

1. Background

- a. SMB provides secure SAP-integrated AI agents that automate routine tasks, enhance decision-making, and improve operational efficiency across finance, supply chain, procurement, HR, and IT functions.
- b. The Customer wishes to engage SMB to licence the Platform for use by the Customer, and SMB agrees to provide the Services to the Customer on the terms as specified in this Agreement.
- c. SMB has agreed to grant a Licence to the Customer for the purposes of utilising the Platform (including the Products) and Services on the terms of this Agreement, and the Customer has agreed to accept the Licence in accordance with the terms of this Agreement.

2. Grant of Licence

- 2.1 Subject to the further terms and conditions set out in this Agreement, from the Start Date, SMB grants the Customer a temporary, royalty-free, non-exclusive, non-transferable, non-assignable right to use and exploit the Relevant IP and the Platform (including the Products) for the Permitted Use and use SMB's Trade Marks and any further accompanying Documentation solely to enable the Customer to use the Platform (including the Products) and/or Services for the duration of the Term and to perform its obligations under this Agreement.

Users

- 2.2 SMB grants the Customer the right to authorise Users to use the Platform (including the Products) for the Permitted Use. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement. For the avoidance of doubt, the Customer acknowledges and agrees that the licence is restricted to the number of Users authorised by SMB in writing. Additionally, the Platform must be used in compliance with all applicable laws and regulations, and only by the number of Users or concurrent instances for which the Customer is licensed.
- 2.3 The Customer acknowledges and agrees that, subject to any applicable written agreement between the Customer and the Users, or any other applicable laws:
 - a. the Customer determines who is a User and what level of user role access to the Platform (including the Products) that User has;

- b. the Customer is liable for all Users' use of the Platform (including the Products) and compliance with this Agreement; and
- c. the Customer controls each User's level of access to the Platform (including the Products) at all times and can revoke or change a User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be a User or shall have that different level of access, as the case may be.

3. Term

- 3.1 Provided the Licence is not terminated in accordance with clause 10, the Licence will commence on the Start Date and will continue for an initial period of twelve (12) months from the Start Date (the "Initial Licence Period"). The Licence will automatically renew for sequential one (1) year periods (each a "Renewal Period") unless either party notifies the other party in writing at least thirty (30) days prior to the end of the then current Term that it wishes the Term to expire at the end of the then current Term without the next automatic one (1) year extension taking place. For the avoidance of doubt, the Initial Licence Period along with any applicable Renewal Period collectively referred to as the "Term".

Non-Exclusivity

- 3.2 During the Term, the parties acknowledge and agree that the provision of the Platform (including the Products) and/or the Services shall be non-exclusive and does not restrict SMB or any Affiliate of SMB from contracting with any other person or entity for the distribution, performance or delivery of the Platform (including the Products) and/or Services.

Amendment of Agreement

- 3.3 SMB may amend this Agreement from time to time by providing the Customer with reasonable notice. If the Customer does not wish to accept the amendments, the Customer must notify SMB immediately, otherwise the Customer's continued use of the Platform (including the Products) will constitute evidence of the Customer's acceptance of the amendments. If the Customer does not agree to the amendments, then SMB may, at its sole discretion, terminate the Agreement or abandon the proposed amendment.

4. Intellectual Property Rights & Copyright

Pre-Existing IP

4.1 A party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the date of this Agreement will not be altered, transferred or assigned by virtue of this Agreement.

Relevant IP

- 4.2 The Customer acknowledges and agrees that it is not acquiring any Intellectual Property Rights (other than the Licence) in or to the Relevant IP and the Trade Marks, information or material (including Confidential Information) relating to the Platform (including the Products) and/or Services provided by SMB.
- 4.3 The Customer acknowledges and agrees that any SMB Data that is captured, collected and/or shared as a part of providing the Software:
- i. is SMB's intellectual property, and the Customer has no proprietary right, title to, or interest in SMB Data pertaining to the Software; and
 - ii. SMB, shall, in its absolute discretion, be entitled to use SMB Data for any purpose as determined by SMB in its absolute discretion.
- 4.4 The Customer acknowledges and agrees it must not take any step to invalidate or prejudice SMB's title thereto or to any Relevant IP owned by a third party, and licensed by SMB to the Customer hereunder. When using the Platform (including the Products), the Customer must comply with the law, including, without limitation, copyright laws.
- 4.5 The Customer acknowledges and agrees that SMB has entered into this Agreement in reliance on the assumption that the Customer's utilisation of the Services will not infringe the Intellectual Property Rights of a third-party.
- 4.6 This Licence is not a sale. Title, copyright and any other rights in the Relevant IP will remain with SMB or its Affiliates (where applicable). Unauthorised copying of the Platform (including the Products) or failure to comply with the above restrictions will result in automatic termination of this Agreement.
- 4.7 Nothing in this Agreement affects the ownership of Moral Rights in the Software.

Source Code

4.8 Nothing in this Agreement shall give to the Customer or any other person any right to access or use the Source Code or constitute any licence of the Source Code. The Customer undertakes not to do it and not to reverse engineer the source code or the Software.

Customer Data

4.9 SMB acknowledges and agrees that any Customer Data that is captured, collected and/or shared with SMB during the Term is the Customer's intellectual property,

and SMB has no proprietary right, title to, or interest in the Customer Data unless otherwise specified in clause 4.10(a) and 4.10(b) below, but the Customer grants or will procure for SMB a right to use the Customer Data for the purposes of this Agreement or as otherwise agreed between the parties acting reasonably.

Anonymised Customer Data

- 4.10 Notwithstanding clause 4.9 above:
- a. the Customer acknowledges and agrees that any Customer Data that is captured, collected and/or shared with SMB shall be used by SMB for machine learning purposes, and such Customer Data obtained shall be anonymised and aggregated in a way that is not identifiable to any one Customer or Customer of the Customer (Anonymised Customer Data); and
 - b. SMB shall be entitled to retain all right, title, interest and ownership of any Anonymised Customer Data for SMB's continued use following termination of this Agreement for any reason or no reason at no additional charge to SMB, and the Customer waives any right, entitlement or interest to the Anonymised Customer Data.

Use of Trade Marks

- 4.11 SMB shall conform to the reasonable requirements of SMB in relation to the use of the Trade Marks on the Platform (including the Products) and any packaging and in all related promotional and advertising materials. Any goodwill or other benefit derived as a result of any use of any of SMB's Trade Marks shall inure to the sole benefit of SMB.
- 4.12 The Customer shall not, at any time during or after the Term:
- i. claim any right, title, or interest in or to, attempt to register in any jurisdiction, or do anything that may adversely affect the validity or enforceability of, any of the Trade Marks; and/or
 - ii. adopt, register or use in any manner whatsoever any name, mark, logo, title, expression, word, device, symbol, or combination thereof, which in any way imitates, resembles, dilutes, or is similar to any of the Trade Marks. Furthermore, at SMB's reasonable request and expense, the Customer shall do all things necessary to assist SMB in the protection of its Trade Marks in the Territory.

Marketing

4.13 SMB reserves the right to use the Customer as a case study for SMB's marketing material (including on its Website on social media, in press releases, testimonials and clippings) for the purposes of promoting SMB and

the Customer agrees and consents to such use, unless the Customer provides SMB express written notice revoking such consent. For the avoidance of doubt, this shall not permit SMB to publish or disclose any Confidential Information of the Customer, otherwise than in accordance with this Agreement.

5. Obligations and Acknowledgements of the Parties

Joint Obligations

- 5.1 The parties acknowledge and agree that:
- a. they will jointly work together to install the Software in accordance with the specifications and timeframes to be agreed between the parties acting reasonably;
 - b. they shall exercise all reasonable care and skill in performing their duties and obligations under this Agreement;
 - c. they shall comply with all federal, state, local and foreign laws in the Territory, constitutions, codes, statutes and ordinances of any governmental authority that may be applicable to the Customer, its activities under this Agreement, the Platform (including the Products) and/or Services, including all applicable taxation laws and regulations affecting the activities of either party under or in connection with this Agreement;
 - d. they will conduct their Business in a professional manner, in accordance with good business practice, and in a manner that reflects favourably at all times on each other, the Platform (including the Products), the Services and the good name, goodwill and reputation of each party; and
 - e. they, and any of their associated entities, Affiliate, successors or permitted assigns shall not otherwise use any of the Confidential Information or SMB provided training to support, maintain or otherwise service a third party's products.

SMB Obligations

- 5.2 SMB shall:
- a. be honest and diligent and provide the Services to it to the best of its knowledge and abilities;
 - b. at all times maintain reasonable ethical, professional and technical standards;
 - c. in relation to any Personal Information of any Customer, supplier or Representative of the Customer, any user or prospective user or any other person, comply with Privacy Laws, information sheets and other relevant material issued from time to time by the Commonwealth Privacy Commissioner;
 - d. provide the Customer and its personnel with such reasonable technical and marketing information, training and support as the SMB considers reasonably necessary to enable use of the Platform (including the Products) in the manner contemplated by the parties acting reasonably;

- e. take all reasonable steps to maintain all licenses to all Relevant IP not owned by SMB necessary for the commercialisation of the Platform (including the Products) in the Territory, and if SMB is unable to maintain any such licenses, SMB shall take all reasonable steps to promptly develop or obtain a license to alternative intellectual property that is at least comparable to such intellectual property to enable the continued commercialisation of the Platform (including the Products) in the Territory; and
- f. use all reasonable endeavours to maintain the availability of the Platform.

Customer Obligations

- 5.3 The Customer shall:
- a. at all times exercise reasonable care in using the Platform (including the Products) and/or Services, including proper use and maintenance in accordance with SMB's instructions and documentation, and ensure compliance with all applicable laws and regulations;
 - b. not use the Relevant IP in any way that could damage the reputation of SMB or the goodwill or the Intellectual Property Rights associated with the Relevant IP or to support any activities outside of the scope of the Business;
 - c. not permit any third party to use the Relevant IP and/or Documentation, without the prior written consent of SMB;
 - d. unless permitted by Law or as otherwise expressly permitted in this Agreement, the Customer, its Affiliates and Representatives must not, nor must the Customer, its Affiliates and Representatives authorise any third person to:
 - i. reproduce, copy, download, scrape, store, publish, transmit, transfer, communicate, distribute, disseminate, sell, rent, lend or otherwise use the Platform (including the Products), in any form or by any means;
 - ii. make the Platform (including the Products) available to any person other than an authorised user;
 - iii. convert material downloaded from the Software into an electronic format other than the one in which it was supplied;
 - iv. modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy the Platform (including the Products) or otherwise attempt to discern the source code of the components of the Software or reproduce all or any portion of the said components;
 - v. remove, alter, circumvent or tamper with any trade marks, copyright notices, copyright protection devices, disclaimers or other legal notices;

- vi. combine the whole or any part of the data available on the Software with any other software, data or material;
 - vii. (vii) store or use any part of such data in an archival database or other searchable database except as forming part of any work product;
 - viii. where applicable, remove any proprietary notices, labels or marks on the Platform (including the Products) or the Documentation; or
 - ix. post the Software to any location that is electronically accessible to the general public, including, but not limited to: electronic bulletin boards, web sites, and ftp sites, and
- e. take out and maintain insurance, including public and product liability and workers compensation insurance, with a reputable insurer in respect of their obligations under this Agreement. The limit of the Customer's insurance policies shall be commercially reasonable from the perspective of the country in which the Customer is domiciled. A certificate of currency of such insurance must be provided to SMB within five (5) Business Days of a written request for evidence of such insurance.
- 5.4 The Customer's use of the Platform (including the Products) and/or Services is strictly limited to Permitted Use set out in Part 6 of the Engagement Form.

6. Fees and Expenses

- 6.1 In consideration for the Licence granted by SMB to the Customer throughout the duration of the Term, the Customer shall pay SMB fees (exclusive of GST) for the provision of the Services and/or the Platform (including the Products) as set out Part 4 of the Engagement Form (Fees).
- 6.2 All Fees payable to SMB shall be made by electronic transfer from a bank account or credit card or debit card nominated by the Customer. SMB accepts payments via Visa, Mastercard and American Express.

Licence Fee

- 6.3 The recurring Licence Fee will be invoiced in advance on the first (1st) Business Day of each month as set out in Part 4 of the Engagement Form for the duration of the Term. Unless otherwise agreed between the parties in writing, payment of the Licence Fee shall be made to SMB within fourteen (14) days after the date of receipt by the Customer of a tax compliant invoice from SMB. Any Additional Fees incurred by the Customer will be charged on the same terms.
- 6.4 After the Term, the Customer may not use or deal with the Platform (including the Products) in any way unless the Customer has agreed to fees payable to SMB for use of the Platform (including the Products) on an on-going basis.

Variation

- 6.5 SMB may change its pricing in respect to the Platform, Products and/or Services from time to time subject to providing the Customer with reasonable written notice of such change in pricing.

Additional Services

- 6.6 Any fees for Additional Services requested by the Customer will be negotiated separately and agreed between the parties in writing.

7. Suspension or modification of the Products

- 7.1 SMB may discontinue or revise any or all aspects of the Platform (including the Products) at its sole discretion and without prior notice to take account of (for example but without limitation) changes in Law or circumstance relating to the Platform (including the Products).
- 7.2 SMB may suspend access to the Platform (including the Products), in whole or in part, until further notice, with immediate effect:
- a. to periodically maintain or improve the Platform (including the Products) and related systems;
 - b. to comply with any order, instruction or request of any government, any emergency services organisation, or other competent judicial, administrative or regulatory authority; or
 - c. if SMB believes that the Platform (including the Products) may be used in such a way as may constitute a breach of this Agreement.
- 7.3 SMB shall use its best endeavours to minimise disruption to the use of the Platform.

8. Confidentiality

- 8.1 Each party must:
- a. not, without the prior written consent of the other party, use or disclose any of the other party's Confidential Information except as expressly permitted to do so by this Agreement or as required by law or any regulatory authority;
 - b. use the other party's Confidential Information solely for the purposes of complying with its obligations and exercising its rights under this Agreement;
 - c. implement and maintain security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the first-mentioned party's possession or control; and
 - d. return or, at the other party's option, destroy all Confidential Information of the other party that is in the first-mentioned party's possession or control upon request by the other party or the expiry, revocation or termination of this Agreement for any reason.

- 8.2 A party may disclose the other party's Confidential Information to the first-mentioned party's employees or professional advisors but only to the extent that they have an actual need to know the Confidential Information in order for the first-mentioned party to properly perform its obligations under this Agreement. The first-mentioned party must ensure that all such employees and professional advisors:
- a. comply with the obligations in this Agreement as if each of them was a party to this Agreement in its place; and
 - b. do not do, or omit to do, anything which, if done or omitted to be done by it, would constitute a breach of this Agreement by it,
 - c. and the Customer acknowledges and agrees that the Customer will be responsible for, and liable to SMB in respect of, the actions and omissions of any and all of the aforementioned employees and professional advisors in relation to such Confidential Information as if they were the Customer's own actions or omissions.
- 8.3 This clause will survive the termination of this Agreement.

9. Disclaimer of Liabilities and Warranties

- 9.1 The Platform (including the Products) and accompanying Documentation are licensed "as is."
- 9.2 The Customer acknowledges that the Platform (including the Products) is only designed to be compatible with an Operating Environment specified as compatible in the System Specifications, and SMB does not warrant or represent that the Platform (including the Products) will be compatible with any other Operating Environment. It is the Customer's sole responsibility to ensure that its Operating Environment meets all required System Specifications.
- 9.3 Subject to clause 12.1, to the extent permitted by law, all implied warranties and conditions are excluded. In no event (including but not limited to any act or omission on SMB's part) will SMB be liable to the Customer for any consequential, incidental or indirect damages (including damages for loss of business profits, business interruption, loss of business information and the like), whether foreseeable or unforeseeable, arising out of the use of or inability to use the Platform (including the Products), Documentation or accompanying written materials.
- 9.4 If any law or regulation including but not limited to the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law, confers rights and remedies on the Customer in relation to the provision by SMB of the Platform (including the Products) which cannot be excluded, restricted or modified (Non-excludable Rights), SMB does not exclude any Non-excludable Rights but SMB does exclude all other conditions and warranties implied by custom, law or statute.
- 9.5 Except as provided for by the Non-excludable Rights:
- a. the Platform (including the Products) used by the Customer are provided without warranties of any kind, either express or implied;
 - b. SMB does not warrant that the Platform (including the Products) will be complete or free from all errors;
 - c. SMB does not assume and shall have no liability for:
 - i. failure to deliver the Services or Platform (including the Products) within a specified time period;
 - ii. availability and delays in delivery of the Services or Platform (including the Products);
 - iii. any failure or interruption of the Software; or
 - iv. damage caused by the Software due directly or indirectly to causes beyond the control of SMB including, but not limited to a Force Majeure Event;
 - v. maintenance and storage of data;
 - vi. disclosure of or failure to protect personally identifiable data.
 - d. SMB does not warrant that information will continue to be available to SMB to enable SMB to keep the Platform (including the Products) up-to-date; and
 - e. all representations are expressly excluded and the Customer has not relied on any representations in trialing the Platform (including the Products).
- 9.6 To the fullest extent permitted by law, SMB's liability for breach of any implied warranty or condition which cannot be excluded, but can be limited, is limited, at SMB's option to supply of the Platform (including the Products) or provision of the Services again or paying for their resupply, and shall not in any event exceed the amounts actually paid by the Customer to SMB during the six (6) month period immediately preceding the event giving rise to such liability.

10. Termination

Termination with Notice

- 10.1 SMB may, without limitation to its rights under clause 10.4, terminate this Agreement at any time by giving at least thirty (30) days written notice to the Customer.
- 10.2 The Customer may, without limitation to its rights under clause 10.4, terminate this Agreement at any time by giving at least ninety (90) days written notice to the SMB and SMB may waive all or part of such notice period.
- 10.3 The Customer may provide SMB with written notice thirty (30) days prior to the completion of the Term that it does not wish for the Agreement to automatically renew, such that the Agreement shall terminate at the end of such notice period. If the Customer does not provide such notice, this Agreement will automatically renew for the additional Term as per clause 3.1.

Termination for Breach

- 10.4 Each party may terminate this Agreement with immediate effect by written notice to the other party if
- a. the other party materially breaches this Agreement where:
 - i. such breach is irreparable; or
 - ii. if remediable, the other party fails to remedy the breach within thirty (30) days of written notice by the terminating party;
 - iii. an Insolvency Event occurs in respect of the other party; or
 - iv. a Force Majeure Event preventing the performance of this Agreement continues for more than ninety (90) Business Days.

Effect of Termination

- 10.5 Upon termination of this Agreement for any reason, the Customer shall immediately cease using the Platform (including the Products) and return to SMB the Platform (including the Products) and all copies of the Platform (including the Products), all revisions, enhancements and upgrades of the Platform (including the Products) and the Media to SMB. Alternatively, if SMB requests, the Customer must destroy such Products, Platform, copies, revisions, enhancements and upgrades by erasing them from the Media and must certify in writing to SMB that they have been destroyed.
- 10.6 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to continue in force after such termination.
- 10.7 Any provision of this Agreement that ought by its nature to survive the termination of this Agreement, shall survive, as shall clause 4 (Intellectual Property Rights & Copyright); clause 8 (Confidentiality); clause 9 (Disclaimer of Liabilities and Warranties); clause 10 (Termination); clause 11 (Indemnity); clause 12 (Warranties, Exclusions and Limitation of Liability); and clause 13 (Privacy).

11. Indemnity

Indemnity for breach of Agreement

- 11.1 The Customer will indemnify and hold SMB harmless against all Losses that may be suffered or incurred by SMB arising directly or indirectly out of, or in connection with, any Relevant Matter.

Indemnity for third party claims

- 11.2 The Customer will indemnify and hold SMB harmless against all Losses that may be suffered or incurred by SMB arising directly or indirectly out of, or in connection with, any Claim brought, or threatened to be brought, by a third party against SMB alleging that the exploitation of the Relevant IP by SMB constitutes an

infringement of any Intellectual Property Rights of the third party, subject to clause 11.3(b) and except to the extent that such infringement arises from modification or alteration of the Relevant IP without the prior written consent of the Customer.

- 11.3 In the event of any third party claim arising for the purposes of clause 11.3, SMB shall:
- a. notify the Customer of the third party claim in writing as soon as reasonably practicable after SMB becomes aware of it; and
 - b. before terminating this Agreement or bringing any Claim against the Customer, give the Customer a reasonable opportunity to:
 - i. modify, alter or substitute the infringing part of the Relevant IP at the Customer's own expense in order to avoid continuing infringement, or
 - ii. procure the authority from the relevant third party to continue exploiting the infringing Relevant IP.

12. Warranties, Exclusions and Limitation of Liability

SMB Warranties

- 12.1 SMB, its Affiliates and its Representatives represent and warrant to the Customer that as at the Start Date, the following warranties are true and correct and not misleading:
- a. SMB is a duly incorporated company validly existing under the laws of its jurisdiction of incorporation and has the power and authority to execute, deliver and perform its obligations under this Agreement;
 - b. SMB has the right to grant the licence granted under clause 2.1; and
 - c. the use by the Customer of the Relevant IP will not infringe any trade mark or other intellectual property rights of any person, nor give rise to payment by the Customer of any royalty to any third party or to any liability to pay compensation.

Customer Warranties

- 12.2 The Customer, its Affiliates and its Representatives represent and warrant to SMB that as at the Start Date, the Customer is a duly incorporated company validly existing under the laws of its jurisdiction of incorporation and has the power and authority to execute, deliver and perform its obligations under this Agreement;

Limitation of Liability

- 12.3 Subject to clause 9, neither party will be liable to the other party for any special, indirect or consequential damages, loss or anticipated profits or loss of revenue, arising from this Agreement however caused whether in tort (including negligence), contract, statute, equity or otherwise.

13. Privacy

- 13.1 If the Platform (including the Products) and/or Services provided by SMB involves the processing of Personal Information, both parties warrant that they will comply with their respective obligations under any applicable Privacy Legislation and the terms of this Agreement.
- 13.2 The Customer must indemnify and hold SMB harmless against all Losses sustained, incurred or suffered by SMB arising as a result of the Customer's breach of clause 13.1.
- 13.3 The Customer acknowledges and agrees that access to the Platform is subject to the Customer creating and maintaining a username and password. The Customer shall be responsible for maintaining the security of its password for the Platform and SMB will not be liable for any loss or damage arising from or in connection with the Customer's failure to comply with this security obligation. The Customer agrees that SMB will be entitled to assume that any person using the Platform with the Customer's username and password is the Customer and the Customer will be required to notify SMB immediately of any known or suspected unauthorised use of any password or any breach of security.
- 13.4 By accepting this Agreement, the Customer agrees to be bound by the provisions of the Privacy Policy located on the Website.

14. Support Services

- 14.1 SMB agree to provide the Customer with Support Services in accordance with this clause.
- 14.2 The Customer may place a request for Support Services either through email or call when such services are required.
- 14.3 Support will be provided on working days between 8am and 6pm AEDT.
- 14.4 SMB may suspend the provision of Support Services if any amount due to be paid by the Customer under this Agreement is overdue.
- 14.5 The provision of Support Services is conditional upon:
- all reasonable information requested by SMB being provided by the Customer in relation to the support requested;
 - the Customer, or any User, not being in breach of this Agreement;
 - the Customer using the Software in accordance with this Agreement.
- 14.6 SMB's liability for any failure to provide the Support Services in accordance with this Agreement is limited to resupplying the Support Services to the extent required to remedy the failure. This is the Customer's sole remedy under this Agreement for any failure to provide the Support Services.
- 14.7 The Customer agrees that if any changes are made to its Operating Environment such that it no longer meets all required System Specifications, fixing any resultant

issues will be outside the scope of the Support Services and will incur additional costs to the Customer at the Commercial Rates.

- 14.8 The Customer agrees that any further support, which is outside the scope of the Support Services, will be charged at the Commercial Rates.

15. General

Further assurances

- 15.1 Each party must (at its own expense, unless otherwise provided in this Agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

Third parties

- 15.2 This Agreement is made for the benefit of the parties to it and their successors and permitted assigns and sub-licensees and is not intended to benefit, or be enforceable by, anyone else.

Costs

- 15.3 Except as otherwise expressly provided in this Agreement, each party must pay its own costs and expenses in respect of the preparation, negotiation and execution of this Agreement.

Relationship of the Parties

- 15.4 This Agreement does not create any partnership, joint venture or agency relationship between the parties.
- 15.5 The Customer may not enter into any agreements or incur any liabilities on behalf of SMB without SMB's prior written consent and may not represent to any person that it has any authority to do so.

Entire Agreement

- 15.6 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Software. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

Severability

- 15.7 Should any part of this Agreement be or become invalid, that part shall be severed from this Agreement. Such invalidity shall not affect the validity of the remaining provisions of the Agreement.

Waiver

15.8 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this Agreement will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this Agreement.

Notices

15.9 All notices which are required to be given under this Agreement must be in writing and must be sent to the address of the recipient set out on the first page of this Agreement or such other address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by prepaid letter or email. Any such notice will be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by prepaid letter) or (if sent by email and unless agreed otherwise), when the email enters the recipient's mail server.

Assignment

15.10 The Customer shall not assign, whether in whole or part, the benefit of this Agreement or any rights or obligations hereunder, without the prior written consent of SMB.

Variation

15.11 No variation of this Agreement will be effective unless in writing and signed by both parties.

Counterparts

15.12 This Agreement shall be executed in counterparts by the respective parties, each of which when so executed shall be deemed to be an original all of which, taken together, shall constitute one and the same Agreement, provided this Agreement shall be of no force and effect until the counterparts are exchanged.

Electronic exchange

15.13 Delivery of an executed counterpart of this Agreement by email in PDF or other image format, will be equally Start as delivery of an original signed hard copy of that counterpart.

Dispute Resolution

15.14 The parties agree:

- a. to attempt in good faith to resolve any dispute between them in connection with any matter arising out of this Agreement;
- b. any agreement reached between the parties must be reduced to writing and will be binding on the parties;
- c. where a dispute cannot be resolved informally as between the parties, and a period of ten (10)

Business Days has elapsed, the parties must seek to agree on the procedural rules and timetable for resolving the dispute through mediation; and

- d. such mediation is to occur by the appointment of a suitable mediator appointed by the parties, or in the absence of agreement, a mediator appointed by the Bar Association of Queensland, or any entity which replaces it.

Governing Law

15.15 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws applicable in Queensland, Australia and the parties agree to submit to the exclusive jurisdiction of the courts of Queensland.

16. Definitions and interpretation

Definitions

16.1 In this Agreement, unless the context or subject matter otherwise requires:

Additional Fees means any additional charge, fee or tax that is not included in the Fees but may be payable by the Customer to SMB or to any third party, and which fees can be amended by SMB from time to time.

Additional Services means any additional services that SMB may offer to the Customer during the Term outside the scope of the Services, which the Customer may wish to purchase from SMB (but is not obliged to do so).

Affiliate means in relation to a party, that party, or another company if that other company:

- a. holds a majority of the voting rights in it; or
- b. is a member of it and has the right to appoint or remove a majority of its board of director; or
- c. is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it; or
- d. or if it is a subsidiary of a company that is itself a subsidiary of that other company.

Approved Integrations means integrations or interfaces between the Software and third-party applications that have been reviewed and expressly authorised in writing by SMB.

Authorised Representative means any Representative that is authorised by the Customer and/or SMB to enter into legally binding agreements on behalf of the Customer and/or SMB.

Business means the business of operating, marketing, promoting, selling and maintaining the Platform (including the Products) and/or the Services.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, Queensland are open for business.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Confidential Information means information of every kind:

- a. which includes, but is not limited to, the Platform, the Products, the Services, SMB Data, Customer Data, strategies, forecasts, projects, plans, documents and financial information of a party including, marketing information, computer records, software, trade secrets, drawings, designs, plans, concepts not reduced to product form and all other documents, records and information of a party which is of a confidential nature, including past, current or future affairs of either party and which, from its nature and content is or would reasonably be expected to be confidential; and
- b. which is the property of that party or any Affiliate or Representative of that party; and
 - i. is disclosed in writing, orally or by any other means by that party or by any person on that party's behalf to the party or an employee, officer or agent of the other party; or
 - ii. comes to the knowledge of the other party or an employee, officer or agent of the other party by any means,
- c. but does not include information which is or becomes generally available to the public (other than as a result of the wrongful disclosure by a party or any Affiliate of the party).

Corporations Act means the Corporations Act 2001 (Cth).

Customer Data means any data and/or information that the Customer would otherwise be able to access without using the Platform (including the Products) and/or Services, and which does not include SMB Data.

Customer Provisioning Fee means the one-time Customer Provisioning Fee referred to in Part 4 of the Engagement Form and at Clause 6, payable by the Customer for the initial setup and configuration of the Software and Services.

Documentation means any operating manuals, training materials, user guides, technical documentation, brochures, instructional material, advertising literature, functional and technical drawings, videos, online tutorials, templates, tools, procedures, diagrams and such other materials provided to the Customer by SMB from time to time to be used by the Customer in marketing and/or utilising the Platform or otherwise to assist the Customer to accomplish the purposes of this Agreement.

Fees means the fees described in clause 6 and Part 4 of the Engagement Form, including the Implementation Fee and the Licence Fee.

Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- a. acts of God, flood, storm, drought, earthquake or other natural disaster;

- b. epidemic or pandemic, including any industrial action or circumstances where there is Government enforced prohibition due to COVID-19 or any other pandemic or epidemic restricts the parties from fulfilling their obligations of this Agreement;
- c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d. nuclear, chemical or biological contamination or sonic boom;
- e. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; and
- f. collapse of buildings, breakdown of plant or machinery, fire, explosion or accident.

GST has the same meaning given to that expression in the GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means any of the following:

- a. a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- b. a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- c. an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- d. 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 a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- e. a controller or analogous person is appointed in respect of any property of a person;
- f. a corporation is deregistered under the Corporations Act 2001 (Cth) or notice of its proposed deregistration is given to the corporation;
- g. a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- h. a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them; or
- i. anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

Intellectual Property Rights means the registered trademarks, designs, patent and copyrights and any and all intellectual and industrial property rights throughout the world whether vested or contingent, including rights of any kind (whether registered or unregistered) in or relating to:

- a. inventions, technological innovations, discoveries and novel designs, protected formulae, formulations, trade secrets, recipes, processes, know-how, operating systems, whether or not registered or registrable as patents, innovation patents (or any similar or analogous rights) or designs, including developments or improvements of equipment, technology, business methods or techniques, illustrations, photographs;
- b. literary works, artistic works and any other works and subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the works and subject matter, subsist anywhere in the world;
- c. trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services; and
- d. trade, business, company names or internet domain names,

irrespective of when or where such thing is created or developed.

Law includes:

- a. any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- b. the common law and the law of equity;
- c. any binding court order, judgment or decree;
- d. any applicable industry code, policy or standard, in each case enforceable by law; and
- e. any applicable direction, policy, rule or order that is given in writing by a Regulator, in each case enforceable by law.

Licence means the licence granted in clause 2.1.

Licence Fee means the Licence Fee to be paid by the Customer referred to in Part 4 of the Engagement Form and on the terms specified in clause 6.3.

Losses means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- a. liabilities on account of tax;
- b. interest and other amounts payable to third parties;
- c. legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- d. all amounts paid in settlement of any Claim.

Media means the media on which the Software is recorded or printed.

Moral Right means:

- a. a right of attribution of authorship;
- b. a right not to have authorship falsely attributed;
- c. a right of integrity of authorship; and/or
- d. a right of a similar nature,

which is conferred by statute, and which exists or comes to exist anywhere in the world, in a deliverable form comprised within this Agreement.

Operating Environment means the Customer's operating environment, facilities, systems, networks, devices, equipment, hardware, software, telecommunications and connections.

Order Form means the document through which the Customer will submit their order for the Software and Services to be provided by the Company pursuant to this Agreement.

Permitted Use has the meaning given to in Part 6 of the Engagement Form.

Personal Information means any information relating to an individual; who can be identified directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person or the equivalent or corresponding definition under any applicable Privacy Legislation.

Platform means the platform operated by SMB containing the Software, licensed by SMB to the Customer pursuant to the terms of this Agreement.

SAP Business One means the enterprise resource planning (ERP) software product developed and owned by SAP Societas Europaea (HRB 720679).

SMB Data means any and all data relating to the Platform (including the Products) and/or Services provided to the Customer by SMB, or that becomes available to the Customer as a consequence of its use of the Platform (including the Products) and/or Services, including data embedded in the Products, images acquired, analytics, metrics and reports or any other insights derived by using the Platform (including the Products) and/or Services, including but not limited to damage assessment and claims assessment data.

Privacy Legislation means the Privacy Act 1988 (Cth) and any applicable analogous legislation in any other jurisdiction from time to time.

Privacy Policy means the privacy policy of SMB located via the domain SMBsolutions.com.au.

Products means the Software and the Documentation and any other products that may be introduced by SMB from time to time.

Relevant IP means all Intellectual Property Rights in the Platform (including the Products), Services, SMB Data and any related documentation or information provided by SMB in connection with the Platform, (including the Products), the Services and this Agreement.

Relevant Matter means anything in connection with:

- a. any use of the Platform (including the Products), except to the extent SMB are found to be negligent or in breach of this Agreement;
- b. any damage to person, property, personal injury or death;
- c. the Customer's breach of this Agreement.
- d. any matter for which SMB have purported to disclaim liability for under this Agreement;
- e. the Customer's misuse or abuse of the Platform (including the Products); and
- f. the Customer's breach or failure to observe any applicable Law.

Representatives means, in respect of a person (including SMB and the Customer), the employees, officers, directors, consultants, agents and professional advisers of that person; and "Representative" shall have the same meaning. **Services** means the provision of Products to the Customer via the Platform.

Software means SMB's proprietary software included in the Relevant IP and includes, systems and updates, mathematical codes, binary or source code, object code, SMB Data, programs, routines and other functions associated with the Business of SMB, including data management, cloud-based data, analytics outputs, operating systems, software patches, updates, fixes, add-on components, and/or web services, and as further provided for in Part 5 of the Engagement Form.

Source Code means the Software code in human-readable form or any part of the Software code in human-readable form, including any files, data or code compiled to create the Software or decompiled from the Software, regardless of the storage format.

Support Services means the support and maintenance services provided by SMB in relation to the Services or the Software, the scope, nature and service levels of which may be specified by SMB in writing from time to time, and which may be updated or amended at SMB's discretion.

System Specifications means any specification for the Software set out in the Documentation.

Term means the term prescribed in clause 3.1.

Territory means [Australia] together with any other countries or regions that the parties agree shall be included in the Territory from time to time by agreement in writing.

Trade Marks means trademarks, trade names, logos, design marks, service marks, service names, trade dress, and brand names of SMB.

User means any person or entity that uses the Platform (including the Products) with the authorisation of the Customer from time to time, including any employee, officer, agent, contractor or advisor of the Customer.

Website means SMB's website located via the domain www.smbolutions.com.au.

Interpretation

16.2 In the interpretation of this Agreement, unless the context or subject matter otherwise requires:

- a. a reference to a background note or recital, clause, schedule, annexure, attachment or exhibit is to a background note or recital, clause, schedule, annexure, attachment or exhibit of or to this Agreement.
- b. in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period.
- c. where an expression, word or phrase is given a particular meaning, then other parts of speech based on that expression, word or phrase and other grammatical forms of that expression, word or phrase, have corresponding meanings.
- d. the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply.
- e. a reference to this Agreement or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them.
- f. where an expression is defined anywhere in this Agreement, it has the same meaning throughout.
- g. a reference to any gender includes all genders.
- h. headings are for convenience of reference only and do not affect interpretation.
- i. a mention of anything after include, includes or including, does not limit what else might be included.
- j. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision.
- k. a reference to dollars or \$ is to an amount in Australian currency.
- l. the singular includes the plural and vice versa.
- m. a reference to any party to this Agreement or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including, without limitation, any person taking by novation), successors and permitted assigns.
- n. a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, State, government, or government or quasi-government body.
- o. an agreement, representation or warranty by or in favour of two or more persons, binds or is for the benefit of all of them jointly and each of them individually.

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