|  |
| --- |
| **Software Agreement v1.1** |

* 1. Definitions

The definitions and interpretation section in this Agreement are set out in **clause 22** (Definitions and interpretation).

* 1. Parties and agreement
     1. Parties

This Agreement is between our customer (referred to as **Customer**) and **Cosive Pty Ltd** ABN **24 608 265 345**, its subsidiaries, successors and assignees (referred to as **Cosive**) and collectively the Parties. This Agreement is available at www.cosive.com (**Site**). The Cosive Services may be provided in other countries by Cosive and its Related Bodies Corporates.

* + 1. Agreement

This Agreement forms the agreement under which Cosive provides Customer with the Cosive Services. Please read this Agreement carefully.

* 1. Cosive Services
     1. Cosive Services

Customer has requested the Cosive Services. Cosive will supply the Cosive Services as set out in this Agreement.

* + 1. Conflicting terms

This Agreement is made up of the following documents (in order of priority):

* + - 1. any Order Form; and
      2. any terms set out at an URL provided by Cosive, including on the Site; and
      3. this document.
  1. Acceptance
     1. Acceptance

Customer accepts this Agreement by:

* + - 1. signing this Agreement; or
      2. signing or accepting and Order Form Cosive provides to you; or
      3. clicking a box indicating acceptance on the Site; or
      4. creating an Account; or
      5. accessing or using the Cosive Services.
    1. Authority

By accepting this Agreement, Customer warrants to Cosive:

* + - 1. that Customer has reviewed this Agreement, including Cosive’s Website Terms of Use and Privacy Policy, available on the Site and the Customer will use the Cosive Services in accordance with them;
      2. that Customer has the legal capacity to enter into a legally binding agreement;
      3. that Customer has the authority to act on behalf of any person or entity for whom are using the Cosive Services and Customer are deemed to have agreed to this Agreement on behalf of that entity’s behalf; and
      4. that Customer has all hardware, software and services which are necessary to access and use the Cosive Services (other than those required to be provided by Cosive under this Agreement).
  1. Term
     1. This Agreement Term

This Agreement commences on the Agreement Start Date and continues until the date that the last Order Form placed under this Agreement expires or is terminated (**Agreement Term**). Any renewal process for this Agreement is set out on the Site or in an Order Form.

* + 1. Order Form Term

Each Order Form commences on the Order Form Start Date and ends on the Order Form End Date (**Order Form** **Term**). If there are no Order Forms in effect, either Party may terminate this Agreement by giving the other Party 30 days’ written notice. Any renewal process for an Order Form Term is set out on the Site or in an Order Form.

* 1. Accounts
     1. Create Account

Cosive may create an account for Customer (**Account**), in order for Customer and Customer’s Authorised Users to access and use the Cosive Services. Customer must ensure that any information Customer provides to Cosive, or Cosive requests from Customer as part of the creation process is complete and accurate.

* + 1. Account Owner

Customer is the Account owner, and regardless of any change in any contact details, Customer will remain responsible for Customer’s Account as set out in this Agreement. If Customer wishes to change the Account owner, Customer must provide Cosive with a written request to transfer the ownership of the Account to the incoming party, which must also include the incoming party’s written consent to take over full responsibility for the Account.

* + 1. Usernames and passwords

Cosive will provide Customer with certain Account details (such as usernames and passwords) when Cosive creates an Account for Customer. It is Customer’s responsibility to keep Customer’s Account details confidential. Customer is responsible for all activity on its Account, including activity by Authorised Users and for ensuring that any activities on Customer’s Account comply with this Agreement.

* + 1. Administration

Cosive is not responsible for the management or administration of Customer’s Account or Customer’s Authorised Users.

* 1. Licence and restrictions on use
     1. Licence

In consideration for payment of the Fees, Cosive grants Customer a non-exclusive, non-transferable (except with Cosive’s written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to access and use Cosive Services for the Order Form Term (**Licence**).

* + 1. Licence for on premises installation
       1. If Cosive provides and supports an on-premises installation, and the Customer has ordered a copy of the Software for download and installation on Customer’s premises as part of the Cosive Services, Cosive grants Customer (subject to this Agreement):
          1. the right to install the Software on Customer’s own servers, during the Order Form Term; and
          2. the right to make 1 copy of the Software solely for back-up purposes,

(**On Premises Installation**).

* + - 1. You must pay the On Premises Installation Fees as set out in the on the Site or in an Order Form.
    1. Licence Restrictions

Customer must not (and must ensure Customer’s Authorised Users do not) access or use the Cosive Services except as permitted by the Licence and Customer must not and must not permit any other person to:

* + - 1. use the Cosive Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property rights;
      2. use the Cosive Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
      3. use the Cosive Services in any way that damages, interferes with or interrupts the supply of the Cosive Services;
      4. introduce malicious programs into our hardware and software or Systems, including viruses, worms, trojan horses and e-mail bombs;
      5. reveal Customer’s Account’s password to others or allow others to use Customer’s Account (other than Authorised Users);
      6. use the Cosive Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where Customer are not the intended recipient or logging into a server or account that Customer are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
      7. use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person’s use of the Cosive Services;
      8. send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the Cosive Services in breach of any person’s privacy (such as by way of identity theft or “phishing”); or
      9. use the Cosive Services to circumvent user authentication or security of any of Cosive’s networks, accounts or hosts or those of Cosive’s members or suppliers.
    1. Customer must obtain necessary approvals

For Cosive to provide the Cosive Services to Customer, Customer must promptly obtain and provide to Cosive any required licences, approvals or consents necessary for Cosive’s performance of the Cosive Services.

* 1. Authorised Users
     1. Authorised Users

If set out on the Site or in an Order Form, Customer agrees that the Licence permits Customer to access and use the Cosive Services in accordance with the number of Authorised Users, as set out on the Site or in an Order Form.

* + 1. Increasing Authorised Users

Customer may, at any time during the Order Form Term, increase the number of Authorised Users by submitting a further Order Form to us and Cosive will apply new fees (and support fees if relevant) which will be applicable as of the effective date of the increase of the number of Authorised Users.

* 1. Third Parties
     1. Third Party Inputs

Customer acknowledges and agrees that:

* + - 1. the provision of the Cosive Services may be contingent on, or impacted by, third parties, other customers’ use of Cosive’s services, suppliers, other subcontractors (**Third Party Inputs**); and
      2. despite anything to the contrary, to the maximum extent permitted by law, Cosive will not be responsible and will have no Liability, for any default or breach of this Agreement or law, if such default or breach was caused or contributed to by any Third Party Inputs.
    1. Interoperability with Third Party Inputs
       1. Customer acknowledges that the Cosive Services include certain optional functionality that may interface or interoperate with third party software or services.
       2. To the extent that Customer chooses to use such functionality and they are not a part of the Cosive Services, Customer is responsible for:
          1. the purchase of;
          2. the requirements; and
          3. the licensing obligations,

related to the applicable third party software and services.

* + - 1. It is Customer’s responsibility to ensure these requirements are met in order for Customer to benefit from the specific functionality made available to Customer.
  1. Implementation Service

Cosive will provide the Implementation Service.

* 1. Development Services
     1. Development

If available from Cosive, Customer may require changes to the scope, functionality or nature of the Cosive Services or the elements of the Software used to provide the Cosive Services or any bespoke customisations to the Cosive Services, Customer must notify Cosive of the changes Customer requires.

* + 1. Scoping

Following notification, at Cosive’s discretion, Cosive may provide Customer with written notice in the form of a statement of work covering:

* + - 1. the changes required to the Cosive Services and the development services required in respect of such changes (**Development Services**); and
      2. the fees required for Cosive to undertake such Development Services (**Development Fee**).
    1. Statement of Work for the Development Services

If Customer agrees to the changes to the Cosive Services, the Development Services and the Development Fees then, subject to the Parties signing a statement of work and this Agreement, Cosive will provide the Development Services to Customer in consideration for payment of the Development Fee.

* 1. Support Services
     1. Support

During the Order Form Term, Cosive will provide Customer with technical support services as set out on the Site or in an Order Form.

* 1. Privacy
     1. Privacy Act

Cosive will at all times comply with the Privacy Act, and in relation to Customer Data that contains or is Personal Information, Cosive will only use this Customer Data in the manner permitted by this Agreement and the Privacy Act.

* + 1. Your obligations
       1. You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to Customer’s business and all matters relating to the Customer Data.
       2. You must and must ensure that all of Customer’s Personnel and Authorised Users comply, with the requirements of the Privacy Act in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement.
       3. Without limiting this **clause 13** (Your obligations), Customer must:
          1. notify Authorised Users, Personnel, or other natural persons from whom Personal Information is collected about any matter prescribed by the Privacy Act in relation to the collection, use and storage of their Personal Information;
          2. ensure that any Personal Information transferred to Cosive is complete, accurate and up to date; and
          3. notify Cosive immediately upon becoming aware of any breach of the Privacy Act that may be related to the use of the Personal Information under this Agreement.
       4. Without limiting this **clause 13** (Your obligations), Customer may only disclose Personal Information in Customer’s control to Cosive if:
          1. Customer is authorised by the Privacy Act to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
          2. Customer has informed the individual to whom the Personal Information relates, that it might be necessary for Customer to disclose their Personal Information to third parties and Customer has obtained their consent to do so; and
          3. where any Personal Information is Sensitive Information, Customer has obtained the specific consent to that disclosure from the individual to whom the Sensitive Information relates.
    2. Data breach

To the extent the Notifiable Data Breaches scheme under Part IIIC of the Privacy Act (**Notifiable Data Breaches Scheme**) applies to Cosive, if Cosive becomes aware of a Data Incident, Cosive will:

* + - 1. notify Customer of the Customer Data Incident by telephone or email;
      2. retain system logs and other information that may be relevant to the Customer Data Incident, or to assessing the cause or impact of the Customer Data Incident;
      3. provide all information Cosive deems relevant to the Customer Data Incident reasonably requested by Customer for the purpose of investigating the Customer Data Incident; and
      4. immediately take all action reasonably necessary to:
         1. mitigate the impact of the Customer Data Incident (including to restore or recover any lost data); and
         2. prevent any repeat of the Customer Data Incident in the future.
    1. Assessment
       1. If Cosive suspects that a Data Incident has occurred, Cosive will, within 30 days, prepare an assessment to determine whether there are reasonable grounds to believe that a Customer Data Incident has occurred.
       2. Where Customer suspects that a Customer Data Incident has occurred, Cosive will, within 30 days of receiving notice from Customer that Customer suspects that a Customer Data Incident has occurred, prepare an assessment to determine whether there are reasonable grounds to believe that a Customer Data Incident has occurred, and the costs of such assessment must be paid by you.
    2. Notice to OAIC

If Cosive believes a Customer Data Incident has occurred, Cosive will provide notice to the Office of the Australian Information Commissioner (**OAIC**) of such Customer Data Incident in accordance with the Notifiable Data Breaches Scheme and Cosive will be the sole Party to notify the individuals who are likely to be at risk of serious harm arising from the Customer Data Incident. Alternatively, where Cosive does not have the contact details of affected individuals, Cosive will provide Customer with a statement to provide to affected individuals.

* 1. Fees and payment
     1. Fees

You must pay Cosive any Fees and any other amounts payable to Cosive under this Agreement in accordance with the Payment Terms.

* + 1. Failure to pay invoices

If any payment has not been made in accordance with the Payment Terms, Cosive may (in Cosive’s absolute discretion):

* + - 1. immediately cease or suspend the provision of the Cosive Services, and recover as a debt due and immediately payable from Customer any additional costs of doing so;
      2. charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 5% per month, calculated daily and compounding monthly, on any such amounts unpaid after the due date; and
      3. engage debt collection services and/or commence legal proceedings in relation to any such amounts.
    1. Recommencement of services

If Customer rectifies such non-payment after the Cosive Services have been suspended, then Cosive will recommence the provision of the Cosive Services as soon as reasonably practicable.

* + 1. Payment

You must pay Cosive the Fees and any other amount payable to Cosive under this Agreement, without set off or delay, via credit card or any other payment method set out in the Order Form.

* + 1. Fees

The Fees are subject to change upon 30 days’ notice from Cosive to Customer and will apply to the next billing cycle. Such notice may be provided at any time by posting the changes on our Site, via email or via a notification to Customer’s Account.

* + 1. GST

All Fees exclude GST. You are responsible for all taxes, levies or duties imposed by taxing authorities in Customer’s own country, and Customer will be responsible for payment of them. Cosive have no responsibility to them on Customer’s behalf.

* 1. Intellectual Property Rights
     1. Cosive’s Intellectual Property

All Intellectual Property in the Software, Cosive Services and all Intellectual Property developed, adapted, modified or created by Cosive or Cosive’s Personnel (including in connection with this Agreement, the Software and the Cosive Services and any machine learning algorithms output from the Cosive Services) is and will remain owned exclusively by Cosive or Cosive’s third party service providers. Any improvements, bugfixes or other modifications to the Cosive Services suggested by Customer will be owned exclusively by Cosive or Cosive’s third party service providers.

* + 1. Obligations

Customer must not, without Cosive’s prior written consent:

* + - 1. copy or use, in whole or in part, any of Cosive’s Intellectual Property;
      2. reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Cosive’s Intellectual Property to any third party;
      3. reverse assemble, reverse engineer, reverse compile or enhance the Cosive Services;
      4. breach any Intellectual Property Rights connected with the Software or the Cosive Services, including altering or modifying any of Cosive’s Intellectual Property;
      5. cause any of Cosive’s Intellectual Property to be framed or embedded in another website; or create derivative works from any of Cosive’s Intellectual Property;
      6. resell, assign, transfer, distribute or make available the Cosive Services to third parties;
      7. “frame”, “mirror” or serve any of the Cosive Services on any web server or other computer server over the Internet or any other network;
      8. alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Cosive Services or Software;
    1. Non identifying analytics

Despite anything to the contrary in this Agreement or elsewhere, Cosive may monitor, analyse and compile information based on and/or related to Customer’s use of the Cosive Services, in an aggregated and anonymised format (**Analytics**). Customer agrees that Cosive may make such Analytics publicly available, provided that it:

* + - 1. does not contain identifying information; and
      2. is not compiled using a sample size small enough to make the underlying Customer Data identifiable.
    1. Rights in Analytics

Cosive and Cosive’s licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property rights in the foregoing.

* + 1. Customer’s Intellectual Property

As between Customer and Cosive:

* + - 1. all Customer Data is and remains Customer’s property; and
      2. Customer retains any and all rights, title and interest in and to the Customer Data, including all copies, modifications, extensions and derivative works.
    1. Licence

Customer grants Cosive a limited licence to copy, transmit, store and back-up or otherwise access the Customer Data during the Agreement Term solely to:

* + - 1. supply the Cosive Services to Customer (including to enable Customer and Customer’s Personnel to access and use the Cosive Services);
      2. diagnose problems with the Cosive Services;
      3. enhance and otherwise modify the Cosive Services; and
      4. develop other services, provided we de-identify the Customer Data,

as reasonably required to perform our obligations under this Agreement.

* + 1. Customer’s Data and compliance
       1. Customer must, at all times, ensure the integrity of the Customer Data and that Customer’s use of the Customer Data is compliant with all Laws.
       2. Customer represents and warrants that:
          1. Customer has obtained all necessary rights, releases and permissions to provide all Customer Data to us and to grant the rights granted to Cosive in this Agreement; and
          2. the Customer Data (and its transfer to and use by Cosive) as authorised by Customer, under this Agreement does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity; and
          3. any use, collection and disclosure authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.
    2. Data

Cosive assumes no responsibility or Liability for the Customer Data. Customer is solely responsible for the Customer Data and the consequences of using, disclosing, storing or transmitting it.

* 1. Liability
     1. Liability

Despite anything to the contrary, to the maximum extent permitted by law:

* + - 1. the maximum aggregate Liability arising from or in connection with this Agreement (including the Cosive Services or the subject matter of this Agreement) will be limited to, and must not exceed in the aggregate for all claims the total amount of Fees Customer paid to Cosive in the 12 month period directly preceding the date on which such Liability arose; and
      2. Cosive will not be liable to Customer for any Consequential Loss,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

* + 1. Exclusions to Liability

Despite anything to the contrary, to the maximum extent permitted by law, Cosive will have no Liability, and Customer waives and releases Cosive from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:

* + - 1. loss of, or damage to, any property or any injury to or loss to any person;
      2. failure or delay in providing the Cosive Services;
      3. breach of this Agreement or any Laws; or
      4. the Computing Environment,

where caused or contributed to by any:

* + - 1. Force Majeure Event;
      2. a fault, defect, error or omission in the Computing Environment or Customer Data; or
      3. act or omission of Customer, Customer’s related parties, Authorised Users, Personnel or any third party (including customers, end users, suppliers, providers or subcontractors),

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Cosive Services.

* + 1. Indemnity

To the maximum extent permitted by law, Customer indemnifies and continues to indemnify Cosive against all Liability Cosive suffers or incurs arising from or as a consequence of a breach of **clause 13** (Privacy), **clause** **15** (Intellectual Property Rights), **clause** **19** (Confidential Information) and Customer’s Authorised Users’ use of the Cosive Services contrary to this Agreement, including from any claim relating to the Customer Data.

* + 1. ACL

Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection Laws and regulations may confer Customer with rights, warranties, guarantees and remedies relating to provision of Cosive’s services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement attempts to exclude, restrict or modify Customer’s Statutory Rights as a consumer under the ACL.  Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.

* + 1. Acknowledgement

Customer acknowledges and agrees that:

* + - 1. Customer is responsible for all users using the Cosive Services, including Customer’s Personnel and any Authorised Users; and
      2. Customer’s use the Cosive Services and any associated programs and files at Customer’s own risk;
      3. the technical processing and transmission of the Cosive Services, including Customer’s Data, may be transferred unencrypted and involves:
         1. transmissions over various networks; and
         2. changes to conform and adapt to technical requirements of connecting networks or devices;
      4. Cosive may use third party service providers to host the Cosive Services. If the providers of third-party applications or services cease to make their services or programs available on reasonable terms, Cosive may cease providing any affected features without Liability or entitling Customer to any refund, credit, or other compensation;
      5. the Cosive Services may use third party products, facilities or services. Cosive does not make any warranty or representation in respect of the third-party products, facilities or services;
      6. Cosive does not guarantee that any file or program available for download and/or execution from or via the Cosive Services is free from viruses or other conditions which could damage or interfere with Data, hardware or software with which it might be used;
      7. Cosive is not responsible for the integrity or existence of any Data on the Computing Environment, network or any device controlled by Customer or Customer’s Authorised Users; and
      8. Cosive may pursue any available equitable or other remedy against Customer if Customer breach any provision of this Agreement.
  1. Termination
     1. Mutual Termination

The Parties may terminate this Agreement by a mutually signed agreement. All Order Forms in existence at the time of termination will also terminate.

* + 1. Mutual termination of Order Forms

The Parties may terminate an Order Form by a mutually signed agreement. Terminating an Order Form does not automatically terminate this Agreement or any other Order Form in effect.

* + 1. Termination for cause of this Agreement or Order Forms

To the extent permitted by law, either Party may terminate this Agreement and any affected Order Form, if the other Party:

* + - 1. has breached a material term of this Agreement or an Order Form and has failed to remedy such breach within 20 Business Days of receiving notice to do so, subject to any other express right of termination;
      2. ceases operation without a successor; or
      3. is subject to an Insolvency Event.
    1. Termination for failure to pay

Cosive may terminate this Agreement or an Order Form by providing Customer with five Business Days’ notice, in Cosive’s sole discretion, if Customer fails to pay an invoice within 30 days of the invoice payment date.

* + 1. Effect of termination

On termination of this Agreement or an Order Form:

* + - 1. Customer must cease using the Cosive Services and Cosive will cease to provide the Cosive Services;
      2. Customer agrees that any payments made are not refundable;
      3. Customer must pay for all Cosive Services provided under this Agreement including Cosive Services which have been performed and have not yet been invoiced to Customer, and all other amounts due and payable under this Agreement, including under an indemnity, within 5 Business Days of termination;
      4. Customer must promptly return (where possible) or delete or destroy (where not possible to return), Cosive’s Confidential Information and Intellectual Property, and/or documents containing or relating to Cosive’s Confidential Information and Intellectual Property;
      5. Cosive must promptly return (where possible) or delete or destroy (where not possible to return), Customer’s Confidential Information and Intellectual Property, and/or documents containing or relating to Customer’s Confidential Information and Intellectual Property unless Cosive is required by Law or regulatory requirements to retain such information;
      6. for the avoidance of doubt, any provisions of this Agreement that by their nature survive the termination of this Agreement will remain in force after this Agreement Term; and
      7. we may remove Customer’s Data within one month of the date of termination or expiry of this Agreement.
    1. Disengagement services

On termination of this Agreement, Cosive may offer to provide Customer with disengagement support services at our then current rates, and such disengagement support services must be agreed in writing by the Parties.

* + 1. Accrued rights

The accrued rights, obligations and remedies of the Parties are not affected by the termination of this Agreement or an Order Form.

* 1. General Warranties
     1. Our warranties

Cosive warrants and agrees that:

* + - 1. Cosive is properly constituted and have the right and authority to enter into this Agreement;
      2. Cosive will provide the Cosive Services in accordance with all applicable Laws; and
      3. Cosive will use reasonable effort to ensure all of Cosive’s obligations under this Agreement will be carried out:
         1. by suitably competent and trained Personnel; and
         2. in an efficient and professional manner.
    1. Customer’s warranties

Customer warrant and agree that:

* + - 1. there are no legal restrictions preventing Customer from agreeing to this Agreement;
      2. Customer is not subject to an Insolvency Event;
      3. Customer will cooperate with Cosive and provide Cosive with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable Cosive to perform the Cosive Services, and as otherwise requested by Cosive, from time to time, and in a timely manner;
      4. all information and documentation that Customer provides to us in connection with this Agreement is true, correct and complete and that Cosive will rely on such information and documentation in order to provide the Cosive Services;
      5. Customer will inform Cosive if Customer has reasonable concerns relating to Cosive’s provision of the Cosive Services under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve Customer’s concerns;
      6. Customer is responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the Cosive Services to be provided in accordance with this Agreement, at Customer’s cost, and for providing Cosive with the necessary consents, licences, authorities and permissions;
      7. Customer will maintain the confidentiality and security of any of Customer’s Account details or passwords;
      8. if applicable, Customer holds a valid ABN which has been advised to Cosive; and
      9. if applicable, Customer is registered for GST purposes.
  1. Confidential Information
     1. Confidential

Each Party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other Party (**Discloser**) except:

* + - 1. where permitted by this Agreement;
      2. with the prior written consent of the Discloser;
      3. where the Confidential Information is received from a third party, except where there has been a breach of confidence;
      4. on a confidential, “needs to know” basis to the Recipient’s Personnel, auditors, insurers, agents and professional advisors; or
      5. where the Recipient is compelled to do so by Law, provided that it gives the other Party written notice prior to disclosure.
    1. Use

The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.

* 1. GST:
     1. Taxable supply

If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

* + 1. Adjustment events

If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this **clause**, an adjustment note issued (if required), and any payments to give effect to the adjustment must be made.

* + 1. Payments

If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

* + 1. GST terminology

The terms “**adjustment event**”, “**consideration**”, “**GST**”, “**input tax credit**”, “**recipient**”, “**supplier**”, “**supply**”, “**taxable supply**” and “**tax** **invoice**” each has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

* 1. General
     1. Amendment

This Agreement may only be amended by a written instrument executed by both Parties.

Cosive reserves the right to amend this Agreement at any time at the sole discretion of Cosive. Cosive will communicate any changes in writing as described in **clause 21.4(b)** (Disputes and Notices).

* + 1. Assignment

Neither Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Party. Any purported dealing in breach of this clause is of no force or effect.

* + 1. Delay
       1. If the provision of the Cosive Services depends upon or includes the provision of information, materials, consents or approvals by Customer or Customer’s Personnel, or requires Customer’s cooperation, action or response (or that of Customer’s Personnel), Customer must provide that information, cooperation and those materials, consents or approvals in a timely manner.
       2. If Customer breach this obligation, Cosive will be entitled to an extension of time in respect of any deadline or milestone to the extent of the delay caused by Customer and we will have no Liability for a failure to perform the Cosive Services caused by you.
       3. If we are delayed from performing our obligations due to such a circumstance for a period of at least two months, we may terminate this Agreement with Customer by giving Customer five Business Days' notice in writing.
    2. Disputes and notices
       1. Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, this Agreement without first meeting with a senior representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
       2. Any notice required or permitted to be given by either Party to the other will be in writing addressed to the Party at the address on the Site or in an Order Form. A Party may change its notice details by written notice to the other Parties. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of digital transmission.
    3. Entire agreement

This Agreement contains the entire understanding between the Parties and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

* + 1. No Exclusivity

The Cosive Services will be provided to Customer on a non-exclusive basis.

* + 1. Feature sets

We reserve the right at any time and from time to time to change or remove features of the Cosive Services provided that, where there is any material negative alteration to the functionality of the Cosive Services in accordance with this **clause**, we will provide Customer with 20 Business Days’ notice and Customer may terminate this Agreement and an Order Form by written notice without Liability to us.

* + 1. Overseas access

The Cosive Services may be accessed in Australia and overseas. Cosive makes no representation that the Cosive Services complies with the Laws (including Intellectual Property laws) of any country outside of Australia. If Customer access the Cosive Services from outside Australia, Customer does so at Customer’s own risk and are responsible for complying with the laws in the place Customer access the Cosive Services.

* + 1. Publicity

Cosive may use advertising or publicly announce that Cosive has undertaken work for Customer, including in website testimonials and in Cosive’s marketing material. Customers can opt-out of publicity by contacting Cosive at the email address provided on the Site or in an Order Form.

* + 1. Subcontracting

Cosive may engage subcontractors to perform the Cosive Services on Cosive’s behalf. Despite this, Cosive retains responsibility for all Cosive’s obligations under this Agreement.

* + 1. Waiver

Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to this Agreement does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.

* + 1. Severence

If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.

* + 1. Jurisdiction

Your use of Cosive Solutions and this Agreement are governed by the laws of Victoria, Australia. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in Victoria, Australia and any courts entitled to hear appeals from those courts and waive any right to object to proceedings being brought in those courts.

* + 1. Counterparts

This Agreement may be executed in any number of counterparts that together will form one instrument.

* 1. Definitions and interpretation
     1. Definitions

Unless defined on the Site or in an Order Form the following words will mean:

**ACL** is defined in **clause 16.4** (ACL);

**Account** is defined in **clause 6** (Accounts);

**Agreement** means this Agreement and any Order Form;

**Agreement Start Date** means the date the last Party signs this Agreement;

**Agreement** **Term** is defined in **clause 5.1** (This Agreement Term);

**Analytics** is defined in **clause 15.3** (Non identifying analytics);

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Victoria, Australia;

**Business Hours** means 9am to 5pm on a Business Day;

**Computing Environment** means Customer’s computing environment including all hardware, software, information technology and telecommunications services and Systems;

**Confidential Information** includes confidential information about a Party’s business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential" but does not include any information which is in the public domain other than through a breach of confidence. Cosive’s Confidential Information includes our Intellectual Property including the Software. Customer’s Confidential Information includes the Data;

**Consequential Loss** includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this Agreement (whether involving a third party or a Party to this Agreement or otherwise);

**Cosive Services** means our Software as a service as described on the Site or in an Order Form as amended by any Development Services, if applicable, and any other services provided to Customer under this Agreement;

**Customer** **Data** means the information, logos, documents and other data inputted by Customer, Customer’s Personnel or Authorised Users into the Software or stored by the Cosive Services or generated by the Cosive Services as a result of Customer’s use of the Cosive Services;

**Customer Data Incident** means any actual or suspected:

* + - 1. breach of Cosive’s obligations relating to the protection of Personal Information under this Agreement;
      2. suspected (by Cosive) unauthorised access to, or unauthorised disclosure of, any Personal Information;
      3. suspected (by Cosive) loss of Personal Information, including where Personal Information is damaged or corrupted so that it becomes unusable,

where, as determined by Cosive, the access or disclosure is likely to result in serious harm to one or more individuals and Cosive has not been able to prevent the likely risk of serious harm with remedial action;

**Development Fees** is defined in **clause 11.2** (*Scoping*);

**Development Services** is defined in **clause 11.2** (*Scoping*);

**Fees** means the fees set out on the Site or in an Order Form, including the Development Fees (if applicable), the Subscription Fees, the Implementation Fees and the On Premises Installation Fees;

**Force Majeure Event** means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

**Implementation Fees** means the implementation fees set out on the Site or in an Order Form;

**Implementation Service** means (if applicable) the services as described on the Site or in an Order Form to set up the Cosive Services.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to either Party:

* + - 1. it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable Laws;
      2. an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
      3. an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
      4. a controller is appointed in respect of any of its property;
      5. it is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;
      6. a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
      7. it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
      8. a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
      9. a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
      10. anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the relevant Party;

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names. Our Intellectual Property includes the Software;

**Laws** means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory and includes the Privacy Act and the Spam Act 2003 (Cth);

**Liability** means any loss, liability, cost, payment, damages, debt or expense (including reasonable legal fees);

**Licence** is defined in **clause 7.1** (Licence);

**Related Bodies Corporate** has the meaning as set out in the Corporations Act 2001 (Cth);

**On Premises Installation Fees** is defined on the Site or in an Order Form;

**Order Form Start Date** means the start date for the relevant Order Form as set out in the Order Form;

**Order Form Term** means the term of the Order Form as set out in the Order Form;

**Party** means either party to this Agreement;

**Personal Information** is defined in the Privacy Act;

**Personnel** means, in relation to a Party, the officers, employees, contractors, sub-contractors and agents of that Party;

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

**Sensitive Information** is defined in the Privacy Act;

**Software** means the software used to provide any of the Cosive Services, and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties;

**Subscription Fees** means the fees as set out on the Site or in an Order Form;

**System** means all hardware, software, networks and other IT systems used by a Party from time to time, including a network; and

**Third Party Inputs** is defined in **clause 8** (Authorised Users).

* 1. Interpretation

In this Agreement, unless the context otherwise requires:

* + - 1. the singular includes the plural and vice versa;
      2. headings are for convenience only and do not affect interpretation;
      3. a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
      4. if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
      5. the word "**month**" means calendar month and the word "**year**" means 12 months;
      6. the words "**in writing**" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
      7. a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
      8. the word “**includes**” and other similar words mean “**includes without limitation**”;
      9. a reference to $ or dollars refers to the currency of Australia from time to time;
      10. a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body; and
      11. no **clause** will be interpreted to the disadvantage of a Party merely because that Party drafted the **clause** or would otherwise benefit from it.

1. Signatures

|  |  |  |
| --- | --- | --- |
| **Executed as an agreement** for and on behalf of  **Cosive Pty Ltd** (ABN: 24 608 265 345) by its duly authorised representative:  Close |  | **Executed as an agreement** for and on behalf of  [*Other party full legal name*] (ABN: [*other party abn*]) by its duly authorised representative:  Close |
| Signature |  | Signature |
| Name (PRINT) |  | Name (PRINT) |
| Date: / / |  | Date / / |