



Terms and Conditions

ALPHACLICK PTY LTD

TRADING AS, ALPHACLICK IT SOLUTIONS (ACN: 160 327 622)

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1. Definitions and Interpretations

In this Agreement, unless the context otherwise requires:

AlphaClick means AlphaClick Pty Ltd (ACN 160 327 622 and its staff

Audit Report means the report produced by AlphaClick following its performance of the audit review conducted as part of the Transition Audit.

Business Day means a day on which banks are open for retail banking business in Melbourne, Victoria, other than a Saturday or Sunday.

Commencement Date means the date determined in accordance with clause 2.

Computer System means the Customer's existing computer systems, including all hardware and software owned by, licensed to or leased by the Customer.

Confidential Information means in the case of each party, all of that party's information which would reasonably be regarded as confidential, disclosed or made available to the other party before or after the Commencement Date, including information relating to its business, customers, service providers, products, databases, services, strategies, or plans, but excluding information which:

- (a) the other party can prove it possessed before the relevant information was disclosed or made available to it by or on behalf of the disclosing party;
- (b) is lawfully acquired prior to the date of disclosure under this Agreement by the other party from a third person without restrictions as to its use or disclosure; or
- (c) is in or becomes part of the public domain other than as a result of the breach by the other party of this Agreement.

Coverage Hours means, unless otherwise specified in the Quotation for a Managed Service, Business Days from 8:00 am to 5:00 pm AEST. The Quotation may specify different Coverage Hours for each Managed Service.

CPI means the Consumer Price Index, Australia, All Groups, Weighted Average of Eight Capital Cities, published by the Australian Bureau of Statistics and, if that index ceases to be published, an alternative consumer price index nominated by AlphaClick.

Customer means the company, person or other entity named as the customer in the Quotation.

Data means any related images relevant to the business of the Customer, documents, databases, customer lists, software application data and other such information pertinent to the operation of the Customer's business which is specified explicitly by the Customer

Documentation means any user manual or other operational documentation or installation instructions provided by (as applicable) the manufacturer of the Third Party Supplied Software.

Fees means the fees payable by the Customer to AlphaClick for provision of the AlphaClick Services as specified in the Quotation and includes any expenses or disbursements payable by the Customer as required by the Quotation.

Force Majeure means a circumstance beyond the reasonable control of a party which results in the party being unable to observe or perform on time an obligation under this Agreement, including any acts of God, fires, floods, earthquakes, or other natural catastrophes; national emergencies, strikes, lockouts or other labour difficulties; computer "hacking" attack or computer virus; any law, order, regulation or other action of any governing authority; or any other cause beyond AlphaClick's reasonable control.

GST means GST within the meaning of A New Tax System

(Goods and Services Tax) Act 1999 and related legislation (as amended).

Health Records Act means the *Health Records Act 2001* (Cth)

Initial Term means, for each Managed Service, the period nominated in the Quotation for that Managed Service. In the event that no period is nominated in the Quotation the period will be one month.

Insolvency Event means that:

- (a) a party enters into any arrangement between itself and its creditors;
- (b) a party ceases to be able to pay its debts as they become due;
- (c) a party ceases to carry on business;
- (d) a mortgagee enters into possession or disposes of the whole or any part of the party's assets or business;
- (e) an order is made (and not set aside within 28 days) or a resolution passed for the winding-up or dissolution of a party; or
- (f) a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person for the party's applicable place of incorporation is appointed over the whole or any part of the party's assets or business.

Intellectual Property Rights means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of know-how, trade secrets, copyright, trademarks, designs, patents and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

Invoice has the meaning given to it in clause 12.3.

AlphaClick Services means any one or more of the following, as specified in the Quotation:

- (1) Transition Audit;
- (2) Server Monitoring Services;
- (3) Patch Management Services;
- (4) Remote Support Services;
- (5) Onsite Support Services;
- (6) Managed Services;
- (7) Backup Services

and any other services which the Quotation requires AlphaClick to provide to the Customer.

Managed Components means the components of the Customer's Computer System, including the Third Party Supplied Software, nominated in the Quotation, in respect of which AlphaClick will provide the AlphaClick Services.

Service Plan means the document (developed by AlphaClick (including a Patch Proposal where necessary) where required by the Quotation)

which, in respect of one or more AlphaClick Services, specifies the services, materials and personnel to be contributed by each party and the responsibilities of each party relating to the AlphaClick Services to be provided under this Agreement. A Service Plan will only be developed where required by the Quotation.

Milestone Dates means, in respect of a specific task which is to be performed by AlphaClick as part of the AlphaClick Services, the target date for the performance of the relevant task.

Monthly Reporting Services means AlphaClick's provision of various monthly reports in respect of the AlphaClick Services, as detailed in the Quotation.

Monthly Reports means those reports nominated in the Quotation to be provided to the Customer as part of the Monthly Reporting Services.

Offsite Backup means the backup of the Customer's data on a third-party external Cloud data centre.

Onsite Backup means the backup of the Customer's data on a USB or NAS hard disk.

Onsite Support Services means the attendance by AlphaClick's personnel at the Site for a nominated number of days per month during the Service Period to provide support for the Managed Components, as detailed in the Quotation.

Patch Management Services means AlphaClick's installation of the patches released for the Third Party Supplied Software, as detailed in the Quotation.

Patch Proposal means the proposal for updating the Third Party Supplied Software as set out in clause 7.2(a);

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

Private Data and Information means any and all data or information of any kind that belongs to the Customer or any third party, including but not limited to financial, medical, personal or other such information and records and will include passwords, numbers, credit information, pin numbers, credit card numbers or any other information which is relevant to in the Privacy Act or any other legislative privacy requirements.

Quotation means the written quotation or proposal document, which has been accepted by the Customer in conjunction with this document, which describes the AlphaClick Services or any other services (as applicable) that are to be provided by AlphaClick to the Customer under this Agreement. The Quotation does not include any pre-sales information (including any marketing of information materials) which AlphaClick may have provided to the Customer in connection with the AlphaClick Services.

Related Bodies Corporate has the meaning provided by the Corporations Act 2001.

Remote Support Services means Remote Support Services provided by AlphaClick of information technology support services in relation to any of the Customer's Managed Components and support services for the Customer's nominated servers as detailed in the Quotation and/or any Service Plan which may include:

- (a) resolution of service or system incidents;
- (b) configuration changes as requested by an appropriate service request;
- (c) fault escalation to third party software and hardware vendors, where the third-party software and hardware is nominated for support within the Quotation;
- (d) user account creation and modification;
- (e) installation of security patches;
- (f) storage and backup support;
- (g) management of backup schedules;
- (h) antivirus system management, as detailed in the Quotation

which do not include the requirement of any physical attendance by AlphaClick or its personnel on the Site.

Renewal Term means, in respect of a Managed Service, the further period, equal in duration to the Initial Term, during which AlphaClick will continue to perform the Managed Service.

Server Monitoring Services means the AlphaClick's monitoring of various network parameters of the Managed Components, as detailed in the Quotation.

Server Monitoring Thresholds means the thresholds for each network parameter being monitored as part of the Server Monitoring

Services or Managed Services as set out in the Quotation or Service Plan (if applicable).

Service Period means, in respect of a Managed Service, the Initial Term and any Renewal Term for that Managed Service.

Site means the location at which (or in respect of which in the case of any Managed Service to be provided remotely), the AlphaClick Services will be provided (if applicable) as specified in the Quotation.

Supplier means AlphaClick.

Supplier Hardware means any third-party hardware licensed by AlphaClick (if any) which AlphaClick facilitates or recommends for the Customer's Computer System to enable AlphaClick to perform the AlphaClick Services.

Supplier Software means any third party licensed software (if any) which AlphaClick facilitates or recommends for the Customer's Computer System to enable AlphaClick to perform the AlphaClick Services.

Support Packages means AlphaClick's Support Packages set out in Schedule 1 of these Terms and Conditions which correspond to the Service Plan to which the Customer is subscribed.

Third Party Supplied Software means the software, nominated in the Quotation, which AlphaClick will source from a third party and manage through the AlphaClick Services.

Managed Services means the service which comprises the review and monitoring of various parameters of the Managed Components, either remotely or by attending the Site, as detailed in the Quotation.

Taxes means all taxes, charges, duties and similar imposed by a government or statutory body relating to the supply or use of goods or services or otherwise arising out of this Agreement including sales tax, goods and services tax, value added tax, fringe benefits tax, undistributed profits tax, financial institutions duty, stamp duties and any interest or penalty imposed in connection with any of the preceding items but does not include income or capital gains tax.

Term has the meaning provided by clause 3.

Third-Party Supplier/Product means any services or products manufactured or supplied by parties other than AlphaClick whether or not owned by or licensed to the Customer or AlphaClick which AlphaClick uses or installs in the performance of the AlphaClick Services and includes items which have been resold by AlphaClick.

Transition Audit means the AlphaClick's audit of the Customer's current information technology infrastructure, in the process of transitioning to AlphaClick.

2. Commencement Date & Quotation

Customer's acceptance of Quotation

- 2.1 Subject to clause 2.3, the Commencement Date is the date provided in the Quotation or the date the Customer notifies AlphaClick of its acceptance of the Quotation, whichever is later.
- 2.2 Acceptance of the Quotation shall constitute acceptance of the terms and conditions contained herein.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of AlphaClick.
- 2.4 These terms and conditions may only be amended with AlphaClick's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and AlphaClick.
- 2.5 None of AlphaClick's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of AlphaClick in writing nor is AlphaClick bound by any such unauthorised statements

Quotation

- 2.6 Where the Customer instructs AlphaClick to commence work after a Quotation has been provided to the Customer by AlphaClick, it is to be taken that the Customer has accepted the Quotation.
- 2.7 Where a Customer has accepted the Quotation, the Customer accepts and agrees that any requests by the Customer to AlphaClick to provide any On-Site Support Services, Remote Support Services or any other AlphaClick Services, Audit Services, Transition Services or other services which are not included in the Quotation or in any Service Plan, AlphaClick will be entitled to charge the Customer any hourly rate and/or call-out fees (as applicable).

Third-Party Supplier's acceptance

- 2.8 Where the Quotation is expressed to be subject to a Third-Party Supplier's acceptance or approval:
 - (a) the provision of the Quotation by AlphaClick to the Customer is an invitation to treat;
 - (b) the Customer's acceptance of the Quotation will not form a binding agreement between the Customer and AlphaClick, but instead is an offer capable of acceptance by AlphaClick;
 - (c) following acceptance of a Quotation by the Customer, AlphaClick will give notice to the Customer once that Third-Party Supplier's acceptance or approval has been given and on the date such notice is given, an agreement is formed between AlphaClick and Customer; and
 - (d) the date AlphaClick notifies the Customer of the Third-Party Supplier's acceptance or approval is the Commencement Date.

3. Term

- 3.1 The Agreement commences on the Commencement Date and will continue until the day the last Service Period for a Managed Service under this Agreement expires.

- 3.2 Unless the Customer or AlphaClick notifies the other that it wishes to cease the relevant Managed Service no less than 1 month prior to the last day of the Initial Term or then current Renewal Term, the Customer will continue to procure, and AlphaClick will continue to perform, the AlphaClick Services for a further Renewal Term on the same terms as the Initial Term subject to any required changes, at AlphaClick's discretion.

4. Service Plan

- 4.1 If the Quotation requires the development of a Service Plan:
- (a) the Customer and AlphaClick will consult with each other and use reasonable efforts to develop the Service Plan.
 - (b) the Customer will pay AlphaClick for the development of the Service Plan in accordance with the Quotation.
- 4.2 The Service Plan will describe:
- (a) the obligations of each party and the resources and facilities which will be provided by each party as required for the performance of the AlphaClick Services;
 - (b) the Service Period and, if applicable, the Milestone Dates applicable to the performance of the AlphaClick Services; and
 - (c) any other the details required by the Quotation.
- 4.3 Once the Service Plan has been developed and agreed the parties must comply with the Service Plan.

5. Transition & Audit Services

This clause 5 applies only if the Quotation requires AlphaClick to provide the Customer with a Transition Audit of existing systems.

- 5.1 AlphaClick will provide the Customer with the Transition Audit in accordance with the terms of this Agreement.
- 5.2 AlphaClick will endeavour to perform the Transition Audit in accordance with any applicable Milestone Dates set out in the Service Plan (as applicable) or in the absence of a Service Plan, within the time frame specified in the Quotation.
- 5.3 Where a Managed Service is dependent or reliant on the results of the Audit Report, AlphaClick is not obliged to perform that Managed Service until the Audit Report has been completed and the recommendations (if any) are implemented by the Customer.

Audit review

- 5.4 The Customer must provide AlphaClick with any assistance requested by AlphaClick within a reasonable time to enable AlphaClick to perform an audit of the Customer's information technology infrastructure by the applicable Milestone Dates or within the time frame specified in the Quotation.
- 5.5 Following AlphaClick's review of the Customer's information technology infrastructure, AlphaClick will prepare the Audit Report, which will contain:
- (a) the results of the audit review; and
 - (b) recommendations for changes or enhancements to the Customer's information technology infrastructure.
- 5.6 If the Customer does not implement the recommendations made in the Audit Report, AlphaClick may, at its discretion:
- (a) terminate this Agreement without further obligation to the Customer; or
 - (b) require a variation to the Fees before AlphaClick performs any other Managed Service.

Completion of Transition Audit

- 5.7 On provision of the Audit Report, AlphaClick will have completed the Transition Audit .
- 5.8 The Transition Audit is a one off service and there is no Renewal Term for this service. If this Agreement or the Customer requires the performance of an additional Audit after the initial provision of the Audit Report, the Customer must pay a further Fee for performance of this service.

6. Server Monitoring Services

This clause 6 applies only if the Quotation requires AlphaClick to provide the Customer with Server Monitoring Services.

Provision of Server Monitoring Services

- 6.1 AlphaClick will provide the Customer with the Server Monitoring Services during the Service Period in accordance with the terms of this Agreement.
- 6.2 AlphaClick will only perform the Server Monitoring Services on the Managed Components that have been nominated in the Quotation, or Service Plan (if applicable).

Customer's assistance

- 6.3 To enable AlphaClick to begin performing the Server Monitoring Services, the Customer:
 - (a) consents to the installation of, and agrees to provide AlphaClick with sufficient space, facilities (including access to power and cooling facilities) and assistance to allow AlphaClick to install, any Supplier Hardware and Supplier Software AlphaClick considers necessary to enable AlphaClick to perform the Server Monitoring Services;
 - (b) must, at its own cost, establish and maintain a connection to the internet at all times during the Service Period to enable AlphaClick to connect remotely to the Customer's Computer System; and
 - (c) must ensure that its Computer System, any relevant data and the Site are ready and available to AlphaClick in order to facilitate the provision of the services by AlphaClick.
- 6.4 Despite any provision of the Quotation, or Service Plan (if applicable), AlphaClick is not required to perform the Server Monitoring Services until the Customer provides the assistance set out in sub clause 6.3(a), but the Customer is still required to pay the Fees for the Service Period.

Notification of issues

- 6.5 If AlphaClick identifies any parameter of the Managed Components that exceeds the Server Monitoring Thresholds, it will:
 - (a) notify the Customer's nominated representative; or
 - (b) if AlphaClick is performing a Managed Service under this Agreement under which it is required to resolve or rectify any issues with the Customer's Computer System, seek to resolve or rectify the issue in accordance with the terms of that Managed Service.

Scope of AlphaClick's obligations

- 6.6 AlphaClick is not required to resolve or rectify any issues identified while performing the Server Monitoring Services unless such repair is part of the requested Services or is part of any Service Plan.
- 6.7 AlphaClick is not responsible for any failure of servers or other components, but will provide the Customer with information and advice about the risks of any failure which becomes apparent to AlphaClick in reliance upon any monitoring software.

7. Third Party Supplied Software

Monitoring of Third Party Supplied Software

- 7.1 AlphaClick will monitor the Third Party Supplied Software during the Service Period for any patches released by the vendor of the Third Party Supplied Software.

Notification of Third Party Supplied Software updates

- 7.2 If a software patch is made available by the vendor of the Third Party Supplied Software, AlphaClick will notify the Customer of:
- (a) the specifications and features of the patch as detailed by the manufacturer of the Third Party Supplied Software in the Documentation;
 - (b) the costs and expenses (if any) to procure the patch or any additional hardware necessary to properly operate the Third Party Supplied Software after the patch is applied (**Upgrade Costs**); and
 - (c) the proposed timeline for testing the patch and updating the Third Party Supplied Software with the patch, including any downtime required to apply the patch to the Third Party Supplied Software.

(the **Patch Proposal**).

- 7.3 If the Customer wishes to proceed with updating the Third Party Supplied Software in accordance with the Patch Proposal, the Customer must notify AlphaClick within 10 Business Days of receiving the Patch Proposal.

Frequency of Updates

- 7.4 AlphaClick will install the number of patches for the Third Party Supplied Software specified in the Quotation or, if no number is specified, up to 2 patches, for each period of 12 months during the Service Period.

Scope of AlphaClick's obligations

- 7.5 On receipt of the Customer's approval of the Patch Proposal, AlphaClick must use its reasonable endeavours to update the Third Party Supplied Software in accordance with the Patch Proposal and the Documentation.
- 7.6 Unless expressly required by the Quotation, the obligations of AlphaClick when providing the Patch Management Services are confined to testing and installing the patch for the Third Party Supplied Software in accordance with the Patch Proposal and by following the installation steps, if any, prescribed by the Documentation.
- 7.7 Unless otherwise expressly required by the Quotation, AlphaClick is not required to integrate the installed Third Party Supplied Software with any other software or parts of the Customer's Computer System, migrate any Customer data or install any Customer provided software after upgrading the Third Party Supplied Software with the relevant patch.
- 7.8 The Customer acknowledges that:
- (a) AlphaClick does not warrant or represent that the Third Party Supplied Software will perform as described by the Vendor or set out in the Patch Proposal; and
 - (b) the testing of the Third Party Supplied Software updated with the patch may fail and if it does so and the Customer elects to not proceed with the upgrade of the Third Party Supplied Software, the Customer is still liable to AlphaClick for the Fees and any associated costs and expenses.
- 7.9 The Customer acknowledges that AlphaClick does not warrant or represent that the upgraded Third Party Supplied Software:
- (a) will operate as intended or be error or bug free; or

(b) is appropriate for the Customer's requirements,

and AlphaClick is not liable for any loss, damage, claim or liability arising from the use or operation of the Third Party Supplied Software following the upgrade unless such loss, damage, claim or liability arises as a result of AlphaClick's failure to comply with the Documentation when upgrading the Third Party Supplied Software.

- 7.10 The Customer will pay all costs associated with any upgrade, including any charges applied by the vendor of the Third Party Supplied Software, and any hardware charges will be borne by the Customer.
- 7.11 The Customer Acknowledges that in the event that the Customer does not undertake the Patch Proposal and/or refuses any Upgrade Costs, AlphaClick will not be held responsible for any failure of the Third Party Supplied Software to perform as required and any compromise or failure which is caused as a result, including failure of hardware and software which may be interlinked with or monitored by the Third Party Supplied Software.

8. Remote Support Services

- 8.1 To enable AlphaClick to perform the Remote Support Services, the Customer:
- (a) consents to the installation of, and agrees to provide AlphaClick with sufficient space, facilities (including access to power and cooling facilities) and assistance to allow AlphaClick to install, any Supplier Hardware and Supplier Software AlphaClick considers necessary to enable AlphaClick to perform the Remote Support Services; and
 - (b) must, at its own cost, establish and maintain a connection to the internet at all times during the Service Period to enable AlphaClick to connect remotely to the Customer's Computer System; and
 - (c) must ensure that its Computer System, any relevant data and the Site are ready and available to AlphaClick in order to facilitate the provision of the services by AlphaClick
- 8.2 AlphaClick will provide to the Customer Remote Support Services in accordance with the Service Plan and/or any corresponding Support Package (if applicable) or if the Customer is not subscribed to a Service Plan and Support Package, then in accordance with the hourly rate as set out in Schedule 1 of this Agreement.
- 8.3 Despite any provision of the Quotation, or Service Plan (if applicable), AlphaClick is not required to perform the Remote Support Services until the Customer provides the assistance set out in sub clause 8.1(a) , but the Customer is still required to pay the Fees for the Service Period.

Scope of AlphaClick's obligations

- 8.4 Unless expressly required by the Quotation, the obligations of AlphaClick when providing the Remote Support Services are confined to:
- (a) only providing the Remote Support Services nominated in the Quotation;
 - (b) providing the Remote Support Services remotely and only to the extent the services can be provided without attending the Site; and
 - (c) the provision of technical services only. Any maintenance required for the Managed Components will be referred to the relevant vendor of the Customer's hardware or Third Party Supplied Software.
- 8.5 AlphaClick's obligation to provide the Remote Support Services is dependent on, and subject to, the Customer:
- (a) providing the assistance set out in clause 8.1;
 - (b) procuring and maintaining hardware and software support contracts with the applicable vendors for the Managed Components.

- 8.6 If a Remote Support Service relates to any matter other than an issue not within the scope of any Service Plan, or AlphaClick Services, nominated in the Quotation, AlphaClick may charge, at its election:
- (a) its standard hourly rates, as amended by the Supplier from time to time, for providing the requested assistance; or
 - (b) terminate the call.

Storage and back up support

- 8.7 If storage and backup support is offered as part of the Remote Support Services, AlphaClick will provide day to day management of the backup schedules as detailed in the Quotation, but the Customer must:
- (a) provide and replace back up media;
 - (b) transport and store back up media off site;
 - (c) purchase additional hardware and software if the existing back up hardware and software is deemed insufficient by AlphaClick for the Customer's storage requirements;
 - (d) maintain its back up software licences (where applicable); and
 - (e) notify AlphaClick of any change to the backup schedule or change to the Computer System (noting that clause 11.7 does not allow this to occur without AlphaClick's consent).
- 8.8 The Customer acknowledges that AlphaClick does not warrant or represent that the Customer's back up software is appropriate for the Customer's requirements. AlphaClick is not liable for any loss, damage, claim or liability arising from the use of the Customer's back up software.

9. On-site Support Services

This clause 9 applies only if the Quotation requires AlphaClick to provide the Customer with Onsite Support Services.

Provision of the Onsite Support Services

- 9.1 AlphaClick will provide to the Customer On-Site Support Services in accordance with the Service Plan and/or any corresponding Support Package (if applicable) or if the Customer is not subscribed to a Service Plan and Support Package, then in accordance with the hourly rate as set out in Schedule 1 of this Agreement.
- 9.2 Where AlphaClick is required to attend the Site during hours which are not Coverage Hours, AlphaClick is entitled to charge and the Customer is liable to pay the AlphaClick's call out fee and hourly rates for resolution of the issue.
- 9.3 AlphaClick will only perform the Onsite Support Services on the Managed Components that have been nominated in the Quotation, or Service Plan (if applicable).

Customer's assistance

- 9.4 To enable AlphaClick to perform the Onsite Support Services, the Customer must:
- (a) provide a clean and safe working environment at the Site for AlphaClick's personnel with access to a desk, power, network connections both to the Computer System and the internet, a fixed phone line and document storage facilities; and
 - (b) ensure that its Computer System, any relevant data and the Site are ready and available to AlphaClick in order to facilitate the provision of the services by AlphaClick.
- 9.5 Despite any provision of the Quotation, or Service Plan (if applicable), AlphaClick is not required to perform the Onsite Support Services until the Customer provides the assistance set out in sub clause 9.4(a), but the Customer is still required to pay the Fees for the Service Period.

Scope of AlphaClick's obligations

- 9.6 Unless expressly required by the Quotation, the obligations of AlphaClick when providing the Onsite Support Services are confined to:
- (a) only providing the Onsite Support Services nominated in the Quotation;
 - (b) providing the Onsite Support Services while located at the Site during Coverage Hours only; and
 - (c) the provision of technical services only. Any maintenance required for the Managed Components will be referred to the relevant vendor of the Customer's hardware or Third Party Supplied Software.
- 9.7 AlphaClick's obligation to provide the Onsite Support Services is dependent on, and subject to, the Customer:
- (a) providing the assistance set out in clause 9.4;
 - (b) procuring and maintaining hardware and software support contracts with the applicable vendors for the Managed Components.

Storage and back up support

- 9.8 If storage and backup support is offered as part of the Onsite Support Services AlphaClick will provide management of the backup schedules while located at the Site on the nominated days as detailed in the Quotation, but the Customer must:
- (a) provide and replace and replace back up media;
 - (b) transport and store back up media off site where and when required;
 - (c) purchase additional hardware and software if the existing back up hardware and software is deemed insufficient by AlphaClick for the Customer's storage requirements;
 - (d) maintain its back up software licences; and
 - (e) notify AlphaClick of any change to the backup schedule or change to the Computer System (noting that clause 11.7 does not allow this to occur without AlphaClick's consent).
- 9.9 The Customer acknowledges that if the Customer provides its own backup software, AlphaClick does not warrant or represent that the Customer's backup software is appropriate for the Customer's requirements. AlphaClick is not liable for any loss, damage, claim or liability arising from the use of the Customer's backup software.

10. Managed Services

This clause 10 applies only if the Quotation requires AlphaClick to provide the Customer with Managed Services.

Provision of Health Check Services

- 10.1 AlphaClick will provide the Customer with the Managed Services during the Service Period in accordance with the terms of this Agreement.
- 10.2 AlphaClick will only perform the Managed Services on the Managed Components that have been nominated in the Quotation, or Service Plan (if applicable).

Customer's assistance

- 10.3 To enable AlphaClick to perform the Managed Services, the Customer:
- (a) consents to the installation of, and agrees to provide AlphaClick with sufficient space, facilities (including access to power and cooling facilities) and assistance to allow AlphaClick to install, any Supplier Hardware and Supplier Software AlphaClick considers necessary to enable AlphaClick to perform the Managed Services;
 - (b) must, at its own cost, establish and maintain a connection to the internet at all times during the Service Period to enable AlphaClick to connect remotely to the Customer's Computer System; and

(c) must ensure that its Computer System, any relevant data and the Site are ready and available to AlphaClick in order to facilitate the provision of the services by AlphaClick.

10.4 Despite any provision of the Quotation, or Service Plan (if applicable), AlphaClick is not required to perform the Health Check Services until the Customer provides the assistance set out in sub clause 10.3(a), but the Customer is still required to pay the Fees for the Service Period.

Notification of issues

10.5 If AlphaClick identifies any parameter of the Managed Components that exceeds the Server Monitoring Thresholds, it will:

- (a) notify the Customer's nominated representative; or
- (b) if AlphaClick is performing a Managed Service under this Agreement under which it is required to resolve or rectify any issues with the Customer's Computer System, seek to resolve or rectify the issue in accordance with the terms of that Managed Service.

Scope of AlphaClick's obligations

10.6 AlphaClick is not required to resolve or rectify any issues identified while performing the Managed Services if not part of the Quotation or if not part of a Managed Service under this Agreement.

10.7 If the Customer requests AlphaClick resolve or rectify any issues identified while performing the Managed Services, the request of which was not set out in the Quotation, the Customer is liable to pay AlphaClick's Fees which will be charged and calculated at AlphaClick's hourly rate.

10.8 In the event that the Customer does not agree to resolve any issues identified by AlphaClick as part of the Managed Services, AlphaClick will not be responsible for any compromise or failure which is caused as a result.

11. AlphaClick Services

Appointment

11.1 Nothing in this Agreement requires AlphaClick to provide any AlphaClick Services to the Customer at any time when:

- (a) the Customer has not paid for AlphaClick Services, the Fees or any amount incurred, to be paid or otherwise invoiced by AlphaClick; or
- (b) the Customer has breached this Agreement and that breach has not been duly remedied.

Personnel, facilities, access and Site

11.2 The Customer will provide sufficient, qualified personnel capable of performing all of its duties and obligations under the Quotation and Service Plan (as applicable) and this Agreement and will provide reasonable and necessary access to its relevant personnel.

11.3 The Customer will provide AlphaClick with access to the information, equipment, facilities and the Site that AlphaClick reasonably requires to perform the AlphaClick Services, including reasonable and necessary on-line access, electrical power, telephone services and working space as AlphaClick may reasonably request.

Maintaining the Computer System

11.4 The Customer acknowledges that the Fees have been proposed by AlphaClick on the basis that the Computer System is properly maintained and up to date and the Customer agrees to continue to maintain the Computer System for the Term.

Change to the Managed Components

- 11.5 The Customer must not substitute, remove or update the Managed Components or the Customer's Computer System without first procuring the consent of AlphaClick.
- 11.6 In giving its consent to the Customer, AlphaClick may, prior to giving its consent:
- (a) where the substitution, removal or update is performed by a third party, require the third party to brief AlphaClick on all aspects of the work performed and provide AlphaClick with all relevant documentation and information relating to the altered Managed Components;
 - (b) perform a Transition Audit on the altered Managed Components or Computer System at the Customer's cost and expense; and
 - (c) vary any Fees or impose new fees for performing the AlphaClick Services.
- 11.7 In the event the Customer changes the Managed Components without the consent of AlphaClick, the Customer holds innocent and indemnifies AlphaClick in relation to any loss, damage and/or liability resulting from the change of the Managed Component and any loss, damage and/or liability incidental to the change of the Managed Components.

AlphaClick to exercise discretion

- 11.8 Subject to complying with its obligations under this Agreement, AlphaClick shall exercise its own independent discretion as to the most appropriate and effective manner of providing the AlphaClick Services and achieving the Customer's requirements.

AlphaClick Services Exclusions

- 11.9 Unless expressly specified to the contrary in the Quotation or in this Agreement for a Managed Service, the AlphaClick Services do not include the following (or services relating to any of the following):
- (a) electrical, air conditioning, building or environmental work external to the Managed Components;
 - (b) effecting changes or alterations to the configuration or specifications of the Computer System;
 - (c) re-installation, moving or removing of the Computer System;
 - (d) repair of damage caused by:
 - (1) the operation of the Maintained Components by a person not authorised by the Customer;
 - (2) the operation of the Maintained Components other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the manufacturer or Supplier;
 - (e) cleaning, painting, or refinishing any part of the Managed Components;
 - (f) re-installing moving or removing the Managed Components or accessories, supplies or other items associated with the Managed Components;
 - (g) maintenance which is determined by AlphaClick not to be related to the Managed Components;
 - (h) rectification of defects, errors or computer viruses in any software, hardware or equipment, or repairs, support or maintenance relating to those things;
 - (i) preservation, translation, migration or management of data not part of any Transition Services;
 - (j) backup of data not part of any Backup Services requested by the Customer as part of the Quotation of explicitly in writing or any data excluded by clause 12.1 and 12.3 herein;
 - (k) rectification of faults in hardware, equipment or telecommunications links or telecommunications services;
 - (l) development of any software or software interfaces needed to complete any installation;
 - (m) supply and installation of consumables or hardware;

- (n) rectification of errors or failures caused by failure of hardware, power, air-conditioning or other environmental failure; or
- (o) installing, transferring, moving or removing software, data, hardware or other equipment or materials.

12. Backup of Data

- 12.1 Unless otherwise agreed to in writing by the parties, AlphaClick will only back up company data inside the Server and will not back up any data on:
 - (a) desktop computers and internal harddrives;
 - (b) external hard drives or USBs;
 - (c) software folders not available on servers such as “My Documents”, “Desktop” and “My Pictures” folders; and
 - (d) any other data retained on a storage device which is not the Server, unless expressly referred to in the Quotation as forming a part of the backup services provided by AlphaClick.
- 12.2 The Customer must retain all data intended to be backed up on the Server and AlphaClick is not obligated to move any data on behalf of the Customer to that server.
- 12.3 Unless otherwise specified explicitly in the Quotation or agreed to by the parties in writing, AlphaClick will not back up executable files, video files, extremely large image files and zip files.

Onsite Data Backup

- 12.4 Where AlphaClick is requested as part of the Quotation to provide Onsite Data Backup, AlphaClick will attend to the Onsite Data Backup as follows:
 - (a) Backups will occur nightly on Mondays to Fridays;
 - (b) Backups will be conducted using third party software;
 - (c) Backup software used in accordance with 12.4(b) will be software that provides daily reports;
 - (d) Backups will be made to a USB and/or NAS hard disk and data will be held on the USB and/or NAS hard disk;
 - (e) Backups will include data as set out in the Definitions and clause 12.1 and 12.3 in this Agreement;
 - (f) Backups will not be encrypted.

Offsite Data Backup

- 12.5 Where AlphaClick is requested as part of the Quotation to provide Offsite Data Backup, AlphaClick will attend to Offsite Data Backup as follows:
 - (a) Backups will occur daily throughout a 24-hour period and the Customer acknowledges this may happen every few hours.
 - (b) Where the backup of data under clause 12.5(a) significantly slows down the Customer’s internet service during the day, the backup of data may be limited to being backed up after business hours only;
 - (c) Backups will be conducted using third party software;
 - (d) Backups will be made to a Cloud server at a third party external data centre within Australia;
 - (e) Backups will include data as set out in the Definitions and clause 12.1 and 12.3 in this Agreement;

- (f) Backups will be encrypted with strong keys (AES, 256 bit) – US-ISO270001 or other such encryption as AlphaClick deems necessary and appropriate for the Customer’s needs;

Monitoring of Backup Services – Onsite Data Backup

- 12.6 AlphaClick will check and review backups no less than once in a calendar week on a day chosen by AlphaClick suitable to system availability and AlphaClick’s schedule save for when AlphaClick receives a failure notification generated by the third-party software used in accordance with 12.4(b)-(c) herein.

Rectification of Onsite Data Backup failures

- 12.7 Where AlphaClick conducts Onsite Data Backup for the Customer, upon receiving a backup failure report from the third-party software, AlphaClick will action the failure within one (1) business day.

Liability

- 12.8 Subject to clause 17 and the subclauses therein, AlphaClick will be under no liability to the Customer or any other person in respect of any data losses, damages and/or claims arising from the Backup Services in relation to any lost data due to:
 - (a) issues with an expiration or error in the third-party backup software licensing;
 - (b) file corruption at either the source of any Data or at the destination of the backed up Data;
 - (c) errors, issues or damage with any backup archives, Managed Components or other hardware or software of the Customer;
 - (d) network and/or connection issues to the NAS backup;
 - (e) slow upload speeds of the Customer’s internet service;
 - (f) limited backup or delayed backup due to slow internet speeds;
 - (g) network and/or infrastructure failures;
 - (h) internet connection failures;
 - (i) any act or omission by the Customer, its directors, associates or employees;
 - (j) any act of malice by a third party with the intention of causing data to be lost or destroyed through fraud, physical or non-physical damage to hardware, the installation of any software with the intention of causing damage (such as viruses) or any other such malice act;
 - (k) failure of the Customer to follow or adhere to recommendations and/or instructions made by AlphaClick to the Customer regarding not only the backup procedure but installation, maintenance, repair and storage of any of the Customer’s hardware or software; and
 - (l) any other failure which is not within the control of AlphaClick or was not possible for AlphaClick to identify prior to any data loss.

13. Fees & Invoices

Fees and Invoices

- 13.1 The Customer must pay AlphaClick the Fees in accordance with the terms of this Agreement, the Quotations and the invoices issued to it by AlphaClick.
- 13.2 The Customer must pay all amounts invoiced to it by AlphaClick including any hardware and software goods, services or subscription facilitated by AlphaClick and included in any invoice issued. The Customer acknowledges that AlphaClick will retain a small fee included in the price invoiced on any third party goods or services, in order to provide the service of the facilitation and in consideration of the time and work required to do so.

Callout Fees & Hourly Rates Payable

- 13.3 If the Customer requests any services set out in this Agreement which incur an hourly rate charge or callout fee, the Customer must pay
- (a) the call out fee (where applicable)
 - (b) a full hour of the hourly rate;
 - (c) fees for each 15 minute period after the first hour, calculated on the hourly rate.

Out of scope services

- 13.4 Where AlphaClick provides the Customer with services that are outside the scope of the services to be provided by AlphaClick as set out in a Quotation, the Customer must pay AlphaClick's standard hourly rates for providing those services, which standard hourly rates will be as amended by AlphaClick from time to time.

Invoice and payment

- 13.5 Subject to the Quotation, AlphaClick will invoice the Customer for the Fees on a monthly basis and will provide the Customer with a valid tax invoice (Invoice).
- 13.6 The Customer must pay AlphaClick the amount invoiced within 10 Business Days after the date of the Invoice.

Disputed invoices

- 13.7 If the Customer wishes to dispute an Invoice it must:
- (a) first pay AlphaClick the Invoice in full; and
 - (b) give AlphaClick notice of the dispute and the reasons why the Customer disputes the relevant Invoice.

Default in payment

- 13.8 If the Customer fails to pay any amount payable under this Agreement by the due date then, AlphaClick may (without prejudice to any other remedies to which it is entitled):
- (a) charge the Customer interest on the amount due and not paid, for the duration that the payment is outstanding by the Customer, at the Interest Rate as prevailing on the due date. The Interest Rate will be the 90 days Bank Accepted Bill rate as quoted by the Reserve Bank of Australia plus 5% for the relevant calendar month in which the payment was due (or if that rate ceases to be quoted, the rate nominated by AlphaClick); and/or
 - (b) suspend performance of AlphaClick's obligations under this Agreement, including the suspension of any services or subscriptions it manages and facilitates through any third party which are included in any amount not paid, without any liability to the Customer for any loss or damage suffered or incurred in respect of the suspension.

Other rights and obligations not affected

- 13.9 The exercise by AlphaClick of any of AlphaClick's rights under clause 13.8 does not affect:
- (a) the Customer's obligations; or
 - (b) any other rights or remedies AlphaClick may have in relation to the default by the Customer, under this Agreement or any other agreement between AlphaClick and the Customer.

Variation

- 13.10 The Fees are subject to variation as set out in clause 13.11.
- 13.11 If the AlphaClick Services are provided during a period greater than 12 months, the Fees in the Quotation will be subject to annual adjustment on the second anniversary of the Commencement Date, and on each anniversary of the Commencement Date after that, by AlphaClick giving the

Customer written notice. Any increase in the Fees will be calculated in accordance with the greater of:

- (a) the change in the CPI between the relevant anniversary date and the date on which the Fees were last set or varied; and
- (b) 5%.

Expenses

- 13.12 The Customer must pay AlphaClick or reimburse AlphaClick for any expenses which the Customer is required to pay or incurs under the Quotation or otherwise under this Agreement in order for AlphaClick to provide the AlphaClick Services, including the engagement of third-party services such as other information technology experts, hardware companies, and software companies.
- 13.13 The Customer acknowledges that the invoice provided by AlphaClick will include the Fees any other amounts payable to third party suppliers of hardware and software facilitated by AlphaClick but which are not supplied by or warranted by AlphaClick and do not form part of the Fees or the Services provided by AlphaClick, as described above.

14. Confidentiality

Acknowledgment of confidentiality

- 14.1 Each party (Recipient) acknowledges that:
 - (a) all the Confidential Information of the other party (Discloser) is secret and confidential to the Discloser; and
 - (b) any unauthorised use, reproduction or disclosure of the Confidential Information may cause loss, damage or expense to the Discloser.

Obligation of confidentiality

- 14.2 The Recipient must (except as may be required by law or with the Discloser's prior written consent):
 - (a) maintain the secrecy and confidentiality of the Confidential Information;
 - (b) not divulge or disclose any of the Discloser's Confidential Information to any other person, firm, corporation or entity;
 - (c) only use the Discloser's Confidential Information where it is necessary to do so to enable the supply or use of the AlphaClick Services;
 - (d) refrain from copying any of the Discloser's Confidential Information, or attempting to do the same, except where necessary to do so to enable the supply or use of the AlphaClick Services; and
 - (e) immediately notify the Discloser of any actual or suspected unauthorised use, reproduction or disclosure of the Discloser's Confidential Information.

Disclosure required by law

- 14.3 If the Recipient is required by law to disclose the Discloser's Confidential Information:
 - (a) the Recipient will promptly give the Discloser written notice specifying the legal requirement and the Confidential Information to be disclosed; and
 - (b) the Recipient will use best endeavours to arrange for disclosure of the relevant Confidential Information in a manner which safeguards the confidentiality of the information disclosed.

15. GST

Definitions

15.1 In this clause 15:

- (a) the expressions Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act; and
- (b) Supplier means any party treated by the GST Act as making a Supply under this Agreement.

Consideration is GST exclusive

15.2 Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST

Payment of GST

- 15.3 If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to AlphaClick an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- 15.4 Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

16. Privacy

- 16.1 In performing their respective obligations under this Agreement, each party will comply with applicable privacy and data protection laws including but not limited to the Privacy Act and the Health Records Act where applicable.
- 16.2 In respect of any Private Data and Information to which the Customer gives AlphaClick access or possession for the purpose of providing the AlphaClick Services, the Customer warrants that AlphaClick's access or possession (as applicable) for that purpose complies with applicable privacy and data protection laws including but not limited to the Privacy Act and the Health Records Act where applicable.
- 16.3 The Customer acknowledges that AlphaClick will require access to Private Data and Information belonging to the Customer, the Customer's employees, clients, customers or other third parties. The Customer undertakes that AlphaClick's access to any such data and information is provided by the Customer with the express consent of any third party having any interest in that data and information.
- 16.4 When accessing or handling the Private Data and Information, AlphaClick will comply with the Customer's applicable reasonable policies that have been disclosed to AlphaClick in writing.
- 16.5 AlphaClick undertakes that it will not misuse or disseminate any Private Data and Information with any adverse intentions and will undertake to comply with such policies as the Customer reasonably requires whilst in possession or control of the Private Data and Information.
- 16.6 In the event that the privacy of any Private Data and Information belonging to a third party is breached and that breach is not caused by an act or omission of AlphaClick, the Customer indemnifies and hold harmless AlphaClick and its officers, employees and agents from and against any loss, (including reasonable legal costs and expenses) or liability reasonably incurred or suffered arising from any proceedings where such loss or liability was caused by the privacy breach.

17. Implied Terms

Exclusion of implied terms

- 17.1 Any representation, warranty, condition, guarantee or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

Non-excludable rights implied by statute

- 17.2 Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law, Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.

Liability for breach of non-excludable rights

- 17.3 To the fullest extent permitted by law, the liability of AlphaClick for a breach of a non-excludable guarantee referred to in clause 17.2 is limited, at AlphaClick's option, to:
- (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; or
 - (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

Survival of clause

- 17.4 Despite any other provision of this Agreement, this clause 17.1, 17.2 and 17.3 survives the expiry or termination of this Agreement.

18. Liability

Limitation of liability

- 18.1 Subject to clause 17 and the subclauses therein, AlphaClick will be under no liability to the Customer or any other person in respect of:
- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its officers, employees, agents or contractors;
 - (b) any loss suffered by the Customer (whether directly or indirectly) as a result of any circumstances beyond the reasonable control of AlphaClick which prevents it from carrying out its obligations under this agreement;
 - (c) any negligent act or omission by AlphaClick; or
 - (d) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or corruption of data or loss or damage resulting from wasted management time irrespective of whether:
 - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (ii) the Customer or any other person was previously notified of the possibility of the loss or damage;
 - (e) Any loss or damage of any kind that is caused by any ransomware, cyber or virus attacks on the Customer's computers or servers, irrespective of any antivirus or firewall installed;

- (f) Any loss or damage of any kind that is caused by the failure of the Customer to follow, adhere to, enact or comply with any instructions, recommendations or advice given by AlphaClick;
- (g) Any loss or damage of any kind that is caused by the failure of the Customer to store and secure its Managed Components and servers.
- (h) Any loss or damage of any kind that is caused by or resulting from any failure, fault or defect of any Third-Party Supplier/Product in the performance of the AlphaClick Services or otherwise.

Maximum liability

- 18.2 Subject to clause 17, the maximum aggregate liability of AlphaClick for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to AlphaClick under the Quotation in relation to the particular Managed Service which was responsible for or connected with the relevant loss, damage or claim.

No reliance on representations

- 18.3 The Customer warrants that it has not relied on any representation made by AlphaClick which has not been stated expressly in this Agreement, or relied upon any descriptions, illustrations or specifications contained in any document including websites or publicity material produced or provided by AlphaClick.
- 18.4 The Customer acknowledges that to the extent AlphaClick has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 18.5 For the avoidance of doubt, the Customer acknowledges that AlphaClick does not warrant or represent that any Third-Party Supplier/Product is appropriate for the Customer's requirements. AlphaClick is not liable for any loss, damage, claim or liability arising from the use of any Third-Party Supplier/Product, whether or not the Third-Party Supplier/Product was recommended or resold by AlphaClick to the Customer.

Indemnity

- 18.6 The Customer will at all times indemnify and hold harmless AlphaClick and its officers, employees and agents ("**those indemnified**") from and against any loss, (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
- (a) a breach by the Customer of its obligations under this Agreement; or
 - (b) any wilful, unlawful or negligent act or omission of the Customer.

Limitation of liability and damages due to Third-Party Supplier/Products

- 18.7 AlphaClick offers no warranty in relation to Third-Party Supplier/Product. Those being products manufactured or supplied by parties other than AlphaClick.
- 18.8 AlphaClick is not the supplier of those products, services or goods and offers no warranties in relation to these products. AlphaClick makes no representations as to whether products or services of third parties will work on the Customer systems other than that, where applicable, the manufacturer of those products or supplier of those services have claimed either directly to AlphaClick in correspondence or through their product documentation that these products or services will work on the target systems types.
- 18.9 AlphaClick offers no guarantees as to the suitability of or reliability of third party products or services.
- 18.10 The Customer agrees that it indemnifies AlphaClick for any damages or consequential damages due to faulty Third-Party Supplier/Products or Third-Party Supplier/Products that do not perform to the manufacturer's specification.

- 18.11 The Customer agrees that it will not seek compensation from AlphaClick for damages resulting from the failure of any Third-Party Supplier/Product in any way.
- 18.12 The Customer agrees that it accepts the Third-Party Supplier/Product's warranties are the only warranties relating to the product and that AlphaClick offer no further warranties in relation to third party products. If a Third-Party Supplier/Product and/or their services does not function correctly, or fails after a period.
- 18.13 The Customer's remedies exist only with the manufacturer or supplier of the Third-Party Supplier/Products in so far as the manufactures warranty and acceptance of use permits and these include but are not limited to:
 - (a) VoIP Cloud (<https://www.voipline.net.au/legal/>)
 - (b) Antivirus (Bitdefender) (<https://www.bitdefender.com/site/view/legal-terms.html>)
 - (c) Cloud backup provider (https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/CrashPlan_for_Small_Business_Master_services_agreement); and
 - (d) Any other supplier, manufacturer or provider that is referred to in any Quotation, invoice or other documents made available to the Customer by AlphaClick.

19. Termination

Termination by Supplier

- 19.1 Without limiting the generality of any other provision in this Agreement, AlphaClick may suspend or terminate (or suspend then subsequently terminate) its provision of all or any of the AlphaClick Services under any Quotation and this Agreement immediately by notice in writing if:
 - (a) the Customer fails to pay an amount owing under this Agreement within 10 Business Days of a written reminder that it is overdue;
 - (b) the Customer is in breach of any term of this Agreement not relating to the payment of money and that breach is not remedied within 15 Business Days of notification by AlphaClick;
 - (c) the Customer suffers or commits an Insolvency Event;
 - (d) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
 - (e) the Customer, being a natural person, dies or becomes incapacitated.

Termination by Customer

- 19.2 The Customer may terminate this Agreement immediately by notice in writing if:
 - (a) AlphaClick is in breach of any term of this Agreement and that breach is not remedied within 15 Business Days of notification by AlphaClick; or
 - (b) AlphaClick suffers or commits an Insolvency Event.

Consequences of termination

- 19.3 If a notice of termination is given to AlphaClick under clause 19.1 or clause 19.2 or this Agreement all monies payable to AlphaClick under this Agreement or which would have become payable but for that termination will, to the extent permitted by law, become immediately due and payable, and:
 - (a) each party may repossess any of its property in the possession, custody or control of the other party;
 - (b) AlphaClick may retain any monies paid;
 - (c) AlphaClick may charge for all AlphaClick Services performed in respect of which no Fees have been previously charged;
 - (d) AlphaClick may charge for all costs, disbursements and expenses, incurred in expectation of performing all of the requirements of the Quotation (except to the extent the Customer has already paid the applicable Fees for those items);

- (e) each party may require the other party to deliver to it or erase or destroy, or procure the delivery, erasure or destruction (as applicable), all materials containing its Confidential Information and certify its compliance with these obligations; and
- (f) each party may pursue any additional or alternative remedies provided by law.

20. Force Majeure

- 20.1 AlphaClick will not be liable for any delay or failure to perform its obligations under a Quotation or this Agreement if that delay is due to Force Majeure.
- 20.2 If a delay or failure of AlphaClick to perform its obligations is caused or anticipated due to Force Majeure, the performance of AlphaClick's obligations will be suspended.
- 20.3 If a delay or failure by AlphaClick to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate the Agreement on providing notice in writing to the other party, in which event AlphaClick will not be deemed to have breached this Agreement.
- 20.4 If this Agreement is terminated pursuant to clause 20.3, AlphaClick will refund moneys previously paid by the Customer under this Agreement for the AlphaClick Services which were not provided due to Force Majeure.

21. Delay

- 21.1 Without limiting clause 20, AlphaClick will not be responsible for any delays (or costs and losses arising from delays) which occur during the course of the AlphaClick Services, Backup Services and which arise from any non-compliance by the Customer with this Agreement, an applicable Quotation or Management Plan, the late supply or provision of instructions and information by the Customer, delays in obtaining access to the Site or any delays caused by the Customer's third party Suppliers and contractors.
- 21.2 AlphaClick will not be responsible for any delays (or costs and losses arising from delays) which occur due to any Third-Party Supplier/Product providers, failure in hardware, or software.
- 21.3 AlphaClick will be entitled to extension of time in respect of any schedule, deadline or milestone equal to the duration of any delay caused by Force Majeure or a cause specified in clause 21.1.

22. Sub-contracts

- 22.1 AlphaClick may sub-contract the performance of all or part of its obligations under this Agreement.
- 22.2 AlphaClick may, without the consent of the Customer, engage individuals on a subcontract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of the AlphaClick Services under this Agreement.

23. AlphaClick's rights

Any express statement of a right of AlphaClick under this Agreement is without prejudice to any other right of AlphaClick expressly stated in this Agreement or existing at law.

24. Entire agreement

- 24.1 These terms and conditions and the Quotation constitute this Agreement which is the entire agreement between the parties for the supply of the Hardware Products and the AlphaClick Services

and supersedes all prior representations, statements and understandings or undertakings, whether verbal or in writing.

- 24.2 No modification or alteration of any provision of this Agreement will be valid except those in writing signed by each party.

25. Severability

The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Term or termination will remain in full force and effect following the expiration of the Term or termination.

26. Notices

- 26.1 Notices under this Agreement may be delivered by hand, by mail, by e-mail or by facsimile to the addresses specified in the Quotation.
- 26.2 Notices will be deemed given:
- (a) in the case of hand delivery, upon delivery;
 - (b) in the case of post, 3 days after posting;
 - (c) in the case of e-mail or facsimile, upon receipt by the sender of confirmation of transmission if confirmation is received before 5.00 pm on a business day or otherwise at the commencement of the first business day following transmission.

27. General

Governing Law

- 27.1 This Agreement will be governed by and construed in accordance with the laws in force in the State of Victoria, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that State and of the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

Severability

- 27.2 Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:
- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
 - (b) be severed from this Agreement in any other case,
- without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

Further Assurances

- 27.3 A party, at its own cost and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to this Agreement.

No adverse construction

- 27.4 This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

No right of set-off

27.5 Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party.

Counterparts

27.6 If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document

Time & Currency

27.7 Any reference to currency in this Agreement is a reference to Australian Dollars and any references to a time are references to that time in accordance with the Australian Eastern Standard Time for Melbourne Victoria.

Schedule 1 – Support Packages

Option 01	Option 02	Option 03	Ad Hoc
<as provided in the quotation>			

Schedule 2 – Response Time

Priority	Criteria	Response Time	Completion Time
Urgent	Affects many people. Mission critical and there is no workaround available. Examples: E-Mail services are not functional; network is not available; Server is down.	Will act upon solving the issues as soon as possible with in the above agreed time frame.	As soon as practically possible.
High	Affects few individuals, no workaround available. Example: Computer with critical data won't boot	Within 4 working hours	As soon as practically possible.
Medium	Affects very few people, workarounds available. Example: Can't check e-mail from one computer, but could use Webmail from another computer.	Within 1 working day	As soon as practically possible.
Low	No effect on productivity, or unsupported software. A service request that does not require immediate attention or involves long range planning. Examples: Monitor showing b/w instead of colour. CD player has no sound. Software not supported.	Within 3 working days	As soon as practically possible.