



Standard Terms

JESI – Standard Terms

for the provision of the Licence and Support Services by J.E.S.I. Management Solutions Pty Ltd (ACN 159 033 173) (**JESI/we/us/our**) to you (**Customer**).

This Standard Terms document and our engagement letter (including ancillary schedules) (together **Engagement Documentation**):

- (a) form the basis of our Agreement with you (and may be added to or amended by subsequent mutual agreement);
- (b) Is our offer to you to acquire a Licence and accept the Support Services (where applicable); and
- (c) Set out the terms and conditions of the Licence and Support Services (where applicable).

You accept our offer of Licence and Support Services if you:

- (a) Sign and return our engagement letter; or
- (b) indicate that you wish for us to provide the Licence by clicking and accepting that you have you have read these Standard Terms and agree to be bound by these, whether or not you sign the engagement letter.

1. Licence

1.1 Licence

In consideration of the payment of Fees by the Customer, and subject to the terms of this Agreement, JESI grants to the Customer a non-exclusive, non-transferrable licence for the Licence Term to use and access the Application via the Website.

1.2 Authorised Use

- (a) The Customer must ensure that Invited Users access and use of all or any of the Application is in accordance with this Agreement or any applicable end user licence agreement published on the Website.
- (b) The Customer acknowledges and agrees that:
 - (i) only Invited Users may access and use the Application;
 - (ii) the Customer is responsible for all Invited Users' use of the Application;
 - (iii) the Customer must only use the Application for the purposes of operating the Customer's business;
 - (iv) An Invited User may access the Application online utilising a Logon ID allocated by JESI to the Invited User.
 - (v) The Customer must ensure that an Authorised User does not disclose their Logon ID to anyone else.



- (vi) JESI may cancel any Logon ID at any time without providing reasons or limit the number of available Login IDs available to the Customer based on the Fee structure adopted.
- (vii) The maximum number of Logon IDs available to the Customer is set out in the Engagement Documents. The Customer acknowledges and agrees that it may purchase additional Logon IDs from JESI and that an additional Fee will be payable for such number of additional Logon IDs required by the Customer.

1.3 Co-operation

Upon the reasonable request of JESI, the Customer will provide JESI with all information and co-operation reasonably necessary to enable JESI to perform its obligations under this Agreement.

1.4 Restrictions

The Customer must not:

- (a) use the Application in any way that could damage the reputation of JESI or the goodwill or other rights associated with the Application;
- (b) use the Application in any way or in association with safety critical applications where the failure of the Application to perform may be reasonably expected to result in significant injury, or in loss of property or loss of life;
- (c) permit any third party to use the Application other than as set out in this Agreement;
- (d) reproduce of any part of the Application for sale or incorporation in any product or service intended for sale or supply to third parties;
- (e) except as expressly permitted by this Agreement, and except to the extent that applicable laws, including the *Copyright Act 1968* (Cth), prevent JESI restraining the Customer from doing so:
 - (i) reproduce, make error corrections to or otherwise modify or adapt the Application or create any derivative works based upon the Application;
 - (ii) de-compile, disassemble or otherwise reverse engineer the Application or permit any third party to do so.
- (f) The Customer must ensure that all Logon IDs required to access the Application are kept secure and confidential. The Customer must immediately notify JESI of any unauthorised use of the Customer's passwords or any other breach of security and JESI will reset the Customer's password and The Customer must take all other actions that JESI reasonably deems necessary to maintain or enhance the security of JESI's computing systems and networks and the Customer's access to the Application.
- (g) When accessing and using the Application, the Customer must not:
 - (i) attempt to undermine the security or integrity of JESI's computing systems or networks or, where the Application are hosted by a third party, that third party's computing systems and networks;



- (ii) use, or misuse, the Service in any way which may impair the functionality of the Application or Website, or other systems used to deliver the Application or impair the ability of any other user to use the Application or Website;
- (iii) attempt to gain unauthorised access to any materials other than those to which the Customer has been given express permission to access or to the computer system on which the Application are hosted;
- (iv) transmit, or input into the Website, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Customer Data in violation of any law (including Customer Data or other material protected by copyright or trade secrets which the Customer does not have the right to use);
- (v) attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Application or to operate the Website except as is strictly necessary to use either of them for normal operation;
- (vi) remove or modify any program markings or any notice of proprietary rights, irrespective of whether such markings or notices are those of JESI or a third party;
- (vii) make any part of the Application available in any manner to any third party for use in that third party's business operations, or otherwise sublicense, rent, assign, communicate to the public or otherwise deal (wholly or in part) with the Application.

2. Availability of Application

2.1 Availability

JESI shall provide the access to the Application through the Website on a continuous basis during the Licence Term, provided however that JESI may, without notice, suspend all or part of any access to the Application immediately, including where:

- (a) there is a malfunction or breakdown of any of JESI's equipment or if JESI is required to undertake the repair, maintenance or service of any part of the Application;
- (b) it is reasonably required to reduce or prevent fraud or interference with the Application;
- (c) JESI is required to comply with an order, instruction or request of a Government Agency, or other such competent body;
- (d) the Customer has failed to pay Fees that are due and payable to JESI;
- (e) there is a Force Majeure Event.

2.2 Downtime

The Customer acknowledges and agrees that access to the Application is reliant upon various factors outside the control of JESI, including, without limitation, the Customer's internet service provider, telecommunications provider or equipment used to access the Application or the Website, JESI's hosting and web server and other factors which may impact upon the delivery of the Application to the Customer via the internet. While JESI shall use all reasonable



endeavours to ensure the Customer has continuous access to the Application, JESI shall not be liable to the Customer or any other person for any Claim or to any other extent for Loss or damage caused by such factors.

2.3 Viability

JESI may suspend access to the Application if a Claim is made that:

- (a) alleges that the continued provision of the Application infringes the rights of any person;
- (b) exposes JESI to liability prosecution for an offence or liability to a statutory penalty.

2.4 Notice

In the event that access to the Application is discontinued in accordance with clause 2.3, JESI will endeavour to provide the Customer with prior written notice where it is reasonable and practicable in JESI's opinion to do so.

2.5 Notice of Maintenance

JESI will use its reasonable endeavours to, except in emergency situations:

- (a) provide the Customer with 24 hours notice of any scheduled maintenance of the Application; and
- (b) undertake any scheduled maintenance between the hours of 7pm and 7am AEST on weekdays or on weekends.

2.6 Loss of Access

The Customer shall have no Claim against JESI in respect of loss of access or functionality to the Application referred to in this clause.

2.7 Credit for Unavailability

Despite the terms of clause 2.6, if, due to the negligent act or omission of JESI, the Customer is unable to access the Application in accordance with this Agreement, JESI may, at its sole discretion, issue the Customer with an amount of credit calculated with reference to the time that the Application was not accessible as a percentage of the total hours the Application would otherwise have been available.

2.8 Malfunctions

JESI does not warrant that the Application is or will be completely error free or free of Defects.

3. Support Services

JESI will provide Support Services for the Support Fees in relation to the Application in accordance with the Support Terms & Conditions (if any) set out in the Engagement Documents for the Licence Term.

4. Ancillary Services

Any additional training, support, Excluded Support (as set out in the Engagement Documents), implementation, integration or other services provided by JESI at the request of the Customer



that is outside of the scope of the Engagement Documents or the Support Services will be charged pursuant to JESI's then Standard Rate Card which is available on request from JESI.

5. Intellectual Property

5.1 Ownership

- (a) JESI warrants that, at the commencement of this Agreement, it is entitled to grant the rights in respect of the Application subject to the terms and conditions of this Agreement.
- (b) The Customer acknowledges that all Intellectual Property Rights subsisting in the Application are either owned or licensed from third parties (as the case may be) by JESI and that nothing in this Agreement has the effect of or should be construed as passing ownership of any Intellectual Property Rights of JESI to any person, including the Customer.

5.2 Customer Materials

- (a) JESI acknowledges that all Intellectual Property Rights subsisting in the Customer Materials are either owned or licensed from third parties (as the case may be) by the Customer and that nothing in this Agreement has the effect of or should be construed as passing ownership of any Intellectual Property Rights in the Customer Material to any person.
- (b) The Customer hereby grants to the JESI a perpetual, royalty free, non-exclusive, non-transferable licence to use, operate, modify, support and maintain the Customer Materials in order to support the Application.
- (c) The Customer acknowledges that JESI retains ownership of all Intellectual Property Rights the Application created by or for JESI whether before or after the date of this Agreement and the Customer hereby irrevocably assigns any Intellectual Property Rights that may vest in the Customer, by operation of law or otherwise.

5.3 No Exclusivity

The Customer acknowledges and agrees that JESI may supply products or services similar to or the same as the Application to its customers or other third parties and the Customer may not restrict JESI's use of the Application. In using such material, JESI must ensure:

- (a) the Customer is not identifiable;
- (b) no personal information originating from the Customer about identifiable individuals is contained in that material;
- (c) the relevant material does not contain Confidential Information of the Customer.

5.4 Continued Development

- (a) The Customer consents to JESI soliciting comments, information, requests, data, ideas, enhancement requests, recommendations, description of processes, or other information concerning the Application from Invited Users or the Customer (**Feedback**).
- (b) JESI owns all Intellectual Property Rights in any Feedback and may use such Feedback for purpose related to the Application or the carrying out of services



generally in its business activities without further approval or acknowledgement, and the Customer hereby assigns to JESI any Intellectual Property Rights in any such Feedback provided always that JESI complies with the general obligations in clause 5.3.

6. Customer Data

6.1 Provision of Information

Through the usage of the Application, the Customer will provide and have stored on JESI's servers, Customer Data. Customer Data may be stored on servers owned by third parties pursuant to arrangements entered into by JESI.

6.2 Security

JESI shall use all reasonable endeavours to ensure that JESI's servants, agents and employees provide a secure environment for any Customer Data held on its systems as a result of use of the Application. The Customer however acknowledges that no information which is available on the internet is completely secure and agrees that JESI will not be liable for any loss or damage or to any extent should such security measures be overcome or breached and the Customer hereby indemnifies JESI in respect of any such Claims.

6.3 Third Party Infringement

The Customer shall not knowingly do any act or thing in relation to data which would infringe any party's copyright or intellectual property rights and shall be responsible for obtaining consent, approval or license from the holders of any intellectual property rights required to enable the Customer to deal with any relevant data or to do any act or thing in relation to those intellectual property rights.

6.4 Use of Customer Data

The Customer grants and JESI reserves the right to use, test, manipulate or put to any other application the Customer Data for the purpose of improving or marketing the Application. JESI will not use the Customer Data for any other purpose without the consent in writing of the Customer.

6.5 Confidentiality

In making use of Customer Data in accordance with clause 6.4, JESI will use all reasonable endeavours to preserve the confidentiality of the Customer Data, including the amendment or alteration of information to cause it to be unidentifiable.

6.6 Other Customer Data

The Customer acknowledges that through the use of the Application it may exchange or otherwise receive or disclose Customer Data to and from other customers. The Customer acknowledges and agrees that JESI has no control over any or all such information and makes no warranty or guarantee as to its accuracy or otherwise appropriateness of the data and all such data is used completely at the Customer's own risk.

6.7 Survival

The rights and obligations of the parties under this clause 6 survive the termination or expiration of this Agreement.



7. Fees, Invoicing and Payment

7.1 Fees

Subject to changes made to the Fees from time to time under the terms of this Agreement, or by agreement of the parties in writing:

- (a) the Customer will pay each of the Fees for the Licence Term, on or before the date(s) for the payment of each such Fee, specified in the Engagement Documents;
- (b) the amount of Fees payable in respect of each extended period subsequent to the Licence Term of this Agreement will be those fees specified from time to time by JESI; and
- (c) any Fees paid by the Customer are non-refundable and no credits or refunds will be provided in respect of partially used periods.

7.2 GST

- (a) The parties agree that the amount of the Fees has been determined without regard to any GST payable in respect of goods and services that will be supplied under this Agreement (**GST Exclusive consideration**).
- (b) To the extent that any supply made, or to be made, by JESI under or in connection with this Agreement is a taxable supply for the purposes of GST Act, the total amount due to JESI in respect of that supply will be the sum of:
 - (i) the GST Exclusive consideration for that supply;
 - (ii) an amount equal to the GST Exclusive consideration for that supply multiplied by the prevailing rate for the calculation of GST as specified under GST Act from time to time.

7.3 Taxes

For each taxable supply, the Customer agrees to pay to JESI, the sum of the amounts specified in paragraphs 7.2(b)(i) and 7.2(b)(ii) in the same manner, and at the same time, as the Fees for such supply would be payable.

8. Non Payment

- (a) JESI reserves the right to render any part of the Application provided subject to the Licence inoperative if payment of Fee is not received in full when due.
- (b) The Customer acknowledges and agrees that it will not be entitled to make any claim against JESI for any loss or damage arising as a result of the Application being rendered inoperative by us pursuant to paragraph (a).

9. Licence Term and Termination

9.1 Licence Term

This Agreement commences on the Licence Commencement Date and continues in force for the Licence Term.



9.2 Renewal

This Agreement shall renew automatically for the Renewal Term unless either party notifies the other in writing prior to the end of the Licence Term or the Renewal Term that this Agreement is not to be renewed.

9.3 Termination by JESI

JESI may terminate this Agreement in whole or in part if:

- (a) The Customer fails to pay any invoice issued by JESI in accordance with the terms of any such invoice;
- (b) the Customer commits a material breach of this Agreement which is capable of being remedied and does not remedy that breach within 14 days after receiving written notice of the breach from JESI; or
- (c) the Customer commits a material breach of this Agreement which is not capable of being remedied;
- (d) the Customer becomes Insolvent; or
- (e) the Customer infringes JESI's Intellectual Property Rights.

9.4 Preservation of Rights

Termination of this Agreement for any reason (including but not limited to termination pursuant to any provision of this clause 8) will not extinguish or otherwise affect:

- (a) any rights of either party against the other which:
 - (i) accrued prior to the time of the termination; or
 - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time of the termination; or
- (b) the provisions of this Agreement which by their nature survive termination.

9.5 Effect of Termination

The termination of this Agreement will not affect any remedy of any party with respect to any breach of this Agreement. The parties agree that such rights and remedies will survive the termination of this Agreement.

9.6 Return of Data

JESI is not required to return any Customer Data to the Customer at the expiration of the Licence Term. If the Customer requires such data for ongoing accounting or compliance requirements, the Customer must pay JESI's reasonable costs and expenses associated with the delivery of such Customer Data as a precondition of delivery to the Customer.

10. Warranties

JESI warrants that it:

- (a) is able to lawfully grant the licence contemplated by this Agreement; and



- (b) will provide and deliver the Application with due care and skill; and
- (c) shall provide and maintain help files and other appropriate user documentation.

11. Suitability

11.1 Responsibility

The Customer is solely responsible for determining the suitability of the Application for its particular needs and for the results obtained.

11.2 Warranties

The Customer warrants to JESI that it has (and will continue to):

- (a) Determined its needs;
- (b) Evaluated the Application's capabilities; and
- (c) Satisfied itself as to the suitability for the Customer's purpose before entering into this Agreement.

11.3 Representations

JESI makes no representation that the Application is suitable for the Customer's requirements or that it conforms to any applicable Law.

12. Liability and Indemnity

12.1 Limit of Liability

- (a) Except as expressly provided by this Agreement, the Application is provided on an "as is" basis without any representation, warranty or condition, whether express or implied, statutory, out of a course of dealing or usage, trade or otherwise including any implied warranty or condition of merchantability quality or fitness for any particular purpose or use.
- (b) JESI does not warrant that the Application will be free of defect, uninterrupted, accurate, complete, current, stable, bug free, error free or available at any time in respect of its operation.
- (c) JESI shall have no responsibility or liability whatsoever as a consequence of any Customer Data, lost, destroyed or damaged by JESI.

12.2 Implied terms and warranties excluded

- (a) The provisions of various laws, statutes, rules or regulations in force from time to time might imply certain conditions, warranties, and obligations in this Agreement. All such conditions, warranties, and obligations are hereby expressly excluded from having any application to this Agreement, except to the extent that it is not lawful to do so.
- (b) Each party's liabilities under any condition, warranty, or obligation implied by law in this Agreement that cannot be excluded is limited:
 - (i) In the case of goods, to (at the supplying party's election):



- (A) the replacement of the goods, or the supply of equivalent goods;
- (B) the repair of the goods;
- (C) paying the cost of replacing the goods or of acquiring equivalent goods; or
- (D) paying the cost of having the goods replaced; and
- (ii) in the case of services, to (at the supplying party's election):
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.

12.3 Indirect losses excluded

In no event will any party be liable to another for:

- (a) a loss of profits, business, business opportunity, revenue, goodwill or anticipated savings; or
- (b) indirect or consequential Loss or damage.

12.4 Caps on Liability

Other than in relation to an obligation on the Customer to pay Fees to JESI, a party's liability to another party for all Claims made by that party under or in connection with this Agreement is, in aggregate, capped at the amount paid by the Customer to JESI under this Agreement in the 6 months prior to the event occurring which gives rise to the Claim.

13. Confidentiality, Privacy and Security

13.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party (a **Discloser**) undertakes to keep the Confidential Information of the other party (a **Recipient**) secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

13.2 Use of Confidential Information

A Recipient may only use or reproduce the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Agreement.

13.3 Disclosure by Recipient

A Recipient disclosing information under this Agreement must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted under this Agreement.

13.4 Return of Confidential Information

At the request of a Discloser, a Recipient must:



- (a) return to the Discloser all Confidential Information of the Discloser; or
- (b) destroy the Discloser 's Confidential Information and certify to the Discloser that it has been destroyed.

13.5 Privacy

If, as a result of this Agreement, a party is able to access any personal information about identifiable individuals, then that party:

- (a) must comply with the *Privacy Act 1988 (Cth)* and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by these laws;
- (b) must comply with any privacy code or policy which has been adopted by the Customer (if provided by the Customer to JESI) as if it were bound by that code or policy;
- (c) must take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers have access to it;
- (d) must immediately notify the other party upon it becoming aware of a breach of this agreement by itself or any representative, employee or officer;
- (e) must co-operate with the other party in the resolution of any complaint under or relating to, any of the laws, codes or policies referred to in (a) and (b) above.

13.6 Exceptions

Nothing in this Agreement prohibits the use or disclosure of any Confidential Information to the extent that the Recipient can demonstrate that:

- (a) the information is received by the Recipient from a third party who is not under an obligation of confidence in relation to such information;
- (b) the information is generally and publicly available other than as a result of a breach of confidence by the person disclosing or receiving the information;
- (c) the information is independently developed by the Recipient's Personnel who do not have access to any of the Discloser's Confidential Information; or
- (d) the Information was lawfully known to the Recipient prior to receipt of the information from the Discloser.

13.7 Damage and other Remedies

Each party acknowledges that a breach of this clause 13 may cause the other party irreparable damage for which monetary damages may not be an adequate remedy. Accordingly, in addition to other remedies that may be available, each party may seek and obtain injunctive relief against such a breach or threatened breach.



14. Customer Representations and Warranties

The Customer represents and warrants to JESI (except as expressly disclosed in this Agreement) each of the following statements insofar as they are applicable to the Customer is true and correct:

- (a) if it is a corporation or trust it has been duly incorporated or created as the case may be and is validly existing under the laws of the place of its incorporation or creation;
- (b) it has the power to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement;
- (d) this Agreement creates valid and binding obligations enforceable in accordance with their terms, subject to any necessary stamping and registration;
- (e) the execution and performance by it of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency;
 - (ii) its constituent documents; or
 - (iii) any other document or agreement which is binding on it or its assets; and
 - (iv) it has had sufficient opportunity to seek independent legal advice regarding this Agreement and all surrounding matters.

15. Dispute Resolution

15.1 Dispute Resolution Process

- (a) The parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with this Agreement.
- (b) A party may give the other party a notice of dispute in connection with this Agreement.
- (c) Any dispute shall be referred:
 - (i) initially to the Customer's representative and JESI's representative, who will endeavour to resolve the dispute within five (5) Business Days of the giving of the notice; and
 - (ii) if the Customer's representative and JESI's representative do not resolve the dispute within that time, to a member of the Executive Committee of the Customer and a director of JESI, who will endeavour to resolve the dispute within a further five (5) Business Days or such other period as is agreed by the parties.
- (d) If after a period of 20 Business Days after delivery of a dispute notice under clause (b), the parties have not been able to resolve or agree on a process to resolve (whether by mediation, arbitration, alternative dispute resolution or otherwise) a dispute, the dispute



shall be referred to mediation. Either party may at any time terminate the mediation in relation to that dispute.

- (e) A party may not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless:
 - (i) the dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in this clause 15; and
 - (ii) a notice terminating any mediation commenced under clause (d) has been issued by either party in accordance with that clause (d).
- (f) If in the course of the dispute resolution procedure set out in clause 15, the parties agree to refer a dispute for resolution by an agreed process, neither party will oppose any application for a stay of any legal proceedings in respect of that dispute pending the completion of that agreed process.

15.2 Obligations continue during dispute resolution process

Until a dispute is resolved, whether by agreement between the parties or by a court order, the parties are obliged to continue to perform their obligations under this Agreement.

16. Assignment and Subcontracting

16.1 By JESI

JESI may assign this Agreement or its rights under this Agreement without the prior written consent of the Customer.

16.2 By the Customer

The Customer must not assign this Agreement or its rights under this Agreement without the prior written consent of JESI. Any attempted assignment without JESI's consent is void.

16.3 Subcontracting

- (a) JESI may subcontract the performance of any of its obligations under this Agreement.
- (b) JESI must ensure that any subcontract entered into by JESI is consistent with the provisions of this Agreement relating confidentiality.

17. Force Majeure Events

- (a) If a Force Majeure Event occurs, the party affected (**Affected Party**) must give written notice to the other party of particulars of the Force Majeure Event and the extent to which the Affected Party is unable to carry out its obligations.
- (b) If the Affected Party provides the notice referred to above:
 - (i) the obligations of the Affected Party will be suspended from the time the notice is received by the other party until the Affected Party is no longer prevented from or delayed in complying with those obligations by the Force Majeure Event; and
 - (ii) the Affected Party must take reasonable steps to remove or mitigate the relevant Force Majeure Event; and



- (iii) if JESI is the Affected Party, the Customer will have the right to suspend all payments to JESI during that time in respect of the obligations that are affected by the Force Majeure Event; and
 - (iv) the term of this Agreement will be extended for that period of time.
- (c) A party cannot claim a Force Majeure Event continues to apply to the extent that it can be rectified by a disaster recovery plan or business continuity plan. JESI must prepare and implement a disaster recovery plan or business continuity plan unless the Force Majeure Event prevents it from doing so.

18. Notices

- (a) A notice, consent, approval or other communication (each a 'notice') under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given at the address last known to the party giving it and:
- (i) delivered to that person's address;
 - (ii) sent by pre-paid mail to that person's address;
 - (iii) transmitted by facsimile to that person's address; or
 - (iv) sent by email to that person's email address.
- (b) A notice given to a party in accordance with this clause is treated as having been given and received:
- (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next following day;
 - (ii) if sent by pre-paid mail, on the third Business Day after posting;
 - (iii) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next following Business Day; and
 - (iv) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)*.
- (c) At the date of this Agreement, the addresses for notices under this Agreement are set out in the Engagement Documents.

19. General

19.1 Modification of Terms

JESI reserves the right to modify or terminate this Agreement in any country where there is any current or future requirement or obligations (set by the government or otherwise) that will impact on JESI operating its business, the Customer accessing the Application or which presents a hardship on JESI to continue to operation without modification of the terms of this Agreement.



19.2 Costs

Each party will pay their respective costs and expenses of in connection with the negotiation, preparation, execution, and performance of this Agreement.

19.3 Entire Agreement

This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

19.4 Jurisdiction

- (a) This Agreement is governed by the law in force in the State of Queensland.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, in relation to any proceedings that may be brought at any time relating to this Agreement.
- (c) Each party irrevocably waives any objection it may have now or in the future to the venue of any proceedings where that venue falls within Queensland.

19.5 No Merger

No right or obligation of any party will merge on completion of any transaction contemplated by this Agreement.

19.6 Severability

Any provision of this Agreement that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of this Agreement which shall remain in force.

19.7 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement.
- (b) Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

20. Acceptance

The Application will evolve over time and because of this, these Standard Terms are not intended to be exhaustive. JESI reserves the right to change these Standard Terms at any time. The change becomes effective at the time that JESI posts the modified terms on its website. JESI will attempt to communicate the changes to these terms to the Customer.

The Customer will be required to accept the modified terms. It is the Customer's obligation to ensure that they have read, understood and agree to the terms before accepting.



21. Definitions and Interpretation

21.1 Definitions

In this Agreement the following definitions apply unless the context requires otherwise:

Agreement means this Standard Terms agreement and includes its Recitals, Annexures, Schedules and Appendices, as applicable.

Ancillary Services means those services described in clause 4 that are not Support Services.

Application means the journey management software solution known as “JESI” including:

- (a) any enhancements, upgrades or modifications to that software; and
- (b) any digital information, illustration, animation, flash file, audio, photographic images and/or other material, together with any other accompanying material made available by JESI for the purposes of this Agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Brisbane, Australia.

Claim means, in relation to a person, a claim, demand, remedy, suit, injury, damage, Loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this Agreement relating to the business, technology or other affairs of the discloser of the information.

Controller has the meaning it has in section 9 of the *Corporations Act*.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means that party identified as such in the Engagement Documents.

Customer Data means data owned or supplied by the Customer and stored on JESI systems through the Customer’s usage of the Application.

Customer Materials means any trademarks, images, content or other materials developed by the Customer prior to the Licence Commencement Date or independently of this Agreement and includes any Customer Data.

Defect means a material failure of the Application to meet any stated specifications.

Fees means the Licence Fees and Support Fees.

Force Majeure Event means any event beyond the reasonable control of the non-performing party and which the party could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts or could not have prevented by taking steps specifically required under this Agreement, including but not limited to the extent that a disaster recovery plan or business continuity plan is able to prevent or remedy such event, which is limited to the following:

- (a) fire, flood, earthquake, elements of nature or act of God;



- (b) acts of way, terrorism, riot, civil disorder, rebellion or revolution, all by a third party; or
- (c) strikes, lockouts or labour disputes of a general nature that extend beyond the non-performing party's Personnel (such as a general or industry-wide strike),

but does not include an act, omission or event caused or contributed to by a Related Entity of the non-performing party.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST means goods and services tax (as modified from time to time) payable under or in accordance with the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act*);
- (b) it has had a Controller appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of **Error! Reference source not found.**, **Error! Reference source not found.** or **Error! Reference source not found.** above;
- (e) it is taken (under section 459(F)(1) of the *Corporations Act*) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the *Corporations Act* (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any or all of **Error! Reference source not found.** to **Error! Reference source not found.** happens in connection with that person under the law of any jurisdiction.

Intellectual Property Rights means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights (including any goodwill associated with those trade mark rights), design rights and trade secrets.

Invited User means an employee, agent, customer, client or contractor of the Customer who is authorised by the Customer to access and use the Application.



Law includes any law or legal requirement, including at common law, in equity, under any statute, regulation or by-law, any condition of any authorisation, and any decision, directive, guidance, guideline or requirements of any Government Authority.

Licence has that meaning as set out in clause 1.1.

Licence Commencement Date means the date set out in the Engagement Documents or if not specified, the date that Application is provided to you.

Licence Fees means those fees set out in the Engagement Documents.

Licence Term means the period specified in the Engagement Documents commencing on the Licence Commencement Date.

Logon ID means the username and password provided by JESI to an Invited User which enables that Invited User to access and utilise the Application.

Loss means claims, liability, loss, damage costs and expenses including but not limited to legal costs on a full indemnity basis.

Personnel includes officers, employees, agents, contractors, consultants and representatives.

Receiver has the meaning it has in the *Corporations Act*.

Related Entities has the meaning it has in the *Corporations Act*, and **Related Entity** has a corresponding meaning.

Renewal Term means a further period of time equal to the Licence Term.

Support Fees means those fees set out in the Engagement Documents.

Support Services means the training, coaching and maintenance services, as specified in this agreement, provided by JESI to the Customer for the Support Fee pursuant to this agreement, in respect of the Application.

Website means the website hosted at the domain name www.jesi.io or any other site operated by JESI and notified to the Customer from time to time.

21.2 General Interpretation

In this Agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) 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;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:



- (i) a person includes a natural person, partnership, joint venture, Government Agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
 - (vi) this Agreement includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) an Agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
- (g) an Agreement on the part of two or more persons binds them jointly and severally;
 - (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
 - (i) in determining the time of day, where relevant to this Agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this Agreement, the time of day in the place where the party required to perform an obligation is located; and
 - (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.
 - (k) A term or expression starting with a capital letter:
 - (i) which is defined in clause **Error! Reference source not found.**, has the meaning given to it in clause **Error! Reference source not found.**;
 - (ii) which is defined in the Corporations Act, but is not defined in clause **Error! Reference source not found.**, has the meaning given to it in the Corporations Act; and
 - (iii) which is defined in the GST Act, but is not defined in clause **Error! Reference source not found.** or the Corporations Act, has the meaning given to it in the GST Act.



Schedule 1 – Support Terms & Conditions

These Support Terms and Conditions are annexed to and form part of the Agreement and govern the provision of support and maintenance services by JESI for all software forming part of the Application provided under the Agreement.

Where the provisions of these Support Terms and Conditions contradict or are inconsistent with the provisions of the Agreement, the provisions of this Schedule shall prevail. Where a term is defined in the Agreement, that term shall have a corresponding meaning in these terms and conditions unless a contrary intention appears on the face of these Support Terms and Conditions.

1. Definitions and Interpretation

1.1 Definitions

In these Terms and Conditions, unless the context requires otherwise:

Agreement means the Software Licence Agreement whereby the Customer has obtained from JESI the right to use the Application to which these Terms and Conditions are attached and form part of;

Excluded Services means those services set out in clause 5;

New Release means an update to the Application which provided primarily to implement an extension, alteration, improvement or additional functionality to the Application or otherwise improve functionality or correct an error in the Application;

Patch means software which has been produced primarily to overcome defects in the Application.

Priority has the meaning given by clause 3.2;

Target Resolution Time has the meaning given by clause 3.5;

Target Response Time has the meaning given by clause 3.5; and

Terms and Conditions means these terms and conditions.

1.2 Interpretation

The rules of interpretation applying to the Agreement apply to these Terms and Conditions.

2. Nature of Services

2.1 Obligation

- (a) During the currency of these Terms and Conditions:
 - (i) JESI will perform such services as it considers reasonable for the Customer in order to ensure the Application remains in substantial conformity with its specifications (**Support Services**); and
 - (ii) JESI will provide New Releases from time to time.
- (b) Where JESI is providing Support Services, such support shall, at the sole option of JESI, take the form of:



- (i) telephone advice;
- (ii) email transmission correspondence;
- (iii) error correction by means of Patches or New Releases; and
- (iv) such services as JESI considers are effectively provided off-site.

2.2 Third Parties

- (a) JESI will deal only and exclusively with the Customer or any of its authorised, suitably qualified or informed representatives when performing the Support Services.
- (b) The Customer must appoint a suitably qualified or informed representative to deal with and be the first point of contact in relation to the Support Services.

2.3 Report

JESI shall provide the Support Services in response to a report or request by the Customer to JESI:

- (a) of a suspected defect or error in the Application, which defect or error allegedly causes the Application to deviate from its specifications; or
- (b) for assistance or guidance from JESI.

2.4 Written Defect Notice

Immediately after making a request for Support Services, which may involve error correction or program modification, the Customer shall give JESI a documented example of the defect or error which it alleges prevents conformity of the Application with its specifications. The Customer shall, if so requested by JESI, give JESI a listing of output and any other data which JESI requires in order to reproduce operating conditions similar to those present when any alleged defect or error in the Application was discovered.

3. Service response

3.1 Customer Report

When providing the report contemplated by clause 2.3, the Customer must designate the Priority of the issue, in its reasonable opinion.

3.2 Priority

The Priority of an issue for which the Customer requests JESI to provide Support Services must be one of the following:

Critical, which means the Application is inoperable and fails catastrophically;

High, which means a part of the Application function is unavailable, the system crashes for some end users or there is material and adverse loss of function or degraded performance for important activities but work can continue;

Medium, which means a part of the Application is not operating efficiently, and causing inconvenience but workarounds are available; and



Low, which means a training or educational issue with users generally not related to a defect in the Application.

3.3 Target Response Time

After JESI receives the report contemplated by clause 2.3, JESI will use its best endeavours to respond to the report by the Target Response Time listed in clause 3.5 during the hours set out in clause 3.5 but not to provide a resolution to the issue.

3.4 Target Resolution Time

After JESI receives the report contemplated by clause 2.3, JESI will use its best endeavours to provide a resolution to the issue by the Target Resolution Time listed in clause 3.5.

3.5 Targets

Priority	Target Response Time	Target Resolution Time
Critical	1 Hour	2 Business Days
Urgent	4 hours	1 Week
Medium	1 Business Day	Upon issue of New Release
Low	2 Business Days	Training / Educational Issue – response within 7 days as part of support services but Fee likely charged on time/materials basis.

3.6 Licensor Obligations

- (a) JESI provides no warranty that it will meet either the Target Response Time or the Target Resolution Time.
- (b) JESI may use any method, system, process, Patch or New Release to resolve any issue, in its sole discretion.

4. Support availability

JESI shall provide the Support Services between 0900 hours and 1700 hours on every day except Saturday, Sunday or a public holiday in the State of Queensland. JESI does not warrant that it will be capable of promptly receiving, processing or otherwise acting upon a request for Support Services which is made outside these hours or that it can provide on-site Support Services outside these hours.

5. Exclusions

5.1 Latest Release

JESI will not provide Support Services to the Customer where the Customer has failed to implement a New Release, where such New Release has been provided by JESI.



5.2 Other Exclusions

Services to be provided by JESI under this Agreement do not include:

- (a) correction of errors or defects caused by operation of the Application in a manner other than that currently specified by JESI;
- (b) correction of errors resulting from data migration or transformation, whether performed by JESI or third parties;
- (c) correction of errors or defects caused by modification, revision, variation, translation or alteration of the Application not authorised by JESI;
- (d) correction of errors caused in whole or in part by the use of computer programs other than the Application;
- (e) correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained operating and programming staff for the operation of the Application;
- (f) training of operating or programming staff;
- (g) rectification of operator errors;
- (h) rectification of errors caused by incorrect use of the Application;
- (i) rectification of errors caused by the Customer or third party equipment fault;
- (j) the Customer or third party equipment maintenance;
- (k) diagnosis or rectification of faults not associated with the Application;
- (l) installation of the Application;
- (m) third party materials;
- (n) rectification of errors in the Customer's or third party's data;
- (o) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by JESI;
- (p) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with JESI;
- (q) correction of errors arising directly or indirectly out of any third party's failure to comply with any agreement between that third party and JESI;
- (r) correction of errors or defects which are the subject of a warranty under another agreement; or
- (s) to provide Support Services:
 - (i) "on-site"; or
 - (ii) to any third party, at any location.



6. Access

6.1 Premises

The Customer shall, where relevant, ensure JESI's support personnel have full and safe on-site access to the Application and any relevant equipment at all reasonable times for the purpose of providing the Support Services or the Excluded Services. The Customer shall also ensure that JESI's support personnel are provided with all information, facilities, assistance and accessories reasonably required by JESI to enable JESI to comply with its obligations under this Agreement.

6.2 Personnel

If reasonably requested by JESI, the Customer shall provide a suitably qualified or informed representative to JESI's personnel and to provide such advice or assistance to those personnel as may be necessary in order to enable JESI to access the Application and relevant equipment and to otherwise effectively perform the Support Services or the Excluded Services.

6.3 Remote Access

The Customer shall ensure JESI is provided with full and safe access to any and all equipment in order to provide the Support Services or the Excluded Services and is provided free of charge with all information, facilities and services reasonably required to enable the Support Services or the Excluded Services to be performed effectively. This includes allowing JESI to access through telecommunications infrastructure any equipment or hardware from a remote location.

