



PROFESSIONAL PRACTICE MANAGEMENT PROGRAM

**SOFTWARE LICENCE,
MAINTENANCE & SUPPORT AGREEMENT**

NIJOEL PTY LTD TRADING AS PPMP ABN 47 283 665 875

And

THE LICENSEE

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SOFTWARE LICENCE AND SUPPORT & MAINTENANCE AGREEMENT

BETWEEN **NIJOEL PTY LTD** TRADING AS **PPMP** ABN 47 283 665 875 of Suite
118/40 Burgundy Street, Heidelberg, Victoria. 3084
(**'PPMP'**)

AND **THE PARTY SO SPECIFIED IN SCHEDULE 1**
(**'Licensee'**)

BACKGROUND

- A. PPMP is the authorised licensor of the Software and the supplier of support services for the Software.
- B. The Licensee wishes to use the Software.
- C. PPMP has agreed to license and support the Software for the Licensee on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS

In this Agreement, except to the extent the context otherwise requires:

'Agreement' means this Software Licence, Maintenance and Support Agreement;

'Business Day' means a day other than a Saturday, Sunday, a public holiday or other holiday in Melbourne;

'Commencement Date' means the date so specified in schedule 1;

'GST' has the same meaning as in the GST Act;

'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* as amended;

'Initial Term' means the period so specified in schedule 1, commencing on the Commencement Date;

'Intellectual Property Rights' means all intellectual property rights, including but not limited to:

- (a) patents, copyright, designs and trade marks whether registered or not, and any right to have confidential information kept confidential, and all other existing or future intellectual property rights in material or works; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition;

'Licence Fee' means the licence fee specified in schedule 1, being either the Single User Licence Fee or the Network Licence Fee;

'Location' has the meaning set out in schedule 1;

'Network Licence Fee' means the Licence Fee described in schedule 1 which applies to Software to be used on a network of computers;

'SaaS' refers to the 'software as a service' model of providing access to the Software via a remote hosted server, accessible via the internet;

'Single User Licence Fee' means the Licence Fee described in schedule 1 which applies to Software used and installed on a single computer;

‘Software’ means the software type and version set out in schedule 1;

‘Supply’ has the same meaning as in the GST Act;

‘Support’ means the support services provided by PPMP under this Agreement;

‘Support Charge’ means the support and maintenance charges per month specified in schedule 1;

‘Support Software’ means the support or diagnostic software provided by PPMP in accordance with clause 5.3;

‘System’ has the meaning set out in schedule 1;

‘Tax Invoice’ has the same meaning as in the GST Act;

‘Upgraded Version’ means an enhancement, improvement or modification to the Software; and

‘Use’, ‘Uses’ or ‘Using’ means:

- (a) utilisation of the Software by copying, transmitting or loading the same into the temporary memory (RAM) or installing into the permanent memory (eg hard disk, CD ROM or other storage device) of the System for the processing of the System instructions or statements contained in the Software;
- (b) copying the Software which is in machine-readable form for Use by the Licensee on the System for the purposes only of understanding the contents of such machine-readable material and for back-up provided that no more than 2 copies are in existence under this Agreement at any one time without prior written consent from PPMP or as otherwise permitted by the applicable law;
- (c) merging the whole or any part of the Software in machine-readable form into another software program;
- (d) storing the whole or any part of the Software on the System or other storage unit or disk; and
- (e) utilising (but not copying) the instructional and/or operational manuals relating to the Software.

‘User’ means any person or entity Using the Software.

‘Warranty period’ means within 90 days from the date of this Agreement.

‘writing’ includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words in a permanent and visible form.

2. LICENCE AND USE OF SOFTWARE

- 2.1 Upon execution and return of this Agreement and payment of the Licence Fee, PPMP grants to the Licensee and the Licensee accepts a non-exclusive, non-transferable licence to either:
- (a) Use the Software on the System for the term of this Agreement in accordance with the provisions of this Agreement; or
 - (b) subscribe to the Software remotely as a service, ie. **SaaS**.

Use of Software on local System

- 2.2 If the Licensee is granted a licence in accordance with clause 2.1(a), PPMP will issue to the Licensee one copy of the Software on media appropriate to the System, for Use on that System, at the specified Location, together with the necessary documentation to Use the same.
- 2.3 If the Software is to be Used on a networked System, the Licensee shall advise PPMP in writing immediately of any increase or proposed increase in the number of computers networked to the System, and pay any additional amount relating to the increased number of computers.
- 2.4 The licence to Use the Software will continue unless terminated in any of the ways set out in this Agreement.
- 2.5 The Software must only be Used on the System, unless the consent of PPMP is obtained to Use the Software on alternative equipment. Such consent shall not be unreasonably withheld.

Software as a Service

- 2.6 If the Licensee is granted a licence to access the Software via SaaS in accordance with clause 2.1(b), PPMP will provide the Licensee with the details necessary to access the Software online.
- 2.7 The Licensee's right to access the Software via SaaS will cease if the Licensee is in default of payment of the applicable monthly Support Charges for more than 30 days.
- 2.8 While PPMP has taken all due care, PPMP does not guarantee that the remote hosted Software will be free from viruses or that access will be uninterrupted.

3. UPDATES AND NEW RELEASES

- 3.1 PPMP is not required to provide software updates or new releases unless specified under this Agreement.
- 3.2 If the Software requires an upgrade or significant modifications to be made on it, PPMP shall develop an Upgraded Version and notify the Licensee of the release of any Upgraded Version.
- 3.3 For Licensees accessing the Software via SaaS, the Software will be automatically upgraded as Upgraded Versions are released. These Licensees will therefor be able to access the Upgraded Version of the Software subject to payment of the applicable monthly Support Charges.
- 3.4 For Licensees Using the Software on a local System:
- (a) The Licensee should obtain an Upgraded Version of the Software as soon as practicable following its release, and arrange for it to be installed on the System;
 - (b) The Licensee may be charged additional Licence Fees to obtain an Upgraded Version of the Software;
 - (c) Upgraded Versions of the Software will be provided at no extra cost if the Licensee pays monthly Support Charges;
 - (d) if the Licensee does not pay monthly Support Charges, the Licensee must pay a new Licence Fee if they wish to upgrade to the Upgraded Version;
 - (e) the Licensee acknowledges that Support will cease in respect of superseded versions of the Software within a reasonable period of release of an Upgraded Versions, and in any event, will cease after 12 months of release of an Upgraded Version.

4. LICENSEE'S RIGHTS AND OBLIGATIONS

- 4.1 All Licensees are entitled to:

- (a) Use or access the Software in accordance with the provisions of this Agreement; and
- (b) receive information on Upgraded Versions.

Use of Software on local System

- 4.2 For Licensees Using the Software on a local System, the Licensee is entitled to:
- (a) receive one copy of the Software for Use on the System, at the specified Location, together with the necessary documentation to install and Use the Software; and
 - (b) load, install and Use the Software on the System.
- 4.3 The Licensee will not create or permit to exist a security interest over the Software or documentation or in any modifications to, or enhancements, software updates or new releases of, the Software or documentation. For the purposes of the foregoing, “security interest” means a security interest that is subject to the Personal Property Securities Act 2009 (Cth) or any other mortgage, pledge, lien, charge or other arrangement of any kind which in substance secures the payment of money or the performance of any obligation, or that gives a creditor priority over unsecured creditors.

Software as a Service

- 4.4 Licensees who access the Software via SaaS will not, nor attempt to:
- (a) provide, publish, post or create a link to the remote hosted Software without PPMP’s express written permission;
 - (b) transmit to or via the remote hosted Software any unlawful, threatening, libellous, defamatory, obscene, dangerous, inflammatory, pornographic or profane material, any material that could constitute or encourage conduct that will be considered a criminal offence, give rise to civil liability or would otherwise violate any laws, nor any materials, malware, spyware, computer viruses or other materials which may adversely affect the security or content of the remote hosted Software;
 - (c) violate the security or any security measures of the remote hosted Software;
 - (d) probe, scan or test the vulnerability of the remote hosted Software or any associated systems or networks;
 - (e) interfere with the service to any other user of the remote hosted Software; nor
 - (f) use any device, software or routine to interfere or attempt to interfere with the proper working of the remote hosted Software.
- 4.5 Licensees must keep any user code and password private and confidential and must not allow anyone else to access the remote hosted Software using their user code and password.

5. SUPPORT

- 5.1 Provided that the Licensee is not in default of payment of the Support Charges or otherwise in default under this Agreement, PPMP agrees to support the Software for the Initial Term upon the terms and subject to the conditions contained in this Agreement.
- 5.2 Support provided by PPMP under this Agreement includes:
- (a) help desk facilities between 9.00am and 5.00pm Monday to Friday on Business Days (PPMP’s standard hours);
 - (b) correction of critical errors or assistance to overcome problems. PPMP may, in its sole discretion, correct errors by ‘patch’ or by new version;
 - (c) information on availability of new versions of the Software;
 - (d) Upgraded Versions of the Software provided that the Licensee uses the most recent version of the Software;
 - (e) access to online information regarding training, Software user tips, frequently asked questions and a help manual; and
 - (f) access to online functionality provided through third parties and facilitated by PPMP at its discretion, which as at the date of this Agreement may include but not be limited to:

- (i) electronic billing services;
 - (ii) electronic reminder messaging services;
 - (iii) electronic appointment services; and
 - (iv) such other functionalities and services which PPMP may facilitate from time to time.
- 5.3 As part of the Support provided by PPMP, PPMP may provide the Licensee with Support Software, and in such an event the Support Software is subject to the terms of the licence granted in accordance with clauses 2 and 4 but to the extent of Support only.
- 5.4 PPMP may charge for services requested by the Licensee which are not specifically set out in by this Agreement and shall notify the Licensee of the cost of any service or services prior to carrying out the service or services.
- 5.5 PPMP may charge for service delivery for Support if PPMP is unable to deliver electronically.
- 5.6 Upon the expiration of the Initial Term, PPMP will continue to provide Support for subsequent terms of similar duration to the Initial Term provided that the Licensee does not default in payment of the Support Charges, subject to clause 3.4(e) regarding superseded versions of the Software.
- 5.7 Support not included in this Agreement and which may be separately charged for includes:
- (a) support of other software, accessories, attachments, machines, systems or other devices not supplied by PPMP nor listed in schedule;
 - (b) rectification of lost or corrupted data arising for any reason other than PPMP's own negligence;
 - (c) support rendered more difficult because of any changes, alterations, additions, modifications or variations to the Software or the use of the system or operating environment;
 - (d) attendance to faults caused by using the Software outside design or other specifications or outside the provisions laid down in any documentation or manual supplied with the Software, or caused by operator error or omission;
 - (e) restoration of data files following failure to backup in accordance with PPMP's recommended procedures;
 - (f) diagnosis and/or rectification of problems not associated with the Software;
 - (g) on-site support except if specified in schedule 1, where appropriate in the event telephone support does not resolve a Software problem; and
 - (h) out-of-hours support except where specified in schedule 1.
6. LICENCE FEE AND SUPPORT CHARGES
- 6.1 The Licence Fee specified in schedule 1 is payable 7 days in advance of the provision of the Software unless otherwise agreed in writing by PPMP.
- 6.2 The Support Charges are payable monthly in advance by way of direct debit from the Licensee's financial institution account, unless otherwise agreed in writing by PPMP. No Support shall be given until payment has been received by PPMP. Invoices will be provided on request.
- 6.3 In the event that the System is inoperable or requires or is under repair, the Licensee must report the same to PPMP for permission to Use the Software on a back-up system at no extra charge, until the System is operational.
- 6.4 The Support Charges payable on the terms of this Agreement are based on services provided during normal working hours (9:00am to 5:00pm) on Business Days. Additional or out-of-hours support is subject to a higher charge.
- 6.5 Support Charges are subject to review from time to time and shall be advised to the Licensee in writing at least 30 days prior to the commencement of the revised charges
- 6.6 If the Licensee disputes the whole or any portion of the amount invoiced by PPMP, the Licensee shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify PPMP in writing (within 7 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the amount in dispute ought to have properly been paid at the time of the first

invoice, then the Licensee shall pay the amount finally resolved together with interest on that amount in accordance with the terms of payment set out in this Agreement.

- 6.7 The Licensee shall pay PPMP interest on any amount due and not paid by the Licensee within the timeframe required by this Agreement at the rate interest specified in the relevant invoice.
- 6.8 If the Licensee fails to pay the Support Charges at any time:
- (a) PPMP will not be responsible for updating or maintaining the Software or any of the Support Software; and
 - (b) the Licensee will not receive or access of the services or functions set out in clause 5.2 of this Agreement.
- 6.9 If the Licensee fails to pay any amounts due under this Agreement, PPMP may at its option and without prejudice to its rights under this Agreement, cease providing services, including Support, under this Agreement until all fees which are due have been paid in full.

7. GOODS AND SERVICES TAX

If any Supply made under this Agreement is a taxable Supply, then:

- (a) If GST is payable in respect of any supply made by a supplier under this Agreement ('**GST amount**'), the recipient will pay to the supplier an amount equal to the GST payable on the supply.
- (b) Subject to clause 7(c), the recipient will pay the GST amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.
- (c) The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 7(b).
- (d) If this contract requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) The amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) If the payment or reimbursement is subject to GST, an amount equal to that GST
- (e) If an adjustment event occurs in relation to a taxable supply under this contract:
 - (i) The supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
 - (ii) Any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note

8. LICENSEE'S UNDERTAKINGS

8.1 The Licensee must not:

- (a) copy the Software (other than for normal system operation and as specified in clause 2) or the Support Software (other than for normal support activities) nor otherwise reproduce the same provided that the Licensee may copy the Software for back-up purposes or incidentally, in the course of converting the Software in accordance with clause 8.1(c);
- (b) translate, adapt, vary, or modify the Software or Support Software; or
- (c) disassemble, decompile or reverse engineer the Software or Support Software, provided however that in the case of decompilation of the Software, the Licensee may incidentally decompile the Software:
 - (i) only if it is essential so to do in order to achieve interoperability of the Software with another software program ('**Permitted Purpose**'); and
 - (ii) provided the information obtained by the Licensee during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party whom it is not necessary to disclose or communicate such information without PPMP's prior written consent and is not used to create any software which is substantially similar to the expression of the Software nor used in any manner which would be restricted by copyright.

8.2 In addition, the Licensee must:

- (a) maintain accurate and up-to-date records of the number and location of all copies of the Software and Support Software, and furnish copies of these records to PPMP upon request;
- (b) supervise and control Use of the Software and Support Software in accordance with the terms of this Agreement;
- (c) ensure that the Software is protected at all times from misuse, damage, destruction or any form of unauthorised use;
- (d) notify PPMP immediately on becoming aware of any unauthorised use or copying of the whole or any part of the Software, Support Software or associated documentation;
- (e) replace the current version of the Software and Support Software with the Upgraded Version immediately upon receipt or notification;
- (f) ensure that the most up to date general virus scanning software is maintained on the System;
- (g) reproduce and include the copyright notice of PPMP on all and any copies, whether in whole or in part, in any form, including partial copies or modifications of the Software and Support Software authorised to be made under this Agreement;
- (h) not provide or otherwise make available the Software or Support Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than the Licensee's employees specified in schedule 1 without prior written consent from PPMP;
- (i) ensure that all authorised Users of the Software understand and agree to comply with obligations under this Agreement; and
- (j) within 14 days after the date of termination or discontinuance of this Agreement for whatever reason (other than with respect to Support only), return or destroy (as PPMP instructs):
 - (i) the Software; and
 - (ii) all copies, in whole and in part, in any form including partial copies or modifications of the Software received from PPMP or made in connection with this Agreement and all documentation relating to it, and
 furnish PPMP with a certificate, certifying that the same has been done, unless the Licensee has obtained PPMP's prior written authorisation to retain one copy for archive purposes only. Where Support only is terminated or discontinued, this clause applies to Support Software.

9. WARRANTY

- 9.1 The Licensee acknowledges that software in general is not error-free and agrees that the existence of errors does not constitute a breach of this Agreement.
- 9.2 If the Licensee discovers a material error which substantially affects the Licensee's use of the Software and notifies PPMP of the error during the Warranty period, PPMP may at its sole option:
- (a) refund the Licence Fee; or
 - (b) use all reasonable endeavours to correct by patch or new release (at its option) that part of the Software which does not so comply provided that such non-compliance has not been caused by any modification, variation or addition to the Software not performed by PPMP or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible.
- 9.3 Subject to clause 9.2 and to the extent permitted by the applicable law, PPMP disclaims all other warranties with respect to the Software and Support Software and the services provided by PPMP under this Agreement, either express or implied, including but not limited to any implied warranties of merchantability or fitness for any particular purpose.
- 9.4 PPMP does not warrant that the Software is free from all known viruses, however it has used commercially reasonable efforts to check for the most commonly known viruses prior to packaging however the Licensee is solely responsible for virus scanning the Software.

10. PPMP'S LIABILITY

- 10.1 PPMP is not liable to the Licensee for any loss or damage caused arising directly or indirectly in connection with this Agreement, the Software, the Support Software, its use, support or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law.
- 10.2 Without limitation to clause 10.1, PPMP expressly excludes liability for consequential loss or damage which may arise in respect of the Software, the Support Software, its use, the System or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 10.3 If any exclusion contained in this Agreement is held to be invalid for any reason and PPMP becomes liable for loss or damage that may lawfully be limited, such liability is limited to the Licence Fee and one annual Support Charge.
- 10.4 Notwithstanding any other provisions of this Agreement, where any Act of Parliament implies any term into this Agreement, and that Act avoids or prohibits provisions in a contract excluding or modifying such term, that term is deemed to be included in this Agreement, but PPMP's liability for breach of that term is limited in one or more of the ways (at PPMP's option) permitted by the *Australian Consumer Law* in the *Competition and Consumer Law Act 2010 (Cth)*.

11. LICENSEE'S ACKNOWLEDGEMENTS

- 11.1 The Licensee warrants that it has not relied on any representation made by PPMP which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by PPMP.
- 11.2 The Licensee acknowledges that to the extent PPMP has made any representation which is not otherwise expressly stated in this Agreement, the Licensee has been provided with an opportunity to independently verify the accuracy of that representation.
- 11.3 The Licensee shall at all times indemnify and hold harmless PPMP 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 Licensee of its obligations under this Agreement; and / or
 - (b) any wilful, unlawful or negligent act or omission of the Licensee.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Licensee acknowledges that any and all of the Intellectual Property Rights subsisting in or used in connection with the Software or the Support Software or the products of the Support, including any modifications, improvements or enhancements made thereto, are and remain the sole property of PPMP or such other party as may be identified in or on it ('Owner'). The Licensee must not during or at any time after the expiry or termination of this Agreement (whether in whole or with respect to support only) in any way question or dispute the ownership of the Intellectual Property Rights by PPMP or the Owner. In the event that any Intellectual Property Rights vest for some reason in the Licensee, the Licensee hereby assigns such Intellectual Property Rights to PPMP.
- 12.2 The parties acknowledge that clause 12.1 does not confer on PPMP any rights, title or interest in the Licensee's data files, patient files, or other business records which the Licensee inputs into or stores on the Software or Support Software.
- 12.3 Nothing in this Agreement affects the ownership of moral rights in the Software or the Support Software or the products of the Support.

13. INDEMNITY BY THE LICENSEE

The Licensee acknowledges and agrees that PPMP shall not be liable to any third party, including the Licensee's customers, in respect of the services rendered by the Licensee and the Licensee agrees and undertakes to indemnify and hold harmless PPMP against any losses, costs, damages and reasonable

expenses incurred by PPMP as a result of claims by third parties against PPMP arising out of or involving the services rendered by the Licensee using the Software.

14. INDEMNITY BY PPMP

PPMP agrees to indemnify the Licensee from and against liability under any final judgment in proceedings brought by a third party against the Licensee which determine that the Licensee's use of the Software or Support Software constitutes an infringement in Australia of Intellectual Property Rights affecting the Software and/or the Support Software as the case may be (and for the purposes of this clause the term Software is deemed to include Support Software) provided that:

- (a) the Licensee has not done, permitted or suffered to be done anything which may have been or become an infringement of any Intellectual Property Rights; and
- (b) the Licensee has exercised a reasonable standard of care in protecting the same,

failing which the Licensee indemnifies PPMP or the Owner against all actions, proceedings, costs, claims and expenses incurred in respect of that failure.

- 14.2 The Licensee must give PPMP prompt notice of any claim of infringement or of suspected or alleged infringement under clause 14 that is made against the Licensee and PPMP has the right to defend any such claims and make settlements at its own discretion and the Licensee must give such assistance as PPMP may reasonably require to settle or oppose any such claims.
- 14.3 In the event that any such infringement occurs or may occur, PPMP may at its sole option and expense:
 - (a) procure for the Licensee the right to continue using the Software or any infringing part;
 - (b) modify or amend the Software or infringing part so that it becomes non-infringing;
 - (c) replace the Software or infringing part with other software of similar capability; or
 - (d) repay to the Licensee the Licence Fee relating to the whole or the infringing part of the Software.

15. CONFIDENTIAL INFORMATION

- 15.1 All information, data, drawings, specifications, documentation, software listings, source or object code which PPMP may have imparted and may from time to time impart to the Licensee relating to the Software, Support Software or support documentation or procedures is confidential. The Licensee agrees that it must use the same solely in accordance with the provisions of this Agreement and that it must not at any time during or after expiry or termination of this Agreement (in whole or with respect to support only), disclose the same, whether directly or indirectly to any third party without PPMP's prior written consent.
- 15.2 The Licensee further agrees that it must not itself or through any subsidiary, agent or third party modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements of the Software or any Support Software or have any software or other program written or developed for it based on any confidential information supplied to it by PPMP.
- 15.3 This clause does not prevent the disclosure or use by the Licensee of any information which is or after the date of this Agreement, through no fault of the Licensee, becomes public knowledge or to the extent permitted by law.
- 15.4 If, in using the Software or Support Software, the Licensee discloses any practice or business information, financial information or patient information of a confidential nature to PPMP, PPMP agrees that it will keep confidential such information. This clause does not prevent the disclosure or use by PPMP of any information which is or after the date of this Agreement, through no fault of PPMP, becomes public knowledge or to the extent permitted by law.

16. INTERRUPTIONS OR DELAYS IN SERVICE

PPMP has no liability to the Licensee in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of interruption or delay outside of the control of PPMP including (without limitation) technical failure (such as interruptions to electrical or

telecommunications supply), failure by a third party in the provision of services, acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, terrorism, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Software, Support Software, materials or Support; the breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (without limitation) work to rule, overtime bars, strikes and lockouts and whether between either of the parties and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties or any other employer).

17. TERMINATION

- 17.1 In addition to other provisions for termination in this Agreement, PPMP may by notice in writing to the Licensee terminate this Agreement, in whole or at PPMP's sole option with respect only to the Support, in any of the following circumstances:
- (a) if the Licensee is in breach of any term, condition or provision of this Agreement or required by applicable law and fails to remedy such breach (if capable of remedy) within 30 days of having received written notice of such breach from PPMP; or
 - (b) if the Licensee enters into any form of insolvency administration, including liquidation, bankruptcy, receivership, voluntary administration or otherwise; or
 - (c) if PPMP elects, at its sole discretion, to terminate the Agreement and gives the Licensee 30 days notice to that effect.
- 17.2 Upon termination, the Licensee must immediately pay to PPMP all costs and expenses, including legal and other fees incurred in relation to any default and all arrears of fees, charges or other payments arising in respect of the Software, Support Software, or support generally, this Agreement or otherwise.
- 17.3 Termination is subject to any rights and remedies PPMP may have under this Agreement or at law.
- 17.4 In the event that this Agreement expires or terminates with respect to Support only, the Licensee shall comply with the provisions of clause 8.2(j) where the same relates to any Support Software and documentation supplied by PPMP in performance of the Support provisions of this Agreement.

18. PPMP'S RIGHTS

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

19. COUNTERPARTS

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

20. SURVIVAL OF AGREEMENT

Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.

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

21. ASSIGNMENT

The Licensee must not assign or otherwise transfer all or part of the Software or this Agreement without the prior written consent of PPMP.

22. WAIVER

Failure or neglect by either party to enforce at any time any of the provisions of this Agreement is not to be construed nor deemed to be a waiver of that party's rights under this Agreement nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's rights to take subsequent action.

23. SEVERABILITY

In the event that any of the terms, conditions or provisions contained in this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision is to that extent severed from the remaining terms, conditions and provisions which continue to be valid to the fullest extent permitted by law.

24. GOVERNING LAW AND JURISDICTION

24.1 This Agreement is governed by the laws of Victoria and the Commonwealth of Australia.

24.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

25. NOTICE

25.1 A notice required or authorised to be given or served upon a party pursuant to this Agreement must be in writing in the English language and shall be given by (i) delivery; (ii) by a nationally recognised next day courier service; (iii) by first class, registered or certified mail, postage prepaid; (iv) by facsimile or by electronic mail to the address of the party specified in this Agreement or such other address as either party may specify in writing. All notices shall be effective upon receipt by the parties to which notice is given 2 Business Days after the date of dispatch, or if by facsimile or electronic mail, at the time of sending upon confirmation of delivery. A notice given or served under this Agreement is sufficient if:

- (a) in the case of a corporation, it is signed by a director or secretary of that corporation; and
- (b) in the case of an individual, it is signed by that individual.

25.2 The provisions of this clause are in addition to any other mode of service permitted by law.

25.3 In this clause 'notice' includes a demand, request, consent, approval, offer and any other instrument or communication made, required or authorised to be given under or pursuant to a provision of this Agreement.

25.4 In this clause 'Business Hours' means from 9.00am to 5.00pm Australia Eastern Standard Time on a Business Day.

26. DISPUTE RESOLUTION

26.1 If a dispute arises between the parties regarding any matter relating to this Agreement ("Dispute") then any party may notify the other parties in writing of the dispute ("Dispute Notice"). Within 7 days of the service of the Dispute Notice, the parties must meet in good faith and use their best endeavours to resolve such Dispute to their mutual satisfaction.

26.2 If the parties are unable to resolve the Dispute under clause 26.1, then the parties, by mutual agreement will appoint a mediator to mediate the Dispute. Failing such agreement a mediator will be appointed by the President for the time being of the Law Institute of Victoria.

26.3 The parties involved in a Dispute will bear their own costs incurred pursuant to clauses 26.1 and 26.2, except that they will share equally the costs relating to any mediator appointed under clause 26.2.

26.4 Despite the dispute resolution procedures above, a party to this agreement may seek injunctive relief from an appropriate Court.

27. INTERPRETATION

In this Agreement, except to the extent the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to a party to this Agreement;
- (c) a reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns;
- (d) a reference to an item in the Background, clause, schedule, annexure or appendix is a reference to an item in the Background, clause or schedule, annexure or appendix to this Agreement and references to this Agreement include its schedules and any annexures;
- (e) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a document or agreement including this Agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (g) in the interpretation of this Agreement, headings are to be disregarded.