



This Agreement is made between

Xplan Technology Pty Limited (ABN 67 095 619 837) ("Us")

And

(ABN) ("You")

Of

I accept the terms of this Agreement on behalf of the customer named above. I warrant that I have read the Initial Client Billing Advice, these printed terms and conditions, and the further terms and conditions on Xplan Technology's website at www.xplantechnology.com/terms/ and www.xplantechnology.com/opensource/ on the date of signing. I also warrant that I am authorised to enter into this Agreement on behalf of the customer named above.

Signed for and on behalf of You:

Signed for and on behalf of Us:

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Our Terms and Conditions, together with the terms specified in the Initial Client Billing Advice and any Invoice, constitute the Agreement which governs the provision by us of the Services to you. The Agreement is effective once you sign this document.

Some of the Terms and Conditions are set out in this document. The remainder are set out on our website at www.xplantechnology.com/terms/ and www.xplantechnology.com/opensource/ and are incorporated into this document as if they were set out in this document. Some of the terms used in this document are defined on our website as well.

1 SERVICES

1.1 Provision of Services

We will provide the Services to you on a non-exclusive and non-transferable basis in accordance with this Agreement.

1.2 Restriction on use of Services

You are only permitted to access and use the Services for the Permitted Purpose. You may make the Services available to Authorised Users. Otherwise, you must not, and must ensure any User does not:

- (a) use the Services for any purpose other than the Permitted Purpose; or
(b) resell or otherwise make the Services (including any Data) available to any person, entity or organisation (including by placing the Services, or any Data, on the internet).

You must not use the Services or Equipment or Software supplied under this Agreement to transmit or disseminate any unlawful, harassing, offensive, defamatory or obscene information or any computer virus.

1.3 Third Party Data

You acknowledge that:

- (a) the Services may include the provision of either data or software or both ("Third Party Data") sourced from third party providers ("Data Providers"); and
(b) if the Services do include the provision of Third Party Data, that provision is subject to conditions which we or the Data Provider notifies to you or which we place on our website at www.xplantechnology.com/terms/ from time to time.

You agree to comply with all such conditions regarding Third Party Data. You acknowledge that the provision by us of Third Party Data is subject to the agreement of those Data Providers and subject to change without notice. We will endeavour to notify you as soon as reasonably practicable if we are no longer able to provide agreed Third Party Data in accordance with this Agreement. You acknowledge that Data Providers may require you to execute a separate agreement in order to receive the Third Party Data.

Our capacity to unilaterally amend the terms or conditions of this Agreement under this clause 1.3 is restricted to changes made in response to the terms or conditions under which Third Party Data is made available to us.

2 CHARGES

2.1 Fees and variations to Fees

You agree to pay us the Fees by the due date. At any time, on not less than 30 days notice, we can vary the Fees in accordance with clause 6.2.

You agree:

- (a) that in addition to our other rights, we may, in our sole discretion, suspend any or all of the Services for any period during which payment of any money you owe us is overdue; and
(b) that we are not liable to you, and you will not make any claim against us, for any loss (including consequential loss), damage, costs or expenses incurred by you relating to, in connection with or arising out of the exercise of our right in (a) above.

You agree that we may invoice you for Support considered by us to be in excess of the agreed level of Support provided for under this Agreement.

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2.2 Invoicing and payment

We will invoice or, if agreed with you, direct debit the Fees. If you do not pay an Invoice by the due date or if, at the date for direct debit, there are insufficient funds in your account (as applicable), you must pay us interest at the rate of 2% per annum over the \$100,000 overdraft rate charged by the National Australia Bank Limited at the due date (calculated daily) on any overdue amount.

2.3 Number of Users

You agree to notify us if, at any time:

- (a) the number of Users increases from the number of Authorised Users agreed with us; or
- (b) there is any other change in your access or use of the Services,

and you agree that we may invoice you additional Fees reflecting that increased number of Users or change.

You indemnify us for any liability for Users in excess of those invoiced by us, including any liability to Data Providers or Exchanges. This indemnity survives termination (for whatever reason) of this Agreement.

3 COMMENCEMENT AND TERMINATION

3.1 Commencement of provision of Services

We will commence providing the Services on the date specified in the Initial Client Billing Advice.

3.2 Termination of this Agreement by us or you

Either we or you may terminate the Agreement by giving the other three (3) clear calendar month's prior written notice.

3.3 Termination of certain Third Party Data by you

You may terminate receipt of Third Party Data on three (3) clear calendar month's written notice to us and, upon such termination, the rest of this Agreement will continue unaffected.

3.4 Termination by us for your breach or by either party for insolvency

If you breach any term of this Agreement or a party is (or they state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth)), you or we (as the case may be) may, in your or our sole discretion, immediately suspend, revoke (in the case of the Software Licence) or terminate any or all of the Services, as applicable.

3.5 Obligation to return your Client Data in the event of termination

In the event of termination of this Agreement, and where we have provided the Equipment or Web-Hosting services to you as part of this Agreement, at your written request, we undertake to deliver to your most recent address for invoicing purposes, a copy of your Client Data in a machine readable format as soon as practicable after termination of this Agreement.

4 ERRORS OR DELAYS IN THE SERVICES

We will use our reasonable endeavours to correct any error, delay, omission or failure in the Services or the transmission of the Services notified to us. However you acknowledge that the Services are provided on an 'as is' basis and we do not warrant that the Services will meet a certain standard, be free from error, delay, omission or failure or be suitable for your purpose, or that any Data will be accurate or complete.

You acknowledge that you must continue to pay the Fees in the event, and for the duration, of any error, delay, omission or failure in the Services or the transmission of the Services regardless of the cause.

5 WARRANTIES AND LIMITATION OF LIABILITY

5.1 General warranty

Both you and we warrant that at the time of:

- (a) executing these Terms and Conditions; and
- (b) for the term of this Agreement,

you or we (as applicable) have the necessary rights, power and authority to enter into the Agreement and to perform our or your (as

applicable) obligations under it. Apart from the warranties in this clause 5.1 and in clause 8.1, we make no other warranties relating to the Services or any Software or Equipment.

5.2 Disclaimer

Except as provided in clause 5.3 and in our indemnities to you in clauses 8.2, 15.2 and 15.3:

- (a) neither we nor any Data Provider will be liable to you or any of your Users for loss of profit or business revenue, reputation, goodwill, business, use, anticipated savings, loss or corruption of data or any costs, damages or claims, or any other indirect or consequential loss or damage suffered or incurred by you (including any liability incurred to a third party) in connection with the Agreement, the Services or the Data howsoever arising, including as a result of any negligence of ours or a Data Provider;
- (b) neither we nor any Data Provider will be liable for any loss or damage suffered or incurred by you or any of your Users arising out of use or receipt of the Services or any Data, including without limitation arising out of or in connection with any fault, error, interruption, delay, omission or failure (whether within or beyond our control or the control of any third party data contributor), or any inaccuracy, error, omission or incompleteness of the Data or any negligent act or omission of ours or a Data Provider;
- (c) while we undertake to implement reasonable security arrangements in respect of our access to your information technology systems, we will not be liable for any loss or damage suffered or incurred by you or any of your Users arising out of any access by us (including our employees and agents) to your information technology systems; and
- (d) subject to (a), (b) and (c), our total liability to you in respect of any and all loss or damage is limited to the total Fees paid by you in the 12 months immediately preceding the event giving rise to liability.

5.3 Limitation of liability

If our liability to you for breach of a term, condition or warranty implied by law into contracts for the supply of goods or services is capable of exclusion, then it is excluded. If our liability to you for breach of such a term is not capable of exclusion but our liability can be limited and it is fair and reasonable to do so, then it is limited, at our discretion, to:

- (a) in the case of goods, repairing or replacing the goods, or paying for their repair or replacement; and
- (b) in the case of services, supplying the services again or paying for their resupply.

5.4 Undertaking where users are not your staff

If you make the Services available to Users which are not your staff using the Services for the Permitted Purpose, you must do so on terms equivalent to clauses 5.2 and 5.3 and no less favourable to you than those clauses are to us. You acknowledge that you may make the Services available to Users which are not your staff only with our prior written agreement and on such additional terms as specified by us.

5.5 Survival of this clause

This clause 5 survives termination (for whatever reason) of this Agreement.

6 GENERAL MATTERS

6.1 Indemnity

You indemnify us and each Data Provider against all actions, suits, claims and demands howsoever arising (including those arising out of tort, breach of contract, equity or breach of statute), and from any loss (including consequential loss), damage, costs or expenses incurred by us or a third party (including a third party data contributor) relating to, in connection with or arising out of your or any User's use of any of the Services or any of your or any User's other activities (including infringement of any person's Intellectual Property rights). This clause 6.1 survives termination (for whatever reason) of this Agreement.

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6.2 Variation

We may vary the terms of this Agreement with regard to Fees, Users, services and/or products provided and costs associated with such Services by written notice (which may be in the form of an Invoice) to you. You are taken to agree to any such variation unless you notify us in writing within 14 days of receipt of the notice.

6.3 Whole agreement

This Agreement (including the Terms and Conditions on our website at www.xplantechnology.com/terms/ and www.xplantechnology.com/opensource/ referred to in this Agreement, the Initial Client Billing Advice and any Invoice) constitutes the whole agreement between you and us relating to the Services.

7 SOFTWARE LICENCE

We grant you and your Authorised Users a non-exclusive, non-transferable licence to use the Software for the term of this Agreement solely for the Permitted Purpose.

You must not, and must ensure any User does not, use the Software for any other purpose and must not copy, use, modify, adapt or translate the Software except as necessary for backup, archival, disaster recovery and testing in connection with the Permitted Purpose, and must not prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code or any internal data file generated by the Software.

You acknowledge that the Software includes functionality which facilitates management of the Software Licence by us.

You must:

- (a) as soon as practicable after termination of this Agreement destroy all Software and Data regardless of the form of that Software and Data; and
- (b) at any time after termination of this Agreement, provide us with all reasonable access to your premises and equipment to confirm your compliance with your obligations under (a) above.

8 SOFTWARE WARRANTY AND INDEMNITY

- 8.1 XPLAN warrants that the XPLAN Software does not infringe the copyright, design or trademark intellectual property rights of any person.
- 8.2 If it is determined by any independent tribunal of law or it is agreed between the parties that the XPLAN Software infringes any copyright, design or trademark intellectual property rights of a third person who has made a claim against you alleging such infringement, XPLAN shall indemnify you against any loss, costs, damage or expenses suffered or incurred by you arising directly out of that claim.
- 8.3 You will notify XPLAN as soon as practicable of any infringement, suspected infringement or alleged infringement by the XPLAN Software of the Intellectual Property Rights of any person.
- 8.4 If it is determined by any independent tribunal of law or it is agreed between the parties to the dispute that an infringement of copyright, design or trademark intellectual property rights has occurred, then XPLAN shall at its sole expense:
 - (a) modify the XPLAN Software in order to avoid continuing infringement; or
 - (b) procure for you the right to continue the use or possession of the infringing XPLAN Software; or
 - (c) if the solutions in either of the preceding paragraphs cannot be achieved, remove the XPLAN Software.

9 HOSTING SERVICES

9.1 Our Obligations

Notwithstanding anything else contained in this Agreement, if we agree to provide you with Hosting as part of the Services:

- (a) We are responsible for installation and maintenance of the Software at the hosted site, including installation of upgrades and releases of the Software;
- (b) We are to implement appropriate back-up and disaster recovery procedures at the hosted site;
- (c) We are to install and maintain equipment and communication infrastructure for the hosted site.

9.2 Your Obligations

Notwithstanding anything else contained in this Agreement, if we agree to provide you with Hosting as part of the Services:

- (a) You are responsible for maintaining login and passwords for accessing your data at the hosted site; and
- (b) You are responsible for all equipment and communication infrastructure necessary for you to access the hosted site.

10 EQUIPMENT AND COMMUNICATION LINE

10.1 Equipment

If we agree to provide you with Equipment for using the Services, you:

- (a) must do all things necessary to ensure that the Equipment can be installed at your premises on the agreed date including obtaining all required permits or licences;
- (b) must not move the Equipment from the place where we have installed it without our prior written consent;
- (c) grant us, effective on and from expiry or termination of the Agreement for any reason, the right to enter your premises and remove the Equipment without any further clearances or permission being required;
- (d) agree to insure any Equipment to its replacement value and on request, provide us with a certificate of currency; and
- (e) acknowledge the Equipment at all times remains our property.

Third party software may be installed on the Equipment when we provide it to you. It is not necessary for you to use that software in order to receive the Services and we do not grant you a licence to use it.

10.2 Communications system

If applicable, we will provide the Services to an agreed distribution point using an agreed communications solution. We may charge you fees as agreed for use of this communications solution.

You are otherwise responsible for all communications costs you incur in accessing the Services.

You agree to pay in accordance with clause 2, the cancellation fees of the communication providers (if any) arising from the termination of some or all of the Services you receive.

11 VIRUS MANAGEMENT OBLIGATIONS

Each party agrees:

- (a) not to knowingly suffer or permit any third party under its direction or control to knowingly introduce into the other party's systems any virus, disabling device or code, worm, Trojan timebomb or other harmful or destructive code ("**Harmful Code**"); and
- (b) that if any Harmful Code is introduced, it will take all reasonable steps:
 - (i) to promptly report that introduction to the other party; and
 - (ii) to eliminate the Harmful Code from its own server.

12 YOUR OPERATIONAL OBLIGATIONS

12.1 Providing a contact for us

You must at all times provide an employee with appropriate skills, knowledge and experience (together with one backup contact) as our sole contact for providing the Support services to you (collectively "**Support Representative**").

12.2 Operational matters

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You agree that it is your sole responsibility:

- (a) to establish proper operating methods;
- (b) to establish and implement adequate back-up and disaster recovery plans;
- (c) to implement procedures and checks to secure your own data and for restart and recovery in the event of malfunction;
- (d) to comply with any requirements of telecommunications authorities; and
- (e) to install the Software and any upgrades or releases in accordance with the written instructions provided by us.

13 OWNERSHIP OF INTELLECTUAL PROPERTY IN THE SERVICES

You acknowledge that, as between you and us, ownership of copyright and all other Intellectual Property Rights in the Services, any Data or any Software and Equipment, remains vested in us and you agree to hereby assign to us any Intellectual Property Rights in the Services, any Data or any Software which may vest in you. You are granted no rights in respect of the Services, Software or Equipment except as expressly stated in this Agreement. You must not reproduce or retransmit the Services or any part of them (including any data incorporated into the Services) except to use the Services in accordance with clause 1.2.

14 FURTHER TERMS RELATING TO PRICING AND PAYMENT

14.1 Dispute of invoice amount

If you dispute any invoiced or directly debited amount, you must notify us within 14 days of receiving that Invoice or that direct debit respectively. You must still pay any undisputed amounts invoiced by the due date.

14.2 Goods and Services Tax (GST) gross up

Where GST is imposed on any supply made under this Agreement by one party ("the supplying party") to the other party ("the receiving party") and the consideration payable for the supply under this Agreement is not expressed to be inclusive of GST, the receiving party must pay, in addition to and at the same time as any GST exclusive consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set-off) by the prevailing GST rate.

14.3 Settlement on termination

As soon as practicable after termination of this Agreement, you and we will reconcile, and you or we (as the case may be) will settle, the account. All settlement payments are payable in accordance with clause 2.

15 FURTHER GENERAL TERMS

15.1 Assignment

We may assign our rights under this Agreement to any of our related companies or to a successor company which will continue the provision of the Services. You are not permitted to assign your rights under the Agreement without our prior written consent. The Agreement will be taken to have been assigned by you if there is a change in control of your business. We will not withhold our consent unreasonably to assignment to a related company or successor company operating the same business. You must notify us as soon as practicable of any change in control or transfer of your business to which a Service relates.

15.2 Confidentiality

Neither party may disclose any Confidential Information to any person without the other party's written consent, except to Representatives requiring the information for the purposes of, and in accordance with, this Agreement, or if either party is required to do so by law or an Exchange or in connection with legal proceedings relating to this Agreement.

In addition we agree:

- (a) to treat as Confidential Information all Client Data; and
- (b) that except as required by law, we will only access that Client Data to provide you with the Services.

Both parties must use all reasonable endeavours to ensure that persons receiving Confidential Information from the other do not

disclose the information except in the circumstances permitted in this clause 15.2.

Each party must, on termination of this Agreement for any reason, at the other party's written request, immediately deliver to the other party all documents or other materials containing or referring to the other party's Confidential Information which is in the first party's possession, power or control or in the possession, power or control of persons who have received Confidential Information from them. Both parties acknowledge that this obligation does not require us to return to you any Confidential Information which is in the possession, power or control of any User who has accessed or obtained the Confidential Information after making a Valid Login.

If it is determined by an independent tribunal of law that we:

- (i) have caused you direct financial loss by intentionally breaching our obligations to you under this clause 15.2; or
- (ii) have intentionally acted dishonestly with regard to keeping your Confidential Information confidential which causes you direct financial loss,

we shall indemnify you against that loss.

This clause 15.2 survives termination (for whatever reason) of this Agreement.

15.3 Privacy

- (a) Both parties must comply with the Privacy Act 1988 (Cth) as if you were bound by the Act (whether or not you are an organisation bound by the Act) and any privacy policies of ours notified to you, from time to time, in respect of your use of the Services and making the Services available to Users.
- (b) You agree to give us any assistance we reasonably request to enable us to comply with our obligations under the Privacy Act.
- (c) Without limiting paragraph (b), you may only disclose Client Data to us if:
 - (i) you are authorised by applicable law to collect the Client Data and to disclose it;
 - (ii) you have informed the client that in order to provide services to them it might be necessary for you to disclose their personal information including, if applicable, tax file number information, to an external organisation that provides information technology services; and
 - (iii) in the case where any Client Data is "sensitive information" for the purposes of the National Privacy Principles in Schedule 3 to the Privacy Act 1988 (Cth), you have obtained the client's consent to that disclosure.
- (d) You indemnify us against any loss (including consequential loss), damage, costs or expenses incurred by us relating to, in connection with or arising out of a breach of this clause 15.3.
- (e) If it is determined by an independent tribunal of law that we have caused you direct financial loss by intentionally breaching our obligations to you under this clause 15.3, we shall indemnify you against that loss.
- (f) This clause 15.3 survives termination (for whatever reason) of this Agreement.

15.4 User access with Valid Login

Notwithstanding any other provision in this Agreement, if:

- (a) a User has entered a Valid Login and has accessed Data, Client Data or any other information from any XPLAN application provided to you as part of the Services; and
- (b) you suffer any loss (including consequential loss) or damage, or incur any costs or expenses relating to, in connection with or arising out of the User's accessing or use of the Data, Client Data or other information;

you agree that we have not breached any provision of this Agreement or any duty of care however arising, and that to the extent permitted by law, we have no liability to you.

15.5 Validation acknowledgement

You acknowledge that using the Valid Login control as the sole validation measure is an appropriate standard of validation for the XPLAN Software to permit a User access to Data, Client Data, or

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other information from any XPLAN application provided to you as part of the Services.

15.6 Notices

Any notice or other communication under this Agreement must be sent in writing by post, fax or email:

- (a) in the case of a notice to you, to your address set out in the Initial Client Billing Advice, or as otherwise notified to us or which we reasonably believe is your new address and specified in our Invoice;
- (b) in the case of a notice to us, to our address specified in an Invoice,

or as otherwise notified. A notice is deemed to have been received within 2 days of posting if posted in Australia or 7 days if posted outside Australia, or if faxed or emailed, at the time of receipt of a confirmation printout or message respectively of a successful delivery.

15.7 Exercise of rights

A failure or delay by us or you (as the case may be) in exercising a right or power under this Agreement is not to be taken as a waiver of that right or power. Any partial exercise of a right or power is not to preclude any further exercise of that right or power.

15.8 Headings

The headings to these Terms and Conditions are inserted for convenience only and do not affect their interpretation.

15.9 Severability

If the whole or part of a provision in this Agreement is void, unenforceable or illegal, it is severed to the extent that it is void, unenforceable or illegal, and the remainder of this Agreement has full force and effect. This clause 15.9 has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

15.10 Inconsistency

In the event of any inconsistency, the following documents comprising the Agreement are to be read in the following descending order of precedence:

- (a) these Terms and Conditions (including those on our website at www.xplantechnology.com/terms/ and www.xplantechnology.com/opensource/);
- (b) our most recent Invoice; then
- (c) the Initial Client Billing Advice.

15.11 Jurisdiction

This Agreement is to be governed by the laws in force in Victoria. You and we submit to the non-exclusive jurisdiction of the courts of Victoria.

16 DISCLAIMER REGARDING INVESTMENT ADVICE

You acknowledge that the provision of the Services by us (including data comprising the Services) does not constitute and is not suitable to be acted upon as investment advice. It is recommended that you seek independent professional advice before making investment decisions in reliance on the Services or Data. This clause 16 survives termination (for whatever reason) of this Agreement.

17 DEFINITIONS

In this Agreement:

Agreement means our agreement for the provision of Services under our Terms and Conditions, and any additional terms specified in the Initial Client Billing Advice and any Invoice.

Authorised User means a User using the Services for the Permitted Purpose and invoiced by us.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made.

Business Hours means the hours of 9.00am to 5.30pm Eastern Standard Time on Business Days.

Client Data means any information other than Excluded Information of the kind described in paragraphs (a) or (b) that is both entered

into the XPLAN Software by you and is stored in the XPLAN Software:

- (a) any information you disclose to us about any of your clients who are natural persons that is "personal information" for the purposes of the National Privacy Principles in Schedule 3 to the Privacy Act 1988 (Cth) and includes a client's tax file number; and
- (b) any information you disclose to us about any of your clients who are not natural persons that is information or an opinion about such a client whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Confidential Information means all confidential, non-public or proprietary information of one party (the **Disclosing Party**) regardless of how it is stored, delivered, provided to or learnt by the other party (the **Receiving Party**) in relation to the business, technology or other affairs of the Disclosing Party, but does not include the Excluded Information. Confidential Information includes all pricing and related terms pertaining to the provision of Services under this Agreement.

Data means any data or information made available through or which form part of or is supplied with, the Services.

Data Provider has the meaning given to that term in clause 1.3, and includes an Exchange.

Equipment means any hardware or other equipment supplied by us under clause 10, including modification and improvements.

Exchange means the Australian Stock Exchange Limited or any other exchange in Australia or overseas on which securities are quoted and traded.

Excluded Information means Confidential Information which:

- (a) is or becomes public domain other than through breach of this Agreement or an obligation of confidence owed to the Disclosing Party; or
- (b) the Receiving Party can prove was already known to the Receiving Party at the time of disclosure by the Disclosing Party (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Receiving Party acquires from a source other than the Disclosing Party or any Representative of theirs where such source is entitled to disclose it.

Fees means the fees specified in the Initial Client Billing Advice in return for the Services (including the provision of agreed Third Party Data) and for additional Support, training, and Equipment (if any) as varied in accordance with this Agreement.

GST has the same meaning as in the A New Tax (Goods and Services Tax) Act 1999 (Cth).

Hosting means the provision by us of a web-server and related connectivity to enable you to operate the licensed Software, access Data and allow you to access your Client Data via your Internet connection

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Initial Client Billing Advice means the document titled Initial Client Billing Advice agreed between us and you in relation to the Services.

Internal Use means any data processed, calculated, reported or manipulated using the Software where the ultimate client is a client of yours or is directly related to you. For the avoidance of doubt, Internal Use does not include, amongst other things, outsourcing or bureau type processing arrangements.

Invoice means a valid tax invoice produced by us.

Permitted Purpose means Internal Use for the operation of your business, or as otherwise agreed in the case of particular Users or types of Users.

Representative includes an employee, agent, officer, director, auditor, adviser, partner, consultant or sub-contractor.

Services means all services provided to you by us including:

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- (a) those specified in the Initial Client Billing Advice and any Invoice;
- (b) Support;
- (c) the granting of the Software Licence; and
- (d) any documentation prepared by us to assist you to use the Services,

and as varied in accordance with this Agreement.

Software means the software developed, owned or provided by us, including any improvements, modifications and related data, but excluding any Client Data.

Software Licence means the licence of the Software that we grant you and your Authorised Users.

Support means the services specified in Schedule A.

Support Representative has the meaning given to that term in clause 12.1.

Terms and Conditions means our document titled Xplan Technology Standard Terms and Conditions, together with the terms on our website at www.xplantechnology.com/terms/ and www.xplantechnology.com/opensource/. In the event of a conflict

between this Agreement and the open source licence terms, the open source licence terms prevail.

Third Party Data has the meaning given to that term in clause 1.3.

User means a person, organisation or entity who uses the Services, regardless of whether that person, organisation or entity is an Authorised User.

Valid Login means that a User has entered a valid and current user-name and password combination to access Data, Client Data or any other information from any XPLAN application provided to you as part of the Services.

We or **Us** means Xplan Technology Pty Limited (ABN 67 095 619 837) and its employees, contractors, agents and representatives.

XPLAN means Xplan Technology Pty Limited (ABN 67 095 619 837)

XPLAN Software means the software developed, owned or provided by us, including any improvements and modifications, but excluding any related data.

You means the company or entity named as the subscriber in the Initial Client Billing Advice and its employees, contractors, agents and representatives.

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Schedule A

Support

Support is to be provided by us to the Support Representative during normal Business Hours. We will not be obliged to provide Support to any other person or location or outside normal Business Hours. Support consists of the services described below. You acknowledge that no liability or financial penalty shall arise or be incurred by us if we fail to provide Support in accordance with this Schedule.

1 UPGRADE SERVICES

1.1 Subject to clause 9.1, we will supply upgrades of the Software to you as and when available by upgrading your hosted software or in the form of downloadable files and instructions to enable an appropriately skilled person to carry out the upgrade task.

2 USER SUPPORT SERVICE

2.1 User Support Services comprises online, telephone and email support for both technical and user questions in relation to the Services.

2.2 The amount of User Support Services provided by us to you will be limited to a maximum of 8 hours per calendar quarter (including time spent investigating a Fault). Unused time expires at the end of the quarter.

2.3 We may, but are under no obligation to, provide User Support Services in excess of the hours set out in paragraph 2.2 or during hours other than Business Hours, at our prevailing standard time and materials rates for such services.

3 ERROR CORRECTION SERVICE

3.1 If you detect, or believe you have detected, any error, defect or non-conformity in the Software such that the Software does not operate in substantial conformity with the specifications for the Software ("Fault"), you may request us to provide the Error Correction Service.

3.2 On reporting the Fault it will be classified and actioned by us in accordance with the following table:

Fault	Definition	Agreed response by Us
Severity 1	Critical defect which prevents operation of the Software or a major component.	We may initially provide assistance in the form of off-site consultation and advice and if not remedied will provide on-site services.
Severity 2	A less critical defect which limits the Software's functionality or performance but still permits the Software to operate at a reduced level of service.	We may initially provide assistance in the form of off-site consultation and advice and if not remedied will provide on-site services.
Severity 3	Defect not materially affecting operation of the Software.	We will provide assistance in the form of off-site telephone and email consultation and advice.

3.3 On reporting each Fault you must provide us a listing of the output and all such other data which we may reasonably request in order to reproduce or simulate operating conditions similar to those present at the time the Fault occurred.

3.4 We may implement temporary work around procedures in relation to Faults as considered practicable by us.

4 EXCLUDED OCCURRENCES

4.1 Support does not include repair of damaged data, investigation of problems, or other User Support Services which:

- (a) arise from additions or modifications to the Software by a person other than us (and such additions or modifications are prohibited);
- (b) arise from misuse of the Software;
- (c) arise due to the failure by you to provide appropriately qualified and adequately trained operating and programming staff for the operation of the Software;
- (d) we are unable to replicate within 2 hours after beginning our investigations;
- (e) are caused by the failure of electricity, air-conditioning, humidity control or any environmental factor including an act of God, flood or fire;
- (f) are caused by operation of the Software other than in accordance with our documentation;
- (g) arise directly or indirectly out of your failure to comply with this Agreement;
- (h) are caused by any hardware or software other than the Software;
- (i) occur in versions of the Software which are more than 2 software issues (releases or upgrades) behind the then current version of the Software;
- (j) are caused by network failure or error, hardware failure, hardware operating system failure or incorrect operation of the hardware or network; or
- (k) in our reasonable opinion represent excessive consultation which is primarily due to lack of training by you of your staff.

At our option, we may provide Support in respect of any of these items at our normal time and materials rates.