# RPO Software Licence Agreement

This RPO Software Licence Agreement contains the terms and conditions that govern the supply of various products and services to you by RPO Software Pty Ltd ACN 615 243 475 (**RPO Software**) and your use of those products and services.

What makes up this RPO Software Licence Agreement:  This RPO Software Licence Agreement is comprised of the following parts, which together constitute a single legally binding document (**Licence**):

(a)     The Product Schedule (or Product Schedules as the case may be);

(b)     Part A – General Terms and Conditions;

(c)     Part B – Special Terms for the Software Products.

By clicking 'I Agree' in the Product, you have accepted the terms of this Licence current as at the time you click 'I Agree'. Those terms supersede any other agreement, whether verbal or written, by any person, sales agent or sales distributor of RPO Software.

Any expressions not defined in Parts B in these terms will, unless context otherwise requires, have the meaning given in the General Terms and Conditions. If there is any inconsistency between the General Terms and Conditions and Part B, Part B will prevail.

Your use of the RPO Software Services is conditional on your accepting this Licence. By downloading, installing, copying or otherwise using the RPO Software Services, you accept and agree to be bound by the terms of this Licence. Acceptance binds you and all of your employees to the terms and conditions of the Licence. If you do not accept those terms and conditions then do not download, install, copy or use the RPO Software Services.

## Part A - General Terms and Conditions

### A1.    LICENCE TERM

A1.1    This Licence will commence on the Effective Date and will continue for the Initial Period.

A1.2    This Licence will automatically renew for further periods of 1 year (**Renewal Period**) unless a party gives the other party notice of its intention not to renew at least 90 days before the end of the Initial Period.

A1.3    After the end of the Initial Period, the Customer can terminate this Licence in accordance with clause A18.

### A2.    LICENCE

A2.1    RPO Software grants to the Customer a non-exclusive, non-transferable, non-sublicensable limited licence during the Initial Period and each Renewal Period (if any) to access and use the RPO Software Services solely for the Customer's internal business purposes in the Territory.

### A3.    RESTRICTIONS ON LICENCE

A3.1    The Customer must use the RPO Software Services and Product Data strictly in accordance with the Licence terms.

A3.2    The Customer must use the RPO Software Services and the Product Data solely for the purpose for which they are intended, and in accordance with all Laws.

A3.3    Except as expressly permitted under this Licence or to the extent permitted by Law, the Customer and its employees, agents and contractors must not:

(a)     decompile, disassemble, reverse compile or otherwise reverse engineer all or any portion of the RPO Software Services, including any source code, object code, algorithms, methods or techniques used or embodied therein;

(b) modify, duplicate or create any derivative works based upon the RPO Software Services or the Product Data;

(c) distribute, resell, disclose, market, publish, rent, lease, assign, incorporate into any database, sublicense or otherwise transfer any Product or Product Data in any form to any third party, or use the RPO Software Services or the Product Data on behalf of or for the benefit of any third party;

(d) remove or alter any copyright, trademark, logo or other proprietary notice or label appearing on or in the RPO Software Services or the Product Data;

(e) data mine, scrape, crawl, email harvest or use any process or processes that send automated queries to the RPO Software Services or the Product Data;

(f) incorporate any portion of the RPO Software Services or the Product Data into any other materials, products or services that are not intended for the Customer's internal business use; and

(g) use, or offer to use, the RPO Software Services or any Product Data for or in connection with any Direct Marketing activities (unless expressly provided for by this Licence) or with the intention of encroaching upon the privacy of an individual or otherwise breaching the Privacy Act as more specifically set out in clause A22.

## A4. ACCESS TO RPO SOFTWARE SERVICES

A4.1 The Customer will access the RPO Software Services in the manner notified by RPO Software to the Customer. If RPO Software provides the Customer with (or allows the Customer to facilitate the generation of) any account, usernames and/or passwords, the Customer:

(a) bears sole responsibility for protecting all usernames and passwords;

(b) must not share or provide such usernames and passwords to any third party;

(c) will remain fully responsible and liable for any authorised or unauthorised use of any usernames and passwords; and

(d) will for security purposes change such usernames passwords periodically or as directed by RPO Software.

A4.2 The Customer is fully responsible and liable for the acts or omissions of its employees, agents or contractors.

A4.3 If Permitted Users share usernames or passwords in contravention of this clause, each incidence of such sharing will constitute use of the RPO Software Services by a person or entity other than the Customer within the meaning of clause A18.3.

## A5. RIGHTS IN RPO SOFTWARE SERVICES AND PRODUCT DATA

A5.1 RPO Software is (or its third party service providers are) the sole and exclusive owner of all right, title and interest in and to the RPO Software Services and the Product Data, including any and all creations, inventions and intellectual property rights contained or embodied within the RPO Software Services and the Product Data.

A5.2 The Customer:

(a) acquires no rights in or to the RPO Software Services or the Product Data, except for the limited licence in clause A2;

(b) must not, and must not permit any other person or entity to, infringe upon, harm or contest the validity or RPO Software's and its service providers' ownership of the RPO Software Services or the Product Data, or the creations, inventions and intellectual property rights contained or embodied within the RPO Software Services and the Product Data;

(c)     must not make copies (other than for back-up or disaster recovery purposes) or derivative works of the RPO Software Services and the Product Data.

## A6.    CHANGES TO RPO SOFTWARE SERVICES

A6.1    RPO Software reserves the right to change or refine the features and functionality of the RPO Software Services from time to time, although, subject to clause A6.2 below, the Products will during the term of this Licence retain at least the basic features described in the relevant Product Schedule.

A6.2    If RPO Software decides to cease supporting or providing some or all basic features of a given Product forming part of the RPO Software Services being provided to the Customer or to cease offering or providing the Product at all, RPO Software will give the Customer notice of at least 90 days before ceasing to support or provide the said basic features or Product, in which case, without prejudice to any other rights the Customer may have under clause A18, the Customer shall be entitled to terminate this Licence (but only in respect of the said Product) by giving RPO Software notice of at least 30 days commencing at any time during the said 90 day period..

A6.3    RPO Software will not be obliged to provide access to RPO Software Services or Product Data to the extent it is prohibited from doing so by Law or any of its agreements with its suppliers or service providers.

## A7.    CUSTOMER MATERIALS

A7.1    If the Customer provides any Customer Materials to RPO Software, the Customer hereby grants to RPO Software and its service providers a worldwide, royalty-free, perpetual, irrevocable, non-exclusive right and licence to use, reproduce, distribute, transmit, perform, display (publicly or otherwise), adapt, make derivative works of, and otherwise commercialise and exploit, the Customer Materials.

A7.2    The Customer represents and warrants to RPO Software and its service providers that:

(a)     it has the right to grant the licences referred to above, in and to the Customer Materials;

(b)     the Customer Materials do not and will not infringe the rights of any third parties, RPO Software and its service providers, including, without limitation, intellectual property rights; and

(c)     that the Customer Materials are free of worms, viruses, trojan horses, malware and any other disabling code.

A7.3    The Customer represents and warrants to RPO Software that it will abide by all applicable Laws, rules and regulations for Customer Materials posted to RPO Software's websites or entered into the RPO Software Services.

A7.4    Because the Customer Materials are not in any way developed or provided by RPO Software, RPO Software will not be responsible to check or verify any Customer Materials nor assess it for suitability for any purpose. Accordingly, any use of or reliance by the Customer upon anything contained in the Customer Materials will be at the Customer's own risk.

A7.5    To the extent the Customer Materials include any Personal Information, the Customer warrants that it has obtained consent from the relevant individuals to use and disclose any such Personal Information as contemplated in this Licence, and that use of the Customer Materials will not put RPO Software in breach of the Privacy Act.

A7.6    RPO Software may in its discretion remove or refuse to distribute or publish in or within its Products any Customer Materials which breach this Licence.

## A8. FEES

A8.1 The Customer will pay the fees set out in the Product Schedule (**Fees**). All Fees, when paid, are non-refundable, even if the Customer stops using the RPO Software Services or the Product Data.

A8.2 Except as expressly provided for in the Product Schedule, all RPO Software Services are GST exclusive. If provision of the RPO Software Services under this Licence is subject to GST, the Customer must pay to RPO Software an additional amount equal to the relevant fee multiplied by the applicable GST rate. Such additional amount is payable at the same time as the related fee. RPO Software will provide the Customer with a Tax Invoice on a periodic basis and in any event in accordance with the GST Law.

A8.3 RPO Software may at its discretion increase the Fees for or during any Renewal Period by providing the Customer written notice of its intention to do so at least 30 days prior to the application of the increase. On receiving a notice of a Fee increase from RPO Software, the Customer may terminate this Licence by giving RPO Software written notice within 30 days of its receipt of the notice of Fee increase.

A8.4 Any amounts not paid to RPO Software when due will be subject to simple interest equal to 10% per annum, calculated on a daily basis.

## A9. LIMITED WARRANTY

A9.1 RPO Software represents and warrants that the RPO Software Services will have those features described in the Product Schedule or in Part B, and that it will use commercially reasonable efforts to ensure that the RPO Software Services are accessible in accordance with this Licence. If this warranty is breached, RPO Software's only obligation (and its service providers' only obligation) is to use commercially reasonable efforts to modify, correct or provide access to the RPO Software Services.

## A10. ALL OTHER WARRANTIES EXCLUDED

A10.1 To the fullest extent permitted by Law (subject to clause A10.3), all other warranties are excluded.

A10.2 To the fullest extent permitted by Law (subject to clause A10.3), RPO Software and its service providers expressly disclaim all warranties:

(a) that the RPO Software Services or the Product Data will meet the Customer's requirements or be fit for any particular purpose;

(b) that the RPO Software Services or the Product Data will be error-free;

(c) that, if the RPO Software Services and Product Data are accessed via the RPO Software's website, RPO Software's website will function in an uninterrupted manner, be available 24 hours a day, 7 days a week, or be fully secure;

(d) that, if the RPO Software Services include software installed by RPO Software, the software will be secure, timely, uninterrupted or error-free, will operate in combination with any other hardware, software, system or data, or will meet the Customer's requirements or expectations;

(e) that any data stored by RPO Software will be accurate, reliable or secure;

(f) that errors or defects will be corrected, although RPO Software will endeavour to correct errors within a reasonable time;

(g) related to the correctness, accuracy, reliability of the RPO Software Services or the resulting Product Data (or otherwise);

(h) that the RPO Software Services will be free of viruses or other harmful components, although RPO Software will use reasonable endeavours to ensure that the RPO Software Services will be free of viruses;

(i)      that the statistical methods on which any of the RPO Software Services are based use appropriate or accurate assumptions, are fit for the Customer's particular purpose or are otherwise suitable for the Customer's use; or

(j)      that the performance of the RPO Software Services will not be affected by data entry errors, including incorrect entries, double entries or delayed entries, or incorrect or untimely data supplied by the RPO Software's third party suppliers.

A10.3    If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by RPO Software in connection with this Licence, and RPO Software's liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses A10.1, A10.2 and A12 do not apply and instead RPO Software's liability for such failure is limited:

(a)      in the case of goods, to any one or more of the following (as RPO Software and its service providers may in their discretion determine):

(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 acquiring equivalent goods; or

(iv)      the payment of the cost of having the goods repaired; or

(b)      in the case of services, to any one of the following (as RPO Software and its service providers may in their discretion determine):

(i)      the supplying of the services again; or

(ii)      the payment of the cost of having the services supplied again, except as expressly provided elsewhere in this Licence.

A10.4    The RPO Software Services do not constitute an appraisal of the subject property. They should not be relied upon in lieu of an appraisal or underwriting process. The accuracy of the methodology used to develop the Product Data generated by the RPO Software Services, the existence of the subject property, and the accuracy of the predicted value and all rule sets provided are estimates based on available data and are not guaranteed or warranted. The condition of the subject property and current market conditions can greatly affect the validity of the RPO Software Services and the Product Data. Any Product Data generated does not include a physical inspection of the subject property or a visual inspection or analysis of current market conditions by a licensed or certified appraiser, which is typically included in an appraisal.

## A11. THIRD PARTY AGREEMENTS

A11.1    The Customer acknowledges that it has read, understands and agrees to any additional terms, conditions and limitations imposed by RPO Software's third party suppliers that are set out in Part B or notified to the Customer.

A11.2    The Customer acknowledges that RPO Software has entered into licensing agreements for the use of data with various third party data suppliers (**Third Party Agreements**), and as such RPO Software is bound by certain contractual obligations. The Customer agrees:

(a)      to comply with and/or accept responsibility for RPO Software's obligations expressed or implied in those Third Party Agreements, as notified to the Customer;

(b)      that a relevant Third Party Agreement may expire or terminate during the period of this Licence, or that suppliers under a Third Party Agreement may cease to provide the relevant services, products or data for any reason or direct RPO

Software to alter the way in which the RPO Software Services are provided; and that in such circumstances:

(i)     RPO Software will not be required, nor have any obligation, to provide some or all of the RPO Software Services to the Customer; and

(ii)    RPO Software will have no liability for any failure to provide the RPO Software Services to the Customer.

## A12.    LIMITATION OF LIABILITY

A12.1   Subject to clause A10.3, the Customer assumes the risk in using the RPO Software Services and the Product Data, as well as total responsibility for establishing such procedures for data backup and virus checking as the Customer considers necessary.

A12.2   To the maximum extent permitted by Law and subject to clause A10.3, in no event (including without limitation in the event of liability under clause A22) will RPO Software's and its service providers' aggregate liability to the Customer for any causes whatsoever exceed the lesser of ten thousand dollars (AUD$10,000) and the amount of Fees actually paid by the Customer to RPO Software under this Licence.

A12.3   To the maximum extent permitted by Law and subject to clause A10.3, in no event will RPO Software or its service providers be liable for:

(a)     any Consequential Loss; or

(b)     damages for any loss of profits or revenue, loss resulting from interruption of business or loss of use or data, arising out of or relating to this Licence, however caused, even if RPO Software and its service providers have been advised of or should have known of the possibility of such loss.

## A13.    THIRD PARTY CLAIMS

A13.1   RPO Software will defend, or at its option settle, any third party claim or suit brought against the Customer on the basis that the Customer's use of the RPO Software Services as permitted under this Licence, infringes any of such party's Australian patents or copyrights, and will pay any final judgment entered against the Customer or any settlement of such claim or suit.

A13.2   RPO Software's obligations in this clause are subject to the following conditions:

(a)     the Customer promptly notifies RPO Software in writing of any allegation of infringement, and fully cooperates with RPO Software, at RPO Software's reasonable cost, in the defence or settlement of such claim or suit;

(b)     the Customer makes no admissions;

(c)     the Customer at RPO Software's request allows RPO Software or its representatives to solely conduct and/or settle all negotiations and litigation; and

(d)     any costs incurred and recovered in such negotiations and litigation will be to the account of RPO Software and/or its assignee.

A13.3   If any part of the RPO Software Services or the Product Data is, or in RPO Software's opinion may become, subject of any claim or suit for any infringement, RPO Software may at its own expense and option modify or replace the affected RPO Software Services or Product Data so that it is non-infringing, or obtain for the Customer the right to continue using the affected RPO Software Services or Product Data. If neither of those options is in RPO Software's opinion commercially reasonable, RPO Software may terminate this Licence with immediate effect, after which time the Customer's use of the affected RPO Software Services or Product Data will be at the Customer's sole risk.

A13.4   RPO Software's obligations under this clause:

(a) will not apply to, and the Customer will indemnify and hold RPO Software and its service providers harmless from, any claim based upon use of any RPO Software Services or any Product Data in combination with any equipment, services, data, algorithms, models, indices, tools and/or products not supplied by RPO Software or its service providers, if the alleged infringement would not have occurred but for such use;

(b) will not apply to, and the Customer will indemnify and hold RPO Software and its service providers harmless from, any claim relating to Customer Materials, including RPO Software's and its service providers' use of Customer Materials as permitted under this Licence; and

(c) are limited as to quantum as set out in clause A12.

## A14. DIRECTIONS

A14.1 The Customer will follow all reasonable instructions that RPO Software gives about the use of the RPO Software Services and Product Data.

## A15. RECORDS, RIGHT TO INSPECT AND AUDIT

A15.1 The Customer must maintain complete and accurate records of the Customer's use of the RPO Software Services and the Product Data.

A15.2 The Customer:

(a) grants RPO Software and its licensees for that purpose, upon notice to the Customer of at least seven days, the right to inspect and/or audit the Customer's records and/or system in order to assess the Customer's compliance with this Licence; and

(b) must co-operate with any investigation concerning the use by the Customer of the RPO Software Services or Product Data.

A15.3 Without limiting the generality of clause A15.2 above, RPO Software may within its sole discretion monitor all Product Data and the Customer's use of the Product, including without limitation by accessing Product logs, but will not access the Customer's systems for that purpose without giving notice in accordance with clause A15.2 above.

## A16. GOOGLE

A16.1 The RPO Software Services may incorporate Google Maps software provided by Google Inc. Where Google Maps software is incorporated into the RPO Software Services the Customer agrees to be bound by:

(a) the "Google Maps Terms and Conditions"; and

(b) the "Google Maps Legal Notices",

(together the **Google Terms**).

A16.2 If the Customer breaches the Google Terms, the Customer will indemnify and hold RPO Software and its service providers harmless from any claim whatsoever by Google Inc. relating to the Customer's breach of the Google Terms.

## A17. CONFIDENTIALITY

A17.1 No Confidential Information may be disclosed by the Customer to any person or entity except:

(a) employees of the Customer requiring the information for the purposes of this Licence who:

(i) are aware of the confidentiality obligations imposed in this clause A17; and

(ii) have entered into written confidentiality agreements with the Customer which require such employees to comply with confidentiality obligations no less restrictive than those set forth in this clause A17;

(b) to the extent the Customer is required to do so by Law; or

(c) to the extent the Customer is required to do so in connection with legal proceedings relating to this Licence.

A17.2 Subject to its rights under this Licence, no Confidential Customer Information may be disclosed by RPO Software to any person or entity except:

(a) employees of RPO Software requiring the information for the purposes of this Licence who:

(i) are aware of the confidentiality obligations imposed in this clause A17; and

(ii) have entered into written confidentiality agreements with RPO Software which require such employees to comply with confidentiality obligations no less restrictive than those set forth in this clause A17;

(b) to the extent RPO Software is required to do so by Law; or

(c) to the extent RPO Software is required to do so in connection with providing the RPO Software Services or Products under, or in connection with legal proceedings, relating to this Licence.

A17.3 The Customer must not use Confidential Information, and RPO Software must not use Confidential Customer Information, except for the purpose of exercising their respective rights or performing their respective obligations under this Licence.

A17.4 Clauses A17.1, A17.2 and A17.3 do not apply to Excluded Information.

A17.5 Notwithstanding clauses A17.1, A17.2 and A17.3, the Customer may disclose parts of the Product Data, or conclusions or summaries of information based on the Product Data, provided that the Customer has first obtained RPO Software's prior written consent for such disclosure and the Customer gives RPO Software credit as the source of the underlying data in a manner reasonably instructed by RPO Software.

A17.6 The parties will each take any action that is necessary to prevent or remedy any breach of that party's confidentiality obligations or other unauthorized disclosure of Confidential Information or Confidential Customer Information as the case may be.

A17.7 The Customer acknowledges that due to the unique nature of the Confidential Information, any breach by the Customer of its obligations under this clause A17 could result in irreparable harm to RPO Software and its service providers for which there is no adequate remedy; and therefore, upon any such breach or threat thereof, RPO Software and its service providers will be entitled to injunctive and other appropriate equitable relief (without the necessity of proving damages, or posting bond or other security), in addition to whatever remedies RPO Software and its service providers may have at Law.

A17.8 RPO Software acknowledges that due to the unique nature of the Confidential Customer Information, any breach by RPO Software of its obligations under this clause A17 could result in irreparable harm to the Customer for which there is no adequate remedy; and therefore, upon any such breach or threat thereof, the Customer will be entitled to injunctive and other appropriate equitable relief (without the necessity of proving damages, or posting bond or other security), in addition to whatever remedies the Customer may have at Law.

A17.9 The Customer will not remove, alter, obscure or otherwise modify any trademark, copyright or other proprietary notice or legend or legal disclaimer placed on or contained within the Confidential Information.

A17.10 The Customer may not make press or other announcements or releases relating to this Licence or the transactions that are the subject of this Licence without RPO Software's prior written approval as to the form and manner of the announcement or release, unless and to the extent that the announcement or release is required to be made by the Customer by Law or by a stock exchange upon which the Customer is listed.

A17.11 Except as otherwise agreed or duly required by Law or any regulatory authority, no party will disclose the terms of this Licence to any person or entity other than its employees, accountants, auditors, financial advisers or legal advisers on a confidential basis.

## A18. BREACH AND TERMINATION

A18.1 If the Customer (or its employees, agents or contractors) breaches any term of this Licence, RPO Software may, at its election, do one or any of the following:

(a) suspend or terminate the Customer's access to the RPO Software Services or Product Data immediately upon written notice to the Customer;

(b) commence proceedings against the Customer for any loss or damage RPO Software suffers as a result of the breach;

(c) refer the matter (including the Customer's name and contact details) to any debt collector or other third party to assist RPO Software in collecting any fee not paid to RPO Software under the terms of this Licence, including conducting any consumer credit searches or listing the Customer with a credit reporting agency.

A18.2 RPO Software and its service providers reserve the right to suspend or terminate the Customer's access to the RPO Software Services in circumstances where:

(a) RPO Software or its service providers reasonably believe that the Customer (which includes its agents or employees) has used or disclosed the RPO Software Services, Product Data or other Confidential Information in a manner not permitted under this Licence or otherwise has materially breached this Licence; or

(b) an event of force majeure occurs that affects RPO Software's ability to provide the RPO Software Services or Product Data.

A18.3 If any use is made of the RPO Software Services or the Product Data by any person or entity other than the Customer and such use is attributed to the act or default of the Customer, then without prejudice to RPO Software's other rights and remedies, the Customer will immediately be liable to pay to RPO Software an amount equal to the charges which such person or entity would have been obliged to pay had RPO Software granted a licence to the unauthorised user at the beginning of the period of the unauthorised use.

A18.4 Either party has the right to terminate this Licence, by a written notice to the other party specifying the event or events in relation to which the notice is given, if:

(a) the other party becomes Insolvent; or

(b) the other party commits a breach of this Licence, and

(i) the breach is material and not capable of being cured; or

(ii) if the breach is capable of being cured and the defaulting party fails to cure the breach within 30 days of being notified in writing of the breach by the party giving the notice (**Rectification Period**).

A18.5 If the Customer fails to rectify any breach within the Rectification Period, RPO Software may, at its election, accept the Customer's failure to rectify as:

(a) a repudiation of this Licence; and

(b)    90 days notice of the Customer's intention to terminate this Licence in accordance with this clause A18 commencing from the date the Rectification Period expired.

A18.6    Following the Initial Period, either party may terminate this Licence, with or without cause, upon at least 90 days prior written notice to the other party. If the Customer delivers a written notice to terminate under this clause, it must also deliver payment (if it has not done so already) for the entire 90 days notice period.

## A19.    CONSEQUENCES OF TERMINATION

A19.1    If this Licence is terminated or expires, all of the Customer's rights to use the RPO Software Services and Product Data will immediately end, and the Customer will at its expense promptly return, or at RPO Software's election destroy, any copies of RPO Software Services, Product Data and other Confidential Information that are either in the Customer's possession or under the Customer's control.

A19.2    Termination of this Licence will not act as a waiver of any breach of this Licence and will not act as a release of either party from any liability for breach of such party's obligations under this Licence.

A19.3    A party's termination of this Licence will be without prejudice to any other right or remedy that it may have, and will not relieve either party of any obligation or liability which arose prior to the effective date of such termination.

A19.4    The following clauses will survive any termination of this Licence: A5; A7; A8; A9; A10, A11.1, A12; A14; A16; A17; A18; A19; A20; A22; and A24.

## A20.    CUSTOMER INDEMNITY

A20.1    The Customer will indemnify and keep indemnified RPO Software, its employees and consultants, and each of them, from and against all liabilities, damages, costs, loss or expense incurred by any of them in or arising out of any third party claim made against any of them to the extent that the third party claim arose out of any breach by the Customer of:

(a)    clauses A2 or A3 above; or

(b)    the rights of any third parties.

## A21.    NOTICES

A21.1    All notices hereunder will be in writing addressed to the parties at their respective addresses notified to each other from time to time.

A21.2    Notice will be deemed given:

(a)    in the case of hand-delivered mail upon delivery or in the case of mail upon written acknowledgment or receipt by an officer or other duly authorised employee, agent or representative or the receiving party (such receipt not to be unduly delayed or withheld);

(b)    in the case of ordinary mail on the fourth day after the date of posting;

(c)    in the case of email transmission upon the email being sent.

A21.3    A party may change its address for service of notices under this clause by giving written notification of the new address to the other party.

## A22.    PRIVACY

A22.1    RPO Software is bound by Privacy Laws and has developed a Privacy Policy, available on RPO Software's website. To the extent that the RPO Software Services or Product Data contain Personal Information, the Customer must:

(a)     comply with all applicable Privacy Laws and ensure that its employees, agents and contractors do so;

(b)     only use personal information that RPO Software discloses for the purpose for which it was disclosed;

(c)     notify RPO Software immediately (by email to support@console.com.au) of any privacy complaints or events which may cause any applicable Privacy Law to be breached; and

(d)     assist RPO Software in dealing with any complaints or potential breaches, including proving its access to relevant information.

A22.2   RPO Software will:

(a)     comply with all applicable Privacy Laws and ensure that its employees, agents and contractors do so;

(b)     subject to its rights under this Licence, only use personal information that the Customer discloses for the purpose for which it was disclosed; and

(c)     assist the Customer in dealing with any complaints or potential breaches, including proving its access to relevant information.

## A23.    GENERAL PROVISIONS

A23.1   No right under this Licence will be deemed to be waived except by notice in writing signed by the party to be bound.

A23.2   This Licence will be governed by and construed in accordance with the Laws in force in the State of Queensland. Each party submits to the non-exclusive jurisdiction of the courts of that place.

A23.3   Variations to this Licence will not be binding unless in writing signed by each party. Written acceptance includes email and online notification of a party's acceptance.

A23.4   The Customer cannot assign this Licence without RPO Software's written consent, which will not be unreasonably withheld. RPO Software may assign this Licence or any right or obligation under this Licence without the prior consent of the Customer, but will give notice to the Customer if this occurs.

A23.5   The Customer warrants that it has not relied:

(a)     on any representation made by RPO Software which has not been expressly stated in this Licence; or

(b)     on the descriptions or specifications contained in any document or material produced or made available by RPO Software.

A23.6   RPO Software will not be liable for any failure to perform or delay in performing its obligations if the failure or delay results from circumstances beyond the control of RPO Software (whether happening in the Territory or elsewhere), including acts of God, refusal of licence, refusal or revocation of any telecommunications organisation's consent in respect of data communication equipment, government act, fire, explosion, accident, strike, industrial dispute, civil commotion or impossibility of obtaining material and/or data.

A23.7   If the whole or any part of a provision of this Licence is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. This clause has no effect if the severance alters the basic nature of this Licence or is contrary to public policy.

A23.8   Nothing contained or implied in this Licence makes one party the partner, agent, or legal representative of the other party for any purpose. Nothing in this Licence creates a partnership, agency or trust, and neither party has any authority to bind the other party.

A23.9   The rights and remedies provided in this Licence are in addition to other rights and remedies given by Law.

## A24.   DEFINITIONS AND INTERPRETATION

A24.1   In these General Terms and Conditions, unless the context requires otherwise, or unless otherwise provided in a relevant Product Schedule:

**Confidential Information** means all confidential, non-public or proprietary information, regardless of how the information is stored, which is delivered to the Customer before, on or after the date of this Licence, relating to the RPO Software Services, product information services or the business, technology or other affairs of RPO Software, including any Product Data, valuation and market share analyses, valuation models and tools, indices, programs or algorithms.

**Confidential Customer Information** means all confidential, non-public or proprietary information, regardless of how the information is stored, which is delivered to RPO Software before, on or after the date of this Licence, relating to the Customer, its products, business, technology or other affairs.

**Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

**Customer** means you and any other parties for or on whose behalf you enter into this Licence

**Customer Materials** means any and all data, information, content, photographs, metadata and other materials provided or that may be supplied to RPO Software by the Customer (or obtained by RPO Software from the Customer), directly or indirectly, including any content posted or entered into any Product from time to time.

**Direct Marketing** means one to one marketing using personal details (eg: name, address, email address), normally supported by a database/resource, which uses one or more advertising media to affect a measurable response and / or transaction from a person and includes, but is not limited to, telemarketing, bulk email messaging, postal canvassing and list brokering.

**Effective Date** means the date and time that the Customer accepts these terms by either clicking "I accept" when indicated, by signing (electronically or otherwise) any Product Schedule provided by RPO Software in relation to the RPO Software Services, by taking any of the steps set out in a Product Schedule as being ways to accept these terms, or by installing or using any of the RPO Software Services, whichever occurs first.

**Excluded Information** means Confidential Information which:

(a)   is in or becomes part of the public domain other than through breach of this Licence or an obligation of confidence owed to RPO Software;

(b)   the Customer can prove, by contemporaneous written documentation, was already known to it at the time of disclosure by RPO Software (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or

(c)   the Customer acquires from a source other than RPO Software where such source is entitled to disclose it.

**GST** has the meaning given to that term in the GST Law.

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

**Initial Period** means the initial period or term specified in the Product Schedule

**Insolvent** means, with respect to an entity, that such entity is or states that it is insolvent, is unable to pay its debts as they come due, is in liquidation, is under administration or has a

controller appointed to its property, ceases conducting business in the normal course, is subject to any arrangement to protect itself from creditors or dissolves.

**Law** means common law, principles of equity, and laws made by parliament (laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

**Permitted Users** means parties who have been allocated usernames and passwords in relation to RPO Software Services in accordance with this Licence

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.

**Privacy Laws** means any legislation (or mandatory government policy, where applicable) enacted by State or Federal agencies in relation to privacy and includes the *Privacy Act 1988* (Cth).

**Privacy Policy** means RPO Software's privacy policy located at https://www.console.com.au/privacy-statement/.

**Product** means the Product or Products (including any Software) defined in a Product Schedule.

**Product Data** means any data or results, including any property information, ownership information, sales information, prices, photographs, valuation or market share analyses, index results or alerts, contained within or provided through the RPO Software Services.

**Product Schedule** means the schedule provided to the Customer separately in either hard or soft copy or online which is executed or accepted by or on behalf of the Customer which contains the Product identity and description, the fees payable and other material terms of the Customer's right to use the Product.

**Renewal Period** has the meaning given in clause A1.

**RPO Software Services** means any Product or service (including support services) selected in the Product Schedule, and any other services being provided by RPO Software to the Customer pursuant to the terms of this Licence.

**Tax Invoice** has the meaning given to that term in the GST Law.

**Territory** means Australia and New Zealand.

A24.2   The headings in this Licence are for convenience of reference only and will not affect the interpretation hereof. The words "include" and "including" are not words of limitation. Words importing the singular number will include the plural and vice versa.

# Part B – Special Terms for Software Products

THESE SPECIAL TERMS APPLY TO CUSTOMERS USING SOFTWARE PRODUCTS.

## B1.   DURATION – SOFTWARE PRODUCTS

B1.1   The Term of use for any Software Product will be as stipulated in the Product Schedule and clause 1 of the General Terms and Conditions.

## B2.   LICENCE OF SOFTWARE PRODUCTS

B2.1   Subject to the General Terms and Conditions, this Part B, and the Customer's performance of its obligations, RPO Software grants to the Customer a non-exclusive, non-transferable, non-sublicensable limited licence during the Initial Period and any subsequent Renewal Period to use the Software and the Product Data supplied by RPO Software or its suppliers for the purpose described in the Product Schedule and the General Terms and Conditions, within the Customer's enterprise only and solely for the Customer's internal business purposes in the Territory.

B2.2     This licence extends to any corrections and updates supplied by RPO Software or its suppliers for any Software or any Product Data.

## B3.    RESTRICTIONS ON USE

B3.1     Each programme and/or data is licensed for use only with that equipment and only at the particular sites listed in the Product Schedule. The Customer must not disseminate or access the system from that site or sites and/or access the system from other sites not listed in the Product Schedule without having first obtained written consent of RPO Software to do so. The parties agree that the licence granted under this Contract will cease immediately upon the termination of this Licence.

B3.2     The Customer may only make so many copies of the Software or any Product Data as are necessary for operational back up and security.

## B4.    INSTALLATION OF SOFTWARE, FEES AND SUPPORT – SOFTWARE PRODUCTS

B4.1     The Customer agrees that it has read, understood and will comply with the System Requirements as published and updated from time to time at RPO Software's website.

B4.2     RPO Software will install the Software on the Customer's network in conjunction with the Customer's preferred technical service provider (if possible). If the Customer's network, hardware or software configuration does not comply with the System Requirements at the date or time of installation by RPO Software of the Software, additional fees may be charged to the Customer as a result of RPO Software having to undertake further installation work.

B4.3     RPO Software will provide the Customer with help desk support for the Software by telephone during business hours to be advised by RPO Software from time to time. Any further training or consulting required by the Customer will incur additional fees.

B4.4     Any implementation fees payable as a result of RPO Software installing the software for the Customer, will be itemised in the Product Schedule and will be due and payable within 7 days of the execution or acceptance of the Product Schedule.

B4.5     RPO Software may, but is not obliged to, assist the Customer to import Customer Materials and/or convert Customer Materials for use by the Software. If RPO Software does provide any such assistance or service, then, without limiting the generality of clause B6 below:

      (a)     RPO Software will under no circumstances bear any liability in respect of any error in or during any importation or data conversion process;

      (b)     the Customer will bear sole responsibility for inputting Customer Materials into the Software and for reviewing and ensuring the integrity, quality and accuracy of such Customer Materials before and after importation and/or conversion.

B4.6     All monthly licence fees will be invoiced in accordance with Product Schedule and will commence on the earlier of:

      (a)     installation of the Software; or

      (b)     the supply of any login details to the Customer to access the Software; or

      (c)     45 days after the Customer executes this Licence.

## B5.    CUSTOMER MATERIALS – SOFTWARE PRODUCTS

B5.1     In addition to clause A7 of the General Terms and Conditions, the following clauses apply to Customer Materials within the Software Product and/or provided to RPO Software through the Software Product.

B5.2     The Customer may from time to time provide or otherwise make available to RPO Software the Customer Materials. The Software may from time to time send to RPO Software information about the Software, the Customer's use of the Software and

Customer Materials made available to the Software. By using the Software, you consent to the transmission of this information. The Customer hereby grants RPO Software and its service providers a worldwide, royalty-free, perpetual, irrevocable, non-exclusive right and licence to use, reproduce, distribute, transmit, perform, display (publicly or otherwise), adapt, make derivative works of, and otherwise commercialise and exploit, the Customer Materials.

B5.3    The Customer represents and warrants to RPO Software and its service providers that it has the right to grant the foregoing licences in and to the Customer Materials; that the Customer Materials do not and shall not infringe upon or misappropriate any rights, including, without limitation, intellectual property rights, of any third parties or RPO Software and its service providers; and that such Customer Materials are free of worms, viruses, Trojan Horses and other disabling code.

## B6.    LIMITED WARRANTY – SOFTWARE PRODUCTS

B6.1    Despite clause A9 of the General Terms and Conditions, RPO Software warrants that if the Customer follows the instructions and meets the System Requirements, the Software will perform substantially as described in the materials that RPO Software provides in or with the Software.

B6.2    Except to the extent specified to the contrary in this Licence, RPO Software will not be obliged to support the Software, whether by providing advice, training, error correction, modifications, updates, new releases or enhancements or otherwise.

B6.3    Despite any other provision of this Licence, RPO Software will not be liable for any error or defect in the Software, or any delay, to the extent that such error, defect, failure or delay occurs as a result of:

(a)    any default of the Customer or its agents, employees or contractors;

(b)    any failure on the part of the Customer to meet the System Requirements; or

(c)    any failure due to a hardware fault provided such hardware fault is not caused by or in the reasonable control of RPO Software or its employees, agents or sub-contractors.

## B7.    DEFINITIONS

**Software** or **Software Product** means rp.office, any software set out in the Product Schedule and other customer hosted software products developed or released by RPO Software from time to time, and which are supplied to the Customer by RPO Software under this Licence.

**System Requirements** means the document of the same name published by RPO Software at RPO Software's website or otherwise provided or made available to the Customer, as updated and updated from time to time, and which sets out the hardware, operating systems and software requirements for the effective utilisation of the Software within the Customer's environment.