

# Xcellerate IT Pty Ltd

ABN: 75 052 208 689

("Xcellerate IT")

## SERVICE TERMS AND CONDITIONS

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### 1 Definitions and Interpretation

1.1 In these terms and conditions, the following terms have the following meanings:

**Associate** has the meaning given to it in the Corporations Act.

**Business Day** means a day on which banks are open for business in Sydney, New South Wales other than a Saturday, Sunday or public holiday in that State.

**Client** means the Party identified in the Proposal as the person who is to receive Services from Xcellerate IT.

**Client Data** means data supplied by the Client to Xcellerate IT to enable it to provide the Services.

**Confidential Information** with respect to either the Client or Xcellerate IT (the **Receiving Party**) means the following information, irrespective of its form or medium and whether or not it comes into existence before, on or after the commencement of the Term:

- (a) details of the Services;
- (b) any technical, commercial, financial or other information whatsoever of or about the other Party (the **Discloser**) or in connection with any of its products, services or its business; and
- (c) all information about the Discloser's business or business processes,

that is not public knowledge or known to the Receiving Party (other than as a result of a breach of a confidentiality obligation of a Party).

**Contract Manager** means a person appointed by each of the Client and Xcellerate IT to manage the performance by that Party of its obligations under the Proposal.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Cure Notice** means a written notice given by a Party that provides the other Party with:

- (a) notice that the other Party is in breach of an obligation under these terms and conditions;
- (b) details of the asserted breach; and
- (c) notice that the breach be remedied within the period specified in the notice, which must not be less than 30 days.

**Deliverable** means the tangible items to be delivered by Xcellerate IT to the Client under the Proposal.

**Developed Software** means any Deliverable, comprising software, developed by Xcellerate IT under the Proposal.

**Effective Date** means the date on which the Proposal is accepted.

**Event of Default** means, in relation to a Party (in this definition **Defaulting Party**) a breach of these terms and conditions or the Proposal by the Defaulting Party, which is capable of remedy, and:

- (a) in respect of which a Cure Notice is given; and
- (b) which the Defaulting Party fails to remedy that breach within the period of time stipulated in a Cure Notice for the breach to be remedied.

Where Xcellerate IT is the Defaulting Party, and the breach is not capable of remedy within 30 days, an Event of Default will not have occurred in respect of Xcellerate IT if, before the expiry of the period of time stipulated in a Cure Notice for the breach to be remedied, it implements a Work-Around in respect of that breach and presents a comprehensive plan to the Client in respect of the remediation of the breach.

**Excusable Event** means strikes, lock-outs or other industrial disputes (whether involving the workforce of Robobai or a third Party), trespassing, sabotage, theft or other criminal acts, cyber-attacks, failure of energy sources or transport network, acts of God, export bans, sanctions and other government actions, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics, pandemics or similar events, natural disasters or extreme adverse weather conditions.

**Fees** means the fees payable to Xcellerate IT under the Proposal.

**Hosting Services** means the provision of hosting services, in respect of Kofax Solutions, by or on behalf of Xcellerate IT under the Proposal.

**Insolvency Event** in relation to a person (**insolvent Party**) means:

- (a) the insolvent Party ceases or takes steps to cease to conduct its business;
- (b) the insolvent Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) the insolvent Party is unable to pay its debts when they are due or is deemed under the Corporations Act to be insolvent;
- (d) a liquidator or provisional liquidator is appointed to the insolvent Party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent Party; or
- (e) an application or order is made or a resolution is passed for the winding up of the insolvent Party.

**Intellectual Property Rights** means all intellectual property rights, including but not limited to patents, copyright, registered designs, trade secrets, trademarks, inventions and discoveries and any application or right to apply for registration of the foregoing.

**GST** means the tax imposed by the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

**Kofax** means Kofax, Inc.

**Kofax Solution** means any Product supplied by Kofax.

**Law** means any:

- (a) Commonwealth, State, Territory or local government legislation in force in Australia or any law of a foreign jurisdiction applicable to the Services, including regulations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law applying in Australia; and
- (c) government agency requirement or authorisation (including conditions in respect of any authorisation).

**Loss** includes any liability, damage, costs (including legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind, in anything but excludes any indirect, incidental or consequential loss (including but not limited to loss of profit, lost savings, business interruption, loss of revenue, loss or diminution of goodwill, loss of business information or data and any other pecuniary

loss).

**Material** means any documentation, documented methodology or process, data or other material in whatever form, including reports, specifications, diagrams, designs, flowcharts, logic diagrams and listings, business rules and requirements, user manuals, user guides, operations manuals, training materials and instructions.

**Milestone** means any event or outcome, that Xcellerate IT is obliged to achieve under a SWO.

**Party** means Xcellerate IT and/or the Client as the case may require.

**Project Manager** means a person appointed by each Party to manage the delivery of Services undertaken by Xcellerate IT.

**Proposal** means the proposal prepared by Xcellerate IT in respect of the Product and the Services and accepted by the Client and into which these terms and conditions are incorporated.

**Product** means any product the Client acquired as set out in the Proposal.

**Rate** means the sum of the Reserve Bank of Australia's *Cash Rate* as published from time to time plus 5%.

**Services** means the services acquired by the Client as described in the Proposal.

**Service Work Order** (or **SWO**) means a written service work order for any Services prepared by Xcellerate IT and signed by the Client and Xcellerate IT.

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including, without limitation, stamp and transaction duty or any goods and services tax (including GST), value added tax or consumption tax, which is imposed or collected by a Government Agency, except where the context requires otherwise. This includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

**Tax Invoice** has the meaning set out in the GST Act.

**Third Party Solution** means any Product supplied directly by a supplier (other than Kofax or Xcellerate IT) to the Client.

**Work-Around** means an arrangement which allows Xcellerate IT to overcome a breach of its obligations under the Proposal without remedying the underlying cause of the breach.

1.2 In these terms and conditions, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a Party includes its successors and permitted assigns;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar inclusive expressions.

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## 2 Product and Services

2.1 Xcellerate IT will provide Services to the Client.

- 2.2 The Client acknowledges and agrees that:
- (a) any Kofax Solution or Third Party Solution will be licensed or provided as a service direct by Kofax or the Third Party (as the case may require) to the Client; and
  - (b) the Client's right to use any Kofax Solution or Third Party Solution will be governed by the applicable software license or service agreement of Kofax or that Third Party (as the case may be).
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### **3 SWO Process**

- 3.1 After the Effective Date, at the request of the Client, Xcellerate IT will prepare the initial draft of each SWO.
- 3.2 The Client and Xcellerate IT will cooperate in good faith to prepare, approve and execute each SWO.
- 3.3 If there is any inconsistency between these terms and conditions and the terms expressed in a signed SWO then, to the extent of that inconsistency, the SWO shall prevail.
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### **4 Performance of Services**

- 4.1 Xcellerate IT must in the performance of the Services:
- (a) comply with all Laws.
  - (b) provide the Services in a diligent and professional manner with the degree of skill and care that is normally exercised by recognised professional persons who supply services of a similar nature;
  - (c) deploy sufficient numbers of personnel and sufficient technical resources to deliver the Services; and
  - (d) ensure that its personnel have appropriate skills and training to perform the Services.
- 4.2 Xcellerate IT must procure that all its employees comply with:
- (a) the Client's policies and procedures as notified to Xcellerate IT (including workplace health and safety policies) while working at a location controlled by the Client; and
  - (b) Xcellerate IT's obligations under these terms and conditions in respect of the Client Data and the Client's Confidential Information.
- 4.3 Xcellerate IT must prepare and keep accurate, clear and concise records of all activities it engages in with respect to the Services.
- 4.4 The Client acknowledges and agrees that:
- (a) Xcellerate IT neither:
    - (i) gives any warranties or performance commitments in relation to any Kofax Solutions and/or Third Party Solutions; nor
    - (ii) guarantees the performance by Kofax and/or a Third Party of its obligations under any contractual arrangement between the Client and Kofax and/or that Third Party.
  - (b) when Hosting Services are provided:
    - (i) Hosting will be outsourced by Xcellerate IT and/or Kofax to the Microsoft Azure or AWS Platform, unless otherwise specified;
    - (ii) the Client must rely on the undertakings made by Microsoft's commitments to service levels and business continuity in respect of the

- Azure environment, details of which are available on request to Xcellerate IT; and
  - (iii) Xcellerate IT does not warrant or guarantee the performance of the Azure environment.
  - (c) the undertakings made by Microsoft regarding Azure include commitments to service levels and business continuity.
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## **5 Change Request**

- 5.1 If either Party requires a change to any of the Proposal, that Party must issue a written change request (**Change Request**) in respect of each change:
    - (a) to the other Party's Project Manager (**Receiving Party**); and
    - (b) in writing.
  - 5.2 Each Party is responsible for its own costs and expenses in preparing and issuing a Change Request and responding to a Change Request issued by the other Party.
  - 5.3 Each Party acknowledges and agrees that a Change Request may result in either an increase to the Fees payable by the Client or a reduction in those Fees depending on the subject matter of the Change Request.
  - 5.4 For a Change Request to be effective, it must be duly executed by both Parties.
  - 5.5 Promptly after receipt of a Change Request, each Party's Project Manager must meet to discuss the proposed change and, within 10 days, the Receiving Party must advise the other Party whether the change is accepted or rejected.
  - 5.6 If the Change Request is accepted by the Receiving Party, the Change Request must be duly executed by both Parties and will come into effect on and from the date of execution or otherwise as agreed between the Parties.
  - 5.7 Once signed by each Party in accordance with this clause 5.3, a Change Request will vary, and form part of, the Proposal to which the request relates.
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## **6 Client Obligations**

- 6.1 The Client must:
  - (a) comply with the operational support procedures and policies of Xcellerate IT as notified to the Client in writing from time to time; and
  - (b) promptly record and report to Xcellerate IT, all errors and malfunctions in the Product and the Services provided by Xcellerate IT.
- 6.2 To the extent that provision of the Services is dependent on activities being undertaken by the Client as:
  - (a) recorded, as Client dependencies, in the Proposal; or
  - (b) reasonably requested by Xcellerate IT from time to time,to enable the Services to be provided in accordance with the obligations imposed on Xcellerate IT by the Proposal, the Client:
  - (c) will undertake those activities in a timely and professional manner; and
  - (d) acknowledges and agrees that Xcellerate IT will not be in breach of its obligations if its ability to perform its obligations is affected by the Client's failure or delay in completing or supplying the Services.
- 6.3 The Client grants to Xcellerate IT a free, non-exclusive, non-transferable licence to use the Client Data solely for the purpose and to the extent necessary for Xcellerate IT to perform the Services.
- 6.4 The Client:

- (a) warrants that Xcellerate IT's use of the Client Data as contemplated by the Proposal will not infringe any third-Party Intellectual Property Rights; and
  - (b) will indemnify Xcellerate IT from and against all Loss which arise out of such infringement.
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## **7 Representations and Warranties**

7.1 Xcellerate IT warrants to the Client that it:

- (a) has the requisite power and authority to carry out the obligations imposed on it by the Proposal;
- (b) has the expertise, experience and the staffing resources required to perform the Services;
- (c) will provide the Services in a manner that does not infringe the Intellectual Property Rights of any person;
- (d) owns or has the right to use (to the extent necessary to provide the Services) all Intellectual Property Rights that it uses to perform those Service; and
- (e) has all licences, authorisations and permits required to provide the Services.

7.2 The Client represents and warrants to Xcellerate IT that it has the requisite power and authority to carry out the obligations imposed on it by the Proposal and the terms of any license or services agreement relating to the Kofax Solution and Third Party Solution.

7.3 Xcellerate IT will not be liable or responsible to the Client for any Service and/or Deliverable that does not meet the requirements of any of the Proposal to the extent such failure occurs by reason of:

- (a) the use by the Client of that Service/Deliverable for a purpose other than for which it was supplied;
  - (b) the use of that Service/Deliverable by any employee, contractor or agent of the Client who is not suitably qualified or adequately trained to do so;
  - (c) any modifications or enhancements to a Service/Deliverable implemented or effected by or on behalf of the Client that are not authorised or approved by Xcellerate IT;
  - (d) any defect, error or failure in the Service/Deliverable;
  - (e) the defect, error or failure in, any system, software, hardware or other equipment with which a Service Deliverable interoperates; or
  - (f) any Excusable Event.
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## **8 Fees**

8.1 In consideration of the supply of the Product and the Services, the Client must pay to Xcellerate IT the Fees as specified, and in the manner provided, in the Proposal.

8.2 Fees payable by the Client for use of the Product and the Services will be invoiced by Xcellerate IT to the Client.

8.3 Unless otherwise specified in the Proposal:

- (a) Fees (if not stated to be a fixed lump-sum price) will be calculated in accordance with the rates and other pricing details set out in the Proposal applicable to the Services provided by Xcellerate IT to the Client; and
- (b) any rates or pricing details described in the Proposal are stated exclusive of GST.

8.4 The Client must pay the Fees at the time and in the manner set out in the applicable Proposal.

- 8.5 All amounts payable by the Client to Xcellerate IT must be paid:
- (a) without set-off or claim under any circumstances including, if a dispute exists in relation to the Services provided; and
  - (b) to the bank account nominated from time to time by Xcellerate IT to the Client.
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## **9 Contract Governance**

- 9.1 On and from the Effective Date, each Contract Manager will:
- (a) act as the contract manager for the Party who appointed such manager;
  - (b) co-ordinate the supply of the Products and provision of the Services under the Proposal;
  - (c) superintend performance of each Party's obligations arising under the Proposal; and
  - (d) be responsible for resolving any issues that arise between the Parties concerning the Services.
- 9.2 The Contract Manager appointed by each Party must be a person:
- (a) with an understanding of the Proposal; and
  - (b) with the authority to make decisions on behalf of the Party it represents and take steps to procure the making of a decision by that Party.
- 9.3 Each Party warrants that the person nominated by it, as its Contract Manager, has the authority to perform to make decisions on behalf of the Party appointing them.
- 9.4 Each Party may replace their Contract Manager by giving written notice to the other. The notice must state the name of the replacement and the date on which the replacement takes effect. A Party must replace its Contract Manager if reasonably requested to do so by the other Party.
- 9.5 The Contract Managers must meet as and when requested by a Party, but no less frequently than once a month, for the purpose of:
- (a) reviewing and assess the progress of the performance of the Services;
  - (b) identify any issues of concern about the Services;
  - (c) reviewing and discussing each Party's compliance with its obligations under the Proposal;
  - (d) reviewing and discussing the need for any revisions to the contractual arrangements between the Parties;
  - (e) resolving any problems, disputes or differences arising between the Parties or any employees;
  - (f) discussing any failure of the Services to achieve any Deliverables or Milestones set out in the Proposal;
  - (g) agreeing on arrangements to remediate any performance issues identified; and
  - (h) discussing any other matter determined by a Contract Manager to be appropriate for discussion at the meeting.
- 9.6 The Contract Managers must keep records of their decisions.
- 9.7 All expenses incurred by a Contract Manager in attending a meeting are to be borne by the Party appointing that Contract Manager.
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## **10 Timing and Delay**

- 10.1 Xcellerate IT must perform the Services in accordance with the timetable (if any) set out in a SWO.

- 10.2 If Xcellerate IT reasonably apprehends that, as a result of:
- (a) an Excusable Event;
  - (b) a Change Request made by the Client;
  - (c) the Client's failure or delay in completing or supplying an activity or deliverable under the Proposal, including any dependency for which the Client is responsible,; or
  - (d) any other event beyond the reasonable control of Xcellerate IT (to the extent Xcellerate IT has taken all reasonable steps to avoid the effect of such event on its ability to fulfil its obligations under the Proposal),

Xcellerate IT will not be able to complete an activity, achieve a Milestone or provide a Deliverable under the Proposal by the date for its completion, Xcellerate IT may extend the time for completion by a reasonable period of time.

- 10.3 Xcellerate IT will notify the Client in writing about:
- (a) the period of the extension; and
  - (b) details of the circumstances giving rise to the need for the extension.

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## 11 Intellectual Property Rights

- 11.1 Xcellerate IT agrees that all right, title and interest (including all Intellectual Property Rights) in the Client's Materials remains vested in the Client.
- 11.2 The Client agrees that all right, title and interest (including all Intellectual Property Rights) in Xcellerate IT's Materials remains vested in the Client.
- 11.3 The Client grants to Xcellerate IT a free, non-exclusive, non-transferable licence to use the Client's Materials solely for the purpose and to the extent necessary to perform the Services. Xcellerate IT must comply with any directions of, or conditions imposed by, the Client in relation to the Client Materials.
- 11.4 Xcellerate IT grants to the Client a free, non-exclusive, non-transferable licence to use Xcellerate IT's Materials solely for the purpose and to the extent necessary to enable to Client to enjoy the use of the Selected Services. The Client must comply with any directions of, or conditions imposed by, Xcellerate IT in relation to Xcellerate IT Materials.
- 11.5 Unless otherwise specified in a SWO:
- (a) all existing and future Intellectual Property Rights in any Developed Software vests in and remains vested in Xcellerate IT; but
  - (b) Xcellerate IT grants to the Client, a perpetual, irrevocable, free, transferrable licence to access and use the Developed Software.
- 11.6 A Deliverable must not include any Intellectual Property Rights owned by third Parties unless Xcellerate IT has the right to licence the use of those rights to the Client or the Client has a licence to use directly from the third Party.

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## 12 IP Infringement

- 12.1 If a Third Party claims, or the Client reasonably believes that someone is likely to claim, that all or part of:
- (a) Xcellerate IT Materials (licensed for use to the Client); or
  - (b) any Deliverable (title of which passes to the Client),
- (Affected Supplier IPR)** infringes the third Party's Intellectual Property Rights, Xcellerate IT must, in addition to any other rights that the Client may have against Xcellerate IT, promptly, at Xcellerate IT's expense:



- (i) use its best efforts to secure the rights for the Client to continue to use the Affected Supplier IPR free of any claim or liability for infringement; or
    - (ii) (if it is unable, despite using its best efforts, to secure such rights) replace or modify the Affected Supplier IPR so that it ceases to infringe, but without degrading the performance or quality of the Affected Supplier IPR.
  - 12.2 If Xcellerate IT is not able to rectify the Affected Supplier IPR in accordance with clause 12.1 within a reasonable period of time (as determined by the Client), in addition to any other rights that the Client may have against Xcellerate IT, Xcellerate IT must refund to the Client a pro-rata portion of the Fees paid by the Client in relation to the Affected Supplier IPR.
  - 12.3 If someone claims, or Xcellerate IT reasonably believes that someone is likely to claim, that all or part of the Client's Materials infringes their Intellectual Property Rights, the Client must, in addition to any other rights that Xcellerate IT may have against the Client, promptly, at the Client's expense:
    - (a) use its best efforts to secure the rights for Xcellerate IT to continue to use the Client's Materials free of any claim or liability for infringement; or
    - (b) (if it is unable, despite using its best efforts, to secure such rights) replace or modify the Client's Materials so that it ceases to infringe, but without degrading the performance or quality of the Client's Materials.
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### **13 Confidentiality**

- 13.1 During the Term, Xcellerate IT will have access to Confidential Information belonging to the Client and the Client will have access to Confidential Information belonging to Xcellerate IT.
- 13.2 Each Party (a **Recipient**) must keep confidential, and not use or disclose, any Confidential Information of the other Party.
- 13.3 The obligation of confidence in clause 13.2 extends to Confidential Information provided to or obtained by a Recipient before accepting the Proposal.
- 13.4 The obligation of confidence in clause 13.2 does not apply to Confidential Information that is:
  - (a) in the public domain (otherwise than as a result of a breach of an obligation of confidence);
  - (b) independently developed by the Recipient; or
  - (c) already known by the recipient independently of his interaction with the other Party and free of any obligation of confidence.
- 13.5 A Recipient may disclose Confidential Information of the other Party:
  - (a) if required by law or court order to do so and it:
    - (i) discloses only the minimum amount of Confidential Information required to satisfy the law or order; and
    - (ii) before disclosing any Confidential Information, gives a reasonable amount of notice to the other Party; and
  - (b) to officers and employees of the Recipient who:
    - (i) have a need to know (and only to the extent that each has a need to know) the Confidential Information for the purposes of implementing the Proposal; and
    - (ii) have been directed and have agreed to keep confidential the Confidential Information on terms not inconsistent with any terms of the Proposal.

- 13.6 Each Party must take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other Party.
- 13.7 A Recipient must immediately on termination of the Proposal or on request from the other Party:
- (a) return to the other Party; or
  - (b) destroy and certify in writing to the other Party the destruction of, all the other Party's Confidential Information in the Recipient's possession or control other than one copy of any notes and other records that the Recipient is required by law to retain.
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## **14 Limitation of Liability**

- 14.1 All representations and warranties, other than those given expressly in the Proposal, are excluded.
- 14.2 The Client acknowledges and agrees that in determining to enter into Proposal it has not relied upon any pre-contractual representations, discussions, communications or acts or omissions of Xcellerate IT that are not expressly set out in the Proposal.
- 14.3 Xcellerate IT's liability to the Client in negligence or other tort, for breach of contract or breach of statutory duty in respect of any Loss suffered by the Client in relation to the provision of any element or part of the Services (**Claim**) is limited to the lesser of:
- (a) \$500,000; and
  - (b) the Fees paid by the Client to Xcellerate IT:
    - (i) up to the date of the date of Claim; and
    - (ii) under the terms of the Proposal to which the Claim relates.
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## **15 Insurance**

- 15.1 Xcellerate IT will obtain and maintain the following insurances during the Term:
- (a) professional indemnity insurance (including cyber-liability insurance) of not less than \$20 million in respect of each event and in the aggregate;
  - (b) public liability insurance of not less than \$20 million in respect of each event; and
  - (c) worker's compensation insurance in accordance with the statutory requirements of any jurisdiction in which Xcellerate IT engages employees, consultants or contractors in connection with the supply of the Service.
- 15.2 Upon request from the Client, Xcellerate IT must provide the Client with evidence of the currency of any insurances it is required to obtain.
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## **16 Dispute Resolution**

- 16.1 The Party asserting that a Dispute has arisen may give notice to the other Party (a **Dispute Notice**).
- 16.2 A Party is not required to resolve a Dispute until a Dispute Notice is given.
- 16.3 Neither Party may begin legal proceedings (including mediation, arbitration or court proceedings) in connection with any part of the Proposal unless the steps in clause 16.4 have been followed.
- 16.4 Any Dispute must be dealt with by:
- (a) first - the Dispute will be referred to the Contract Managers who will meet and use all reasonable commercial efforts to resolve the Dispute Notice within five Business Days of the Dispute Notice being given; and (if not so resolved)

- (b) second - if the Dispute is not resolved, the Dispute will be referred to the Chief Executive Officers of each Party who will use all reasonable commercial efforts to resolve the Dispute within 20 Business Days of the Dispute Notice being given or such longer period as may be mutually agreed by the Chief Executive Officers.
- 16.5 If a Dispute is not resolved in accordance with clause 16.4 the dispute must be submitted by either Party to mediation.
- 16.6 Either Party may commence legal proceedings if a Dispute is not resolved at mediation.
- 16.7 A Party may commence court proceedings in relation to any dispute arising in connection with the Proposal at any time where the Party seeks urgent interlocutory relief.
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## **17 Termination**

- 17.1 Either Party may terminate the Proposal by notice in writing to the other, if the other is the subject of:
- (a) an Event of Default; or
  - (b) an Insolvency Event.
- Termination under this clause takes effect on the day on which notice is given.
- 17.2 Termination by a Party under clause 17.1 is in addition to any claim for damages or other relief.
- 17.3 On termination of the Proposal under clause 17.1:
- (a) in respect of any element or part of the Services which Xcellerate IT has not fully performed:
    - (i) Xcellerate IT will continue to supply the Services; and
    - (ii) the Client's obligation to pay for such Services remains and is unaffected by the termination;
  - (b) Xcellerate IT is entitled to recover from the Client all money due and payable for Services provided whether or not invoiced at the date of termination; and
  - (c) each Party is entitled to continue to exercise all rights, powers and remedies under the Proposal in respect of any other breach by the other Party.
- 17.4 If the Client is subject to an Event of Default, Xcellerate IT may, at its discretion elect to suspend its obligation to supply the Services until such time the Client has satisfied the relevant Cure Notice.
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## **18 Notices**

- 18.1 A notice given under any document must be in writing and delivered to a Party by email to the email address that is used by such Party at the time of giving the notice.
- 18.2 A notice is taken to be duly given and received if delivered by email on the Business Day after it is despatched provided that the sender does not receive a message to the effect that the sender is 'out of office' or that delivery has failed.

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## **19 Miscellaneous**

- 19.1 These terms and conditions may only be varied or replaced by an agreement executed by the Parties.
- 19.2 The Proposal (and any document incorporated by reference in it) records the entire agreement between the Parties in relation to his subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the Parties in relation to the subject matter of the Proposal.
- 19.3 Any part or all of any provision of any document that is illegal or unenforceable will be severed and will not affect the continued operation of the remaining provisions of that document.
- 19.4 A rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of a document or any part of it.
- 19.5 Any rights and remedies that a Party may have under these terms and conditions, or the Proposal are in addition to and do not replace or limit any other rights or remedies that Party may have.
- 19.6 All warranties, releases, exclusions of liability, indemnities, terms with respect to intellectual property and confidential information on the part of a Party will remain valid and binding upon that Party following expiry or termination of the Proposal.
- 19.7 The failure, delay or omission by a Party to exercise, or to partially exercise, a right, power or remedy under these terms and conditions does not operate as a waiver of that right, power or remedy.
- 19.8 Delivery of a signed copy of any document by electronic means will have the same effect as delivery of the physical copy bearing the original signature, provided that such copy, on receipt, can be reproduced in an eye-readable form.
- 19.9 Signing of any of any document by means of a digital, electronic signature is deemed, for all purposes, to have the same legal effect as signing of a physical copy.
- 19.10 Each Party must take all steps, execute all documents and do everything necessary or desirable to give full effect to any of the transactions contemplated by the Proposal.
- 19.11 The rights, obligations and indemnities in clause 11 (Intellectual Property Rights), clause 12 (Infringement) clause 13 (Confidentiality), clause 14 (Limitation of Liability), and clause 17 (Termination) survive the termination or expiry of the Proposal.
- 20.12 The Proposal is governed by the laws of the State of New South Wales. Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning these terms and conditions.