

Master Services Agreement

Parties

Name	Parashift Pty Ltd
ACN	163 535 886
Short form name	Parashift
Notice details	431 King William St, Adelaide SA 5000 e-mail: contact@parashift.com.au Attention: Mr Kieren Fitzpatrick
Name	The party named and described in the Proposal, Quote or Scope of Works
Short form name	Client

Background

- A. Parashift is in the business of supplying Software (including as a reseller), business consultancy services and software development and support services.
- B. The Client has requested that it be provided with a licence to use the Software, and has the option of requesting ancillary services from Parashift.
- C. Parashift agrees to provide the Client a downloaded copy of the Software, to licence the Software to the Client, and to provide the Services to the Client (if any), in accordance with these terms and conditions.

1. Defined terms & interpretation

1.1 Defined terms

In these terms and conditions:

Agreement means this agreement governing the supply of the Software and/or Services under individual Statements of Work formed in accordance with clause 5.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.

Business Day means a day that is not a Saturday, Sunday or a national public holiday.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Commencement Date has the meaning given in clause 2.

Confidential Information means:

- (a) all information, know-how and intellectual property in relation to the Software and/or the Services; and
- (b) all other information treated by Parashift as confidential,

regardless of its form and whether the person receiving the information becomes aware of it before or after the date of this Agreement.

Damages means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis (whether incurred by or awarded against a party)) and consequential and indirect losses and damages including those arising out of any third party claim.

EULA means an end user licence agreement with a third party Software licensor, which the Client may be required to enter into as a condition of licensing Software under this Agreement.

Fees and Charges has the meaning described in clause 6.1.

Force Majeure Event means, in relation to a party, anything outside the reasonable control of the party, including:

- (a) any act or omission of a third person (except for an act or omission of the party's Personnel);
- (b) fire, flood, earthquake, elements of nature or act of God; or
- (c) riot, civil disorder, rebellion or revolution.

Intellectual Property Rights means all intellectual property rights, including:

- (a) patents, copyright, rights in circuit layouts, database rights, registered designs, trade marks, logos, slogans (in each case, whether registrable or non-registrable); and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

Licence Fee has the meaning given in clause 6.1(a).

Materials means any deliverable material or document:

- (a) made available by Parashift for use with the Software, including any user manual or instructions (whether made available online or otherwise); or
- (b) created by Parashift in providing the Services.

Parashift IP has the meaning given by clause 3.1.

Permitted Purpose means use of the Software by the Client and its Personnel strictly in accordance with this Agreement for the purposes of the Client conducting its ordinary business and any other purpose described in the Scope of Works.

Personnel means, in relation to a party, the officers, employees, contractors and agents of the party and any related body corporate of it.

Privacy Act means the *Privacy Act 1988* (Cth).

Service Levels has the meaning given in clause 4.2.

Services Fee has the meaning given in clause 6.1(b).

Services means the services to be provided by Parashift under this Agreement (if any) as described the Scope of Works and, if applicable, includes any Support Services or additional services provided under clause 5.4.

Software means the software described in the Scope of Works (including any Updates) and other software developed by Parashift under this Agreement or a Scope of Works in the course of performing the Services.

Scope of Works means the document labelled Proposal, Quote or Scope of Works detailing the specific Software to be supplied and or any Services to be performed by Parashift under this Agreement.

Support Services means the provision by Parashift to the Client (at the Client's request) of Software support services on the terms and subject to the conditions specified in the Schedule to this Agreement.

Term has the meaning given in clause 2.

Third Party Materials means any software, documentation, tools, materials and other items in which a third party holds Intellectual Property Rights, including those:

- (a) described in the Scope of Works as being owned by a third party and made available under licence for the purposes of this Agreement; and
- (b) delivered or made available to the Client for the purposes of this Agreement (including because those materials are required for or incidental to the Software or the outcome of any Services).

User means any person to whom the Client issues a username and password to enable that person access the Software.

Wilful Misconduct means any act or failure to act (whether sole, joint or concurrent) by any person or entity that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity.

1.2 Interpretation

In this Agreement and each Scope of Works, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (e) a reference to time is to Eastern Standard Time (EST) in Australia;
- (f) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (l) headings are for ease of reference only and do not affect interpretation.

2. Term of the Agreement

This Agreement commences on the date the Scope of Works is signed by the last party (**Commencement Date**), and will continue:

- (a) for an initial period of 12 months, such term to be renewed annually for successive periods of 12 months until terminated in accordance with clause 14; or
- (b) until the Services described in the Scope of Works are completed,

whichever occurs sooner (**Term**).

3. Software licence

3.1 Licence

- (a) The Client may subscribe to one or more Software products by executing a Scope of Works for the relevant Software product(s) in accordance with clause 5.
- (b) Subject to payment of the Licence Fee, and the client entering into the relevant EULA (if required), Parashift grants to the Client a non-exclusive, non-transferable, revocable licence to install, access and use the Software and any Materials (**Parashift IP**) for the Permitted Purpose during the Term and otherwise in accordance with this Agreement.
- (c) If the Permitted Purpose is limited to a particular number of Users, computers, sites or locations (as described in the relevant Scope of Works), Parashift's written consent is required for any extension of, or alteration to, the Permitted Purpose.

3.2 Access

- (a) Upon receipt of payment of the Licence Fee (and any other fees specified by Parashift under this Agreement), Parashift will provide the Client with access to the Software and the Materials, and such hardware keys as are required to enable the Software to be installed and used.
- (b) The Client must keep, and must ensure that the Users keep, any user accounts and passwords provided by Parashift confidential and secure at all times.
- (c) The Client will receive the then current version of the Software only.
- (d) If applicable, Parashift may, from time to time, make available any patch, fix, update, software or computer program produced primarily to overcome defects or errors in the Software or to extend, refine or replace existing functionality (**Update**) for the Software to the Client free of charge. Parashift reserves the right to nominate that any Update is mandatory, in which case the Client must install that Update without delay.
- (e) The Client acknowledges and agrees that it:
 - (i) is responsible and liable for the acts and omissions of each User in connection with the Software and this Agreement as if they were the Client's own acts and omissions;
 - (ii) accepts all liability for any unauthorised use of any username and password issued to any User; and
 - (iii) must obtain Parashift's written consent to any extension of, or alteration to, the number of Users licensed to use the Software, subject to payment of any

additional Licence Fees in accordance with this Agreement.

3.3 Third Party Materials

- (a) The Client acknowledges that the Software may incorporate Third Party Materials.
- (b) Licensing of Third Party Materials is subject to certain terms and conditions, and a description of where the licence terms for the Third Party Materials are made available is set out in the Scope of Works (**Additional Terms**). The Client agrees to comply with the Additional Terms, as amended or replaced from time to time.

4. Providing Services

4.1 Parashift to provide Services

If a Scope of Works states that Parashift will provide the Services for/in connection with the Software, then:

- (a) Parashift will provide those Services in the form and manner described in the Scope of Works and otherwise subject to this Agreement;
- (b) the Client will pay for those Services in accordance with clause 6; and
- (c) those Services will commence on the Commencement Date, and will be provided for the period, described in the Scope of Works.

4.2 Service levels

Service levels for particular Services may be specified in a Scope of Works (**Service Levels**). If Service Levels are specified, Parashift will use its best endeavours to meet or exceed the Service Levels.

4.3 Client's obligations

To the extent required to provide the Services, the Client:

- (a) must give Parashift unrestricted and unfettered access to:
 - (i) all data, records and information of the Client to allow Parashift to perform its obligations under this Agreement;
 - (ii) the Users and the Client's Personnel;
- (b) authorises Parashift to access the Client's premises and facilities to allow Parashift to perform its obligations under this Agreement;
- (c) must, if any services relating to Software or computer hardware are provided, provide Parashift with unhindered, uninterrupted access to the Client's hardware and systems, including to provide remote access to its computer systems in a form and manner reasonably nominated by Parashift for the purpose of Parashift providing remote support (if Parashift elects to do so); and
- (d) must ensure that the Client's equipment and products used by Parashift in connection with the Services will be reasonably fit for the purposes for which they are used.

4.4 Client to assist

The Client must give Parashift any assistance reasonably required by Parashift to provide the Services (excluding financial assistance).

4.5 Parashift's reliance on Client

In providing the Services, Parashift will be relying upon the completeness and accuracy of information provided by the

Client. Parashift will be entitled to rely upon, and assumes no obligation to independently verify, the completeness or accuracy of any information provided by the Client. The Client must ensure the completeness and accuracy of all information provided to Parashift, and advise Parashift immediately of any material change in that information.

4.6 Delay or failure in performing Client's obligations

- (a) Any delay or failure by the Client in performing its obligations under this Agreement may result in delay or failure by Parashift to provide the Services.
- (b) If there is a delay or failure by the Client in performing its obligations under this Agreement:
 - (i) Parashift is not responsible for any delay or failure to provide the Services as a consequence; and
 - (ii) the Client must pay any additional cost incurred by Parashift because of any delay or failure by the Client in performing those obligations.

4.7 Postponement of delivery dates

If Parashift cannot meet delivery dates or other timelines specified in the Scope of Works, it will provide written notice to the Client and the Scope of Works will be varied in accordance with that notice once provided.

4.8 Benefit of Services

The Services (and any Materials produced by Parashift for the Client including written reports) are provided for the Client's exclusive use and benefit and are not provided for use by, or the benefit of, any other third party and may not be relied upon by any other person, unless Parashift agrees otherwise in writing.

4.9 Parashift's general service obligations

Parashift agrees that:

- (a) it will provide the Services with due care, skill and diligence and to a high professional standard; and
- (b) the Personnel it engages or employs to provide Services will be suitably experienced and qualified to provide the Services.

5. Scope of Works

5.1 Quote for Software and/or Services

- (a) If the Client wishes to be licensed to use any Software, and/or acquire any Services with the Software, it must issue a written request in a form nominated by Parashift from time to time outlining the Software and/or Services required.
- (b) If Parashift is prepared to provide the Software and/or Services so requested, Parashift will submit a written quotation specifying the Licence Fee and Services Fee (as applicable) payable by the Client (**Quote**).
- (c) On receipt of a Quote, the Client must notify Parashift in writing by the date specified in that Quote whether it accepts or rejects the Quote.

5.2 Preparation and acceptance

- (a) If the Client accepts the Quote, Parashift will prepare a Scope of Works outlining:
 - (i) the Software to be licensed;
 - (ii) the Services to be provided;
 - (iii) the applicable Licence Fee and Services Fees;
 - (iv) any Materials to be delivered; and

(v) anything else relevant to the provision of those Services or this Agreement.

- (b) The Client must execute and return the Scope of Works to Parashift within the period of time specified by Parashift.
- (c) The parties may agree that a Quote is a Scope of Works under this Agreement, without the need for further formality, except that the Client must sign, date and return the Quote to Parashift (and the provisions of this Agreement dealing with Statements of Work will then apply to that Quote).

5.3 Execution

- (a) Each time a Scope of Works is executed by the Client and Parashift, a separate agreement for the supply of the Software and the Services and any Materials (if any) described in that Scope of Works is formed between Parashift and the Client.
- (b) Each Scope of Works is governed by:
- (i) the terms and conditions outlined in that Scope of Works; and
 - (ii) the terms and conditions of this Agreement (including any schedules to this Agreement).
- (c) If there is any inconsistency or ambiguity between or among this Agreement and a Scope of Works, the following order of precedence will apply:
- (i) first, the terms and conditions of that Scope of Works; and
 - (ii) second, the terms and conditions of this Agreement.

5.4 Variations

- (a) The Client may request Parashift to provide services in addition to those set out in a Scope of Works (such as increasing the number of Users), and Parashift will reasonably try to accommodate the Client's request.
- (b) Where the Client requests additional services not set out in a Scope of Works, Parashift will:
- (i) confirm whether or not those additional services are able to be provided by Parashift (and in the case of any further requested changes to Software, having regard to the rights granted to Parashift by its licensors and the technical capabilities of the Software);
 - (ii) where Parashift is able to provide those additional services, provide an estimated timeline for the completion and implementation of those additional services; and
 - (iii) specify the additional cost to complete those additional services.
- (c) Within 5 Business Days of receipt of the information in clause 5.4(b), the Client must accept or reject Parashift's proposal for the provision of additional services.
- (d) If the Client:
- (i) accepts Parashift's proposal, those additional services will be deemed to form part of the relevant Scope of Works from the date of acceptance; or
 - (ii) rejects Parashift's proposal, this Agreement will continue in full force but unamended (and

Parashift will not be required to provide those additional services).

5.5 Terms of additional services

Unless otherwise agreed in writing (including if specified in any proposal provided by Parashift), any additional services provided under clause 5.4 are on a "time and materials" basis at Parashift's then-prevailing standard rates.

6. Payment

6.1 Fees and Charges

The Client must pay to Parashift:

- (a) the annual Software licence fee specified in the Scope of Works (**Licence Fee**);
 - (b) the fees specified in the Scope of Works for provision of the Services (**Services Fee**) (if any); and
 - (c) any other amount agreed by the parties from time to time, including as a result of Parashift agreeing to vary, extend or alter the number of Users,
- (together, **Fees and Charges**).

6.2 Invoicing

- (a) Parashift may invoice the Licence Fee on or prior to the Commencement Date and annually thereafter.
- (b) If a Services Fee is payable, Parashift will invoice that amount at the same time as the Licence Fee or at the time or times specified in the Scope of Works.
- (c) If a charge for additional services provided under clause 5.4 is payable, Parashift will invoice the Client for payment on or after completion.

6.3 Payment by the Client

The Client must pay each invoice in full within 14 days after the date of the invoice via telegraphic transfer or electronic funds transfer to the bank account nominated by Parashift in writing, and without any set off or deduction.

6.4 Interest on overdue amounts

- (a) If the Client does not pay an invoice in full by its due date, Parashift may charge interest on any overdue amount at the rate of 2% above the prime lending rate of the Client's principal banker, calculated daily, from the due date until the date of payment.
- (b) The parties acknowledge and agree that any interest paid or payable under this clause 6.4 is not a penalty but a reasonable pre-estimate of the loss incurred by Parashift because of the Client failing to comply with clause 6.3.

6.5 Adjustment of Fees and Charges

The Client acknowledges and agrees that, on each anniversary of the Commencement Date, the Fees and Charges will increase in line with the increase in the capital city average Consumer Price Index for Australia, as published by the Australian Bureau of Statistics, over the previous year, as notified to the Client in writing.

6.6 No pro-rata refund

Subject to clause 11.3, the Client will not be entitled to receive any refund of the Fees and Charges paid by the Client should these terms be terminated for any reason.

6.7 Failure to pay

If the Client does not pay an amount due under this Agreement for more than 14 days after its due date, Parashift may immediately suspend the Client's access to the Software and/or stop providing Services to the Client until the Client pays all

outstanding amounts. This is without prejudice to any other remedies Parashift may have in relation to this Agreement.

7. Conditions of use

7.1 Conditions

The Client:

- (a) will be solely responsible for the use, supervision, management and control of the Software, and must not authorise use or disclosure to any persons other than the Users without Parashift's prior written consent;
- (b) must not use the Software otherwise than in accordance with all terms of this Agreement;
- (c) must maintain the minimum requirements for the operation of the Software as specified in the Materials or otherwise notified by Parashift from time to time;
- (d) must not (subject only to clause 7.2) alter, modify, tamper with, decompile, disassemble, reverse engineer or attempt to reverse engineer the Software, or otherwise attempt to derive the Software source code from the object code except to the extent permitted by applicable law or treaty;
- (e) must not alter, delete or interfere with any copyright or trade mark notice which appears as part of the Software;
- (f) reverse engineer, disassemble, or decompile any software forming part of the Software, unless permitted to do so by law, and then only strictly in accordance with the provisions or terms under which that right is given by such law;
- (g) use the Software for any unlawful purpose; or
- (h) authorise or otherwise permit use of the Software (or any part of it) by any person who is not a User licensed to use the Software under this Agreement.

7.2 Configuration

The Client may reasonably install, configure and adapt the Software for the purposes of operating and optimising the Software for the Client's own system(s), but acknowledges and agrees that any assistance from Parashift required to remedy errors caused by the Client in the course of doing so will be at the Client's expense.

8. Intellectual Property Rights

8.1 Ownership

All Intellectual Property Rights in the Parashift IP are owned by, or licensed to, Parashift.

8.2 No transfer

This Agreement does not transfer any Intellectual Property Rights in the Parashift IP to the Client, and the Client must not represent that it owns those rights.

8.3 Modifications

If the Client configures, adapts or modifies the Parashift IP under clause 7.2, or does so without Parashift's written consent and in breach of this Agreement (together **Modifications**) then:

- (a) Parashift owns any Intellectual Property Rights in the Modifications;
- (b) the Client assigns to Parashift any copyright and other Intellectual Property Rights which would, apart from this clause 8.3, have been owned by the Client; and
- (c) those Modifications are included in the licence granted under clause 3.1 from when they are made.

8.4 Disclosure

On request by Parashift, the Client must disclose to Parashift the nature and extent of all Modifications made (including by describing how those Modifications were made), and provide a copy of the relevant source code or object code (at Parashift's election) for the Modifications.

8.5 Infringement Claims

If someone makes a claim against the Client that any of the Parashift IP infringes their Intellectual Property Rights, the Client must:

- (a) give Parashift:
 - (i) notice of the claim;
 - (ii) full control over any proceedings and negotiations conducted, and full authority to reach any settlement; and
 - (iii) any assistance required by Parashift to defend the claim; and
- (b) not make a representation or public statement about the claim without first getting Parashift's written consent.

8.6 Remedy

- (a) If someone makes, or Parashift reasonably believes that someone is likely to make, a claim against the Client that any of the Parashift IP infringes their Intellectual Property Rights, Parashift will:
 - (i) use reasonable efforts to secure the rights for the Client to use the relevant Parashift IP free of any claim or liability for infringement;
 - (ii) replace or modify the relevant Parashift IP so that the Client does not infringe the rights; or
 - (iii) remove the relevant Parashift IP from the Services.
- (b) To the extent permitted by law, in the event of a claim that the Parashift IP infringes the Intellectual Property Rights of a third party, clause 8.6(a) provides the sole and exclusive remedy of the Client.

8.7 Client's Intellectual Property Rights

If the Services require Parashift to use the Client's Intellectual Property Rights, the Client:

- (a) retains ownership of those rights; and
- (b) grants Parashift a non-exclusive licence to use those rights to provide the Services.

9. Confidential Information and privacy

9.1 Confidentiality

The Client must:

- (a) keep Confidential Information confidential and secure;
- (b) comply with Parashift's directions regarding Confidential Information; and
- (c) return Confidential Information to Parashift on:
 - (i) the termination of this Agreement; or
 - (ii) the reasonable request of Parashift.

9.2 Use and disclosure of Confidential Information

The Client may only:

- (a) use Confidential Information for the purposes of this Agreement.
- (b) disclose Confidential Information to a third person if:

- (i) the third person must know for the purposes of this Agreement (but only to that extent); and
- (ii) the third person has signed a confidentiality undertaking like that contained in this Agreement or as otherwise required by Parashift.

9.3 Exceptions

Clause 9 does not apply to:

- (a) information independently created, or known, by the Client (whether alone or with a third person);
- (b) information that is public knowledge (except because of a breach of confidentiality referred to in this Agreement); or
- (c) information required to be disclosed by law (including a relevant stock exchange).

9.4 Disclosure required by law

If the Client must disclose Confidential Information by law under clause 9.3(c), the Client must first:

- (a) give Parashift:
 - (i) notice of the details of the proposed disclosure;
 - (ii) a reasonable opportunity to do what it thinks necessary to protect the confidentiality of the Confidential Information; and
 - (iii) any assistance reasonably required by Parashift to protect the confidentiality of the Confidential Information; and
- (b) give the proposed disclosee notice that the Confidential Information is confidential to Parashift.

9.5 Privacy

If Parashift gives the Client personal information (as defined in the *Privacy Act*), the Client must comply with:

- (a) the *Privacy Act* (including the Australian Privacy Principles) and any applicable law relating to privacy; and
- (b) Parashift's reasonable directions for the protection of the personal information, including how it collects, holds, uses and discloses the information.

10. Indemnity

10.1 Indemnity

The Client indemnifies Parashift and its Personnel against any Damages that they may sustain or incur as a result, directly or indirectly, of:

- (a) the Client's access to and/or use of the Software;
- (b) any performance or failure of the Software;
- (c) a breach of this Agreement by the Client;
- (d) any loss of or corruption to any data generated, stored or used by the Software;
- (e) any loss of or damage to any property or injury to or death of any person as a result of the provision of the Services or the Client's access to and/or use of the Software;
- (f) a claim by any third party the Client's use of the Software or any Modifications has infringed the Intellectual Property Rights of that party; or

- (g) any negligent, unlawful or wilful act or omission of the Client or its Personnel in connection with this Agreement.

10.2 Exception

The indemnity in clause 10.1 does not apply to the extent that the Damages result from wilful misconduct, fraud or gross negligence of Parashift or its Personnel.

11. Limitation of liability

11.1 No guaranteed access

The Client acknowledges and agrees that while Parashift will make reasonable efforts to ensure availability, continuity, reliability, accuracy, currency and security of the Software, Parashift makes no representations, warranties or guarantees in relation to the Software. Parashift will not be liable if the Software is unavailable for any reason, including directly or indirectly as a result of:

- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
- (b) negligent, malicious or wilful acts or omissions of third parties (including Parashift's third party service providers);
- (c) maintenance or repairs carried out by Parashift or any third party service provider in respect of any of the systems used in connection with the provision of the Software;
- (d) any events beyond Parashift's control; or
- (e) services provided by third parties ceasing or becoming unavailable.

11.2 Exclusion

Subject to clause 11.3, and to the extent permitted by law:

- (a) all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from this Agreement;
- (b) Parashift's liability to the Client arising directly or indirectly under or in connection with this Agreement, and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited to the amount of Fees and Charges actually paid by the Client under a relevant Scope of Workss;
- (c) Parashift will have no liability whatsoever to the Client for any loss, harm, Damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage (including economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data); and
- (d) any liability of Parashift in respect of a claim brought against it by the Client (or any third party) is reduced proportionally to the extent that any breach of this Agreement or act or omission of the Client contributes to or causes the claim.

11.3 Australian Consumer Law

If a supply by Parashift under this Agreement is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in these terms and conditions excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to

the extent that the Australian Consumer Law permits Parashift to limit its liability, then Parashift's liability is limited to:

- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

12. Goods and services tax

12.1 Consideration does not include GST

Unless specifically described in this Agreement as 'GST inclusive', any sum payable (or amount included in the calculation of a sum payable), or consideration to be provided, under or in accordance with this Agreement does not include any amount on account of GST.

12.2 Gross up of consideration

Where any supply to be made by one party (**Supplier**) to another party (**Recipient**) under or in accordance with this Agreement is subject to GST (other than a supply the consideration for which is specifically described in this Agreement as 'GST inclusive');

- (a) the consideration payable or to be provided for that supply but for the application of this clause (**GST Exclusive Consideration**) shall be increased by, and the Recipient shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply (**GST Amount**); and
- (b) the Recipient must pay the GST Amount to the Supplier, without set-off, deduction or requirement for demand, at the earlier of:
 - (i) the time that the GST Exclusive Consideration is payable or to be provided; and
 - (ii) the time that the Supplier has to pay the GST in respect of that supply.

12.3 Reimbursements

If any payment to be made to a party under or in accordance with this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the preceding sub-clause.

12.4 Tax invoices

Notwithstanding any other provision of this Agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under or in accordance with this Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

12.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this Agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

12.6 Interpretation

A word or expression used in this clause which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause.

13. Dispute resolution

13.1 No court proceeding unless procedure followed

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with clause 13.

13.2 Notice of Dispute

A party claiming that a dispute, difference or question arising out of this Agreement has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).

13.3 Negotiations

The parties must attempt to resolve any Dispute by negotiations using the following escalation procedure:

- (a) when a Dispute Notice is given, each party's respective representatives must first attempt to resolve the Dispute; and
- (b) if they cannot resolve the Dispute within five Business Days after the Dispute Notice is given, they must refer the Dispute to each party's chief executive officer who must then attempt to resolve it.

13.4 Failure to negotiate settlement

If the parties cannot resolve the Dispute within 10 Business Days after the Dispute Notice is given:

- (a) each party is free to start court proceedings; or
- (b) the parties may agree to attempt to resolve the Dispute by other means such as expert determination, mediation or arbitration.

13.5 Release if other party breaches

If a party breaches the procedure in this clause 13 in relation to a Dispute, the other party need not comply with clause 13 in relation to the Dispute.

13.6 Obligations continue

The parties' obligations in this Agreement continue, pending the resolution of a Dispute.

13.7 Right to terminate

The dispute resolution procedure in this clause 13 does not affect a party's right to terminate the Agreement in accordance with clause 14.

13.8 Costs

Each party must pay its own costs of complying with clause 13.

14. Termination

14.1 Termination without cause by Parashift

- (a) Parashift may, in its absolute discretion, terminate this Agreement and/or any Scope of Works, by giving the Client 30 days' prior written notice.
- (b) If any third party licence rights relating to the Software or the Services granted to Parashift or otherwise made available to Parashift are materially altered, expire, are suspended or are otherwise terminated, Parashift may terminate this Agreement or any Scope of Works (at its election) if Parashift is no longer able to make available the Software or the relevant Services.

14.2 Termination with cause by Parashift

Parashift may terminate this Agreement and/or any Scope of Works with immediate effect by giving the Client written notice if:

- (a) the Client breaches a term of this Agreement and fails to remedy the breach (where capable of remedy) within 14 days after receiving notice requiring it to do so;
- (b) the Client breaches a material provision of this Agreement and the breach is not capable of remedy; or
- (c) an event referred to in clause 14.4 happens to the Client.

14.3 Termination with cause by Client

The Client may terminate this Agreement and/or any Scope of Works with immediate effect by giving Parashift notice if:

- (a) Parashift breaches a term of this Agreement and fails to remedy the breach (where capable of remedy) within 14 days after receiving notice requiring it to do so; or
- (b) Parashift breaches a material provision of this Agreement and the breach is not capable of remedy.

14.4 Client to give notice of events

The Client must give Parashift written notice immediately if:

- (a) there is any change in the direct or indirect beneficial ownership or control of the Client;
- (b) if the Client is a partnership, a step is taken to dissolve the partnership or a partner dies;
- (c) the Client disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (d) the Client stops carrying on business;
- (e) the Client cannot pay its debts as they become due;
- (f) a mortgagee takes a step to take possession or dispose of the whole or any part of the Client's assets, operations or business;
- (g) a step is taken to enter into an arrangement between the Client and its creditors; or
- (h) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Client's assets or business.

15. After termination or expiry

15.1 Client's action on termination or expiry

On termination of this Agreement or any Scope of Works for any reason:

- (a) the licence to the relevant Software product(s) granted under clause 3.1 ends;
- (b) the Client must immediately cease using that Software, and must procure that the Users also do so;
- (c) Parashift will cease providing the applicable Services (if any);
- (d) to the extent the Client has in its possession or control copies of the Software, whether in tangible or electronic form, and whether stored on a disk or installed on its own platform or system, the Client must (at Parashift's direction) either return to Parashift, or destroy, each such copy of the Software;

- (e) the Client must immediately pay to Parashift all amounts due and outstanding prior to the date of termination; and
- (f) the Client must immediately stop using the Parashift IP and Parashift's Confidential Information, and at Parashift's option:

- (i) return to Parashift;
- (ii) destroy and certify in writing to Parashift the destruction of; or
- (iii) destroy and permit Parashift to witness the destruction of,

all of the Parashift IP and Parashift's Confidential Information in the Client's possession or control, and all notes, memoranda, correspondence, reports, summaries and other materials in which any Parashift IP exists or which in any way contains or refers to any of Parashift's Confidential Information, other than any information which the Client is required to retain by law (if any).

15.2 Accrued rights and remedies

Termination of this Agreement does not affect any accrued rights or remedies of either party.

16. Force majeure

If Parashift is wholly or partially unable to provide the Software and/or the Services because of a Force Majeure Event then:

- (a) as soon as reasonably practicable after the Force Majeure Event arises, Parashift must give the Client notice of the extent to which Parashift is unable to provide the Software and/or Services; and
- (b) Parashift's obligation to provide the Software and/or the Services is suspended for the duration of the delay arising out of the Force Majeure Event; and
- (c) any suspension of the Software and/or the Services as a result of the Force Majeure Event does not constitute a breach of this Agreement by Parashift.

17. Notices and other communications

17.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or e-mail to the recipient's address for Notices specified in this Agreement, as varied by any Notice given by the recipient to the sender.

17.2 Effective on receipt

A Notice given in accordance with clause 17.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by e-mail, on the first to occur of:
 - (i) receipt by the sender of an e-mail acknowledgement from the recipient's information system showing that the Notice

- has been delivered to the recipient's e-mail address specified in this Agreement;
- (ii) the time that the Notice enters an information system which is under the recipient's control; and
- (iii) the time that the Notice is first opened or read by the intended addressee,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

18. Miscellaneous

- (a) This Agreement may be altered only in writing signed by each party.
- (b) Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.
- (c) A party may only assign this Agreement or a right under this Agreement with the prior written consent of each other party.
- (d) Each party must pay its own costs of negotiating, preparing and executing this Agreement.
- (e) Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Agreement or any transaction contemplated by this Agreement must be paid by the Client.
- (f) Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.
- (g) This Agreement may be executed in counterparts. All executed counterparts constitute one document.

- (h) The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.
- (i) This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- (j) Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.
- (k) A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.
- (l) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (m) Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, fiduciary, agency or partnership between the parties.
- (n) This Agreement is governed by the law of South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia.