOVUS and each of its officers, directors, employees, agents, consultants and contractors (**Indemnified Persons**) from, and against, any Loss of any kind which those Indemnified Persons may suffer, or incur, in connection with—
- (a) a breach by User of any provision of this Agreement; or
- (b) any claim, action, demand, remedy, suit, proceeding or right of action against any Indemnified Person by—
 - (1) any third party relating to User's access to, or use of, any part of the Services; or
 - (2) User or third party relating to an allegation or finding that any—
 - (A) Data provided, or collected, by User infringes the Intellectual Property Rights of a third party; or
 - (B) Data or Output is illegal, fraudulent, inaccurate, incorrect, incomplete, misleading or deceptive, or likely to mislead or deceive.
- ### 9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY
- 9.1 User acknowledges and agrees that—
- (a) all Intellectual Property Rights in, and relating to, the Services is owned by MOVUS or its licensors; and
 - (b) it will ensure that the User Documentation, and any other material derived from the User Documentation, is utilised only for the purpose of using the Services, except with MOVUS's prior written consent, and that User is responsible for the safekeeping of the User Documentation.
- 9.2 Subject to this Agreement, MOVUS grants User a non-exclusive, non-transferable and royalty free licence:
- (a) in perpetuity to—
 - (1) access, store and process the Output on User's computer system; and
 - (2) use and reproduce the Output for conducting its business in accordance with this Agreement.
 - (b) for the duration of the Term, to use the User Documentation for the purpose of using the Services.
- 9.3 MOVUS agrees not to provide the Data to any third party (other than a third party engaged by MOVUS to assist in the provision of the Services), unless it is:
- (a) required to do so for the purpose of any audit or compliance purposes, or as otherwise required by law; or
 - (b) provided on an aggregated and anonymous basis, together with Data from one, or more, other subscribers to the Services, for the purposes of providing statistical and/or analytical information.
- 9.4 Subject to clause 9.3, User hereby unconditionally and irrevocably grant to MOVUS, a perpetual worldwide, royalty-free, non-exclusive licence (including the right to sub-licence and transfer those rights to third parties) to use, reproduce, copy, store, modify, adapt, distribute, publish and create derivative works from, and otherwise exercise all Intellectual Property Rights in, the Data or Output for any purpose and in any form, without compensation to User.
- 9.5 Each party (**Receiving Party**) must keep the Confidential Information of the other party (**Discloser**) confidential, safe and secure at all times during, and after the termination of, this Agreement and not disclose it to any person other than:
- (a) the Receiving Party's agents, advisors, contractors and personnel who have a need to know, provided they are subject to an obligation to keep the Confidential Information confidential or, in the case of MOVUS, as contemplated by this Agreement; or
 - (b) where required to do so by law.
- 9.6 The Receiving Party will only use or disclose the Confidential Information of the Discloser in accordance with these Terms and Conditions.
- 9.7 Both parties agree to deal with Confidential Information that is personal information (as defined in the *Privacy Act 1988* (Cth)) in accordance with the *Privacy Act 1988* (Cth).
- 9.8 User agrees to allow MOVUS to use, during the Term and for a period of one year thereafter, User's company name and logos for the sole purpose of identifying User on MOVUS marketing material.
- ### 10. DATA RETENTION AND BACK-UP
- 10.1 Subject to clause 9, User acknowledges and agrees that MOVUS may retain all Data and Output obtained through the provision of the Services, as well as any information provided by User during the provision of the Services, at the termination of this Agreement.

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10.2 MOVUS will, at the end of the Term, make available to User all Data that it retains in a comma separated value format (or another format as agreed in writing). User acknowledges that reprocessing the Data in another way may attract additional Fees.

11. TERM AND TERMINATION

- 11.1 This Agreement commences from the date that MOVUS notifies User of its acceptance of the PO and continues for the Term.
- 11.2 This Agreement will automatically renew at the completion of the Initial Term for a further term equal to the length of the Initial Term (each period being a **Subsequent Term**), unless either party provides the other party with written notice to not renew the Agreement at least 30 days prior to the expiration of the Term.
- 11.3 MOVUS reserves the right to increase, or vary, the Fees for Subsequent Terms by providing User with 40 days' written notice prior to the renewal date.
- 11.4 Either party may terminate this Agreement immediately for any of the following reasons by providing written notice to the other party:
- (a) User fails to pay, in full, any Fees by the due date;
 - (b) the other party breaches any material term of this Agreement and such breach is not capable of being remedied;
 - (c) the other party breaches any material term of this Agreement and, if it is capable of being remedied, does not remedy that breach within 14 days after receipt of notice of breach; or
 - (d) the other party becomes insolvent, has a controller or receiver appointed, enters into liquidation or administration, fails to comply with a statutory demand, it is unable to pay its debts when they fall due or something having a similar effect to the foregoing happens in connection with the party.
- 11.5 Termination of this Agreement is without prejudice to accrued rights and obligations of a party as at the date of expiry or termination. User is not entitled to a refund of any Fees paid in advance.
- 11.6 Upon the termination of this Agreement:
- (a) User's rights to access, and use, the Services shall cease;
 - (b) all Equipment and User Documentation must be returned to MOVUS, at User's costs; and
 - (c) all Fees payable to MOVUS must be paid immediately.
- 11.7 Clauses 3.3(d), 5, 7, 8, 9, 10 and 11, as well as any other clauses that are intended to survive termination, shall survive termination of this Agreement.

12. VARIATION

- 12.1 MOVUS may vary these Terms and Conditions provided that it provides User with not less than 14 days' prior notice.
- 12.2 User may terminate this Agreement by giving 30 days' notice to MOVUS upon receipt of a notice in accordance with clause 12.1.

13. NOTICES

- 13.1 All notices under this Agreement—
- (a) must be in writing and by email; and
 - (b) will be deemed to be delivered when acknowledgement of receipt is recorded on the sender's computer.
- 13.2 Notices to User will be sent to the address specified on the PO (or such other address as User may notify MOVUS of from time to time). Notices to MOVUS must be sent to support@movus.com.au or as otherwise notified to User from time to time.

14. GENERAL

- 14.1 This Agreement does not create a relationship of partnership, employment or agency between MOVUS and User.
- 14.2 User may not assign nor novate this Agreement, or any benefit arising thereunder, without MOVUS's prior written consent.
- 14.3 This Agreement constitutes the entire agreement between the parties supersedes all previous agreements or representations, whether recorded in writing or otherwise.
- 14.4 A provision of, or a right created by, this Agreement may not be waived, except in writing and signed by the party giving the waiver.
- 14.5 This Agreement is governed by the law in force in Queensland, Australia. Each party submits to the jurisdiction of the courts of Queensland in relation to this Agreement.
- 14.6 If any provision of this Agreement is unlawful, invalid, or void, that provision must be read down so that is valid and enforceable (or, if it cannot be read down, severed) so that the validity and enforceability of the remaining provisions are not affected.

15. DEFINITIONS

In this Agreement, unless the context otherwise requires:

Agreement means these Terms and Conditions, and the Quotation.

Applicable Laws means any and all statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time which pertains to the Services.

Business Day means a day from 9:00 a.m. to 5:00 p.m., other than a Saturday, Sunday, or a public holiday in Brisbane, Queensland.

Confidential Information means information that relates to the business, assets, or affairs, of the Discloser and is by its nature confidential or the Receiving Party knows, or ought to know, is confidential, but does not include information that—

- (a) was rightfully known to, or in the possession or control of, the Receiving Party prior to its receipt and which is not subject to a separate obligation of confidentiality on that party; or
- (b) is, or becomes, public knowledge (other than as a result of a breach of confidentiality by the Receiving Party or any person to whom it discloses Confidential Information).

Consequential Loss means any loss of, or failure to realise, revenue, agreements, income, profit, savings or opportunity, damage to reputation, loss or corruption of data, or any indirect, special, economic or consequential loss.

Data means any data that is recorded by the Equipment.

Equipment means any product or equipment that MOVUS provides User from time to time.

Fees means the fees payable to MOVUS in accordance with clause 5.

GST has the meaning given to that term in the *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

Initial Term has the meaning given to that term in the Quotation.

Intellectual Property Rights means any and all:

- (a) current and future registered and unregistered rights in respect of copyright, designs, semiconductor or circuit layouts, trade marks, trade names, business names, trade secrets, know-how, Confidential Information, patents, inventions and discoveries;
- (b) applications for grant of any of the above;
- (c) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and
- (d) other intellectual property as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation*.

Loss means loss, damage, cost, expense or liability of any kind, including liability to a third party, any loss of profits or indirect, consequential, incidental, special exemplary, or punitive loss or damage.

MOVUS means MOVUS Australia Pty Ltd (ACN 612 412 611) and its subsidiary and affiliated, or related, companies.

Output means any information or data generated by the System using, or as a result of the processing of, the Data.

PO means an official purchase order provided by User referencing the Quotation.

Quotation means an official quotation provided by MOVUS specifying the commercial terms of the Services to be provided by MOVUS.

Service(s) means the service of providing User with the right to access and use the System, Equipment, Data and/or Output, and the provision of associated helpdesk and support services, and User Documentation.

Subsequent Term has the meaning given to that term in clause 11.2.

System means the system that integrates the web-based software, together with the Equipment and its integrated technology.

Tax Invoice has the meaning given to that term in *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

Term means the period commencing on the date the Agreement is formed and continuing until the end of the Initial Term or a Subsequent Term (if any), unless terminated earlier.

Terms and Conditions means this General Terms and Conditions.

User means the entity whose details are set out in the Quotation and includes any executors, administrators, successors and permitted assigns of that entity. It also includes an individual natural person user (such as the entity's officers, directors, employees, agents, consultants and invitees) that is authorised to use and access the Services.

User Documentation means any user manual, service standards, fee schedule or other documentation relating to the Services as may be published by MOVUS, from time to time.