

DATE _____

PARTIES:

- (1) **COMPUTING INNOVATIONS**, registered office at Shop 4, Hibiscus Centre, 28 Ridge St, Nambucca Heads, NSW 2448 (the "Supplier"); and
- (2) _____

_____ (the "Customer").

AGREEMENT:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"**Agreement**" means this agreement (including the Schedules) and any amendments to it from time to time;

"**Business Day**" means any week day, other than a bank or public holiday;

"**Business Hours**" means between 08:30 and 16:30 on a Business Day;

"**Charges**" means the amounts payable by the Customer to the Supplier under or in relation to this Agreement (as set out in Schedule 2);

"**Effective Date**" means the date of execution of this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hardware**" means the physical desktop computer(s), laptop(s) and peripheral devices attached to such, which belong to the Customer and are covered by this agreement;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Minimum Term**" means the period of 12 months following the Effective Date;

"**Schedule**" means a schedule attached to this Agreement;

"**Services**" means the support services provided or to be provided by the Supplier to the Customer under this Agreement;

"**Software**" means the operating system software installed on the Hardware, for example Microsoft Windows™. It may also include other software programs at the Supplier's discretion;

"**Term**" means the term of this Agreement; and

- 1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this Agreement.

2. TERM

This Agreement will come into force on the Effective Date and will continue in force until terminated in accordance with Clause 11.

3. SERVICES

3.1 The Supplier will provide the Services specified in Schedule 1 to the Customer during the Term in accordance with the terms and conditions of this Agreement.

3.2 The Supplier may suspend the provision of any Services if any amount due to be paid by the Customer to the Supplier under this Agreement is overdue by more than 7 days.

4. CUSTOMER OBLIGATIONS

The Customer will provide the Supplier with access to the Software and Hardware, and such other co-operation as is required by the Supplier to enable the performance by the Supplier of its obligations under this Agreement.

5. INVOICING

The Supplier will issue invoices for the Charges to the Customer as set out in Schedule 2.

6. PAYMENT

6.1 The Customer will pay the Charges to the Supplier within 7 days of the date of issue of an invoice issued in accordance with Clause 5.

6.2 All Charges stated in or in relation to this Agreement are stated inclusive of GST, unless the context requires otherwise.

6.3 Charges are paid monthly via recurring EFTPOS payment, or by direct bank transfer by monthly standing order.

6.4 If the Customer does not pay any amount properly due to the Supplier under or in connection with this Agreement, the Supplier may charge the Customer interest on the overdue amount at a rate of 10% per year.

7. NOT USED

8. NOT USED

9. WARRANTIES

9.1 The Customer warrants to the Supplier:

- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement; and
- (b) that the Software, Hardware and any works or materials provided by or on behalf of the Customer to the Supplier for the purpose of assisting with or enabling the maintenance of the Software/Hardware, and their use by the Supplier in accordance with the terms of this Agreement will not:
 - (i) infringe any person's Intellectual Property Rights or other legal rights;
 - (ii) breach any laws, statutes or regulations; or
 - (iii) give rise to a cause of action against the Supplier or the Customer or any other person, in each case in any jurisdiction and under any applicable law.

9.2 The Supplier warrants and represents to the Customer:

- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
- (b) that it will perform its obligations under this Agreement with reasonable care and skill;
- (c) that any work undertaken will not:
 - (i) infringe any person's Intellectual Property Rights or other legal rights;
 - (ii) breach any laws, statutes or regulations; or
 - (iii) give rise to a cause of action against the Supplier or the Customer or any other person, in each case in any jurisdiction and under any applicable law.

9.3 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

10.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

10.2 The limitations and exclusions of liability set out in this Clause 10:

- (a) are subject to Clause 10.1;
- (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

10.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

10.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.

10.5 Neither party will be liable for any loss of or damage to goodwill or reputation.

10.6 Neither party will be liable in respect of any loss or corruption of any data, database, software or hardware.

10.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.

10.8 Neither party will be liable for any losses arising out of a Force Majeure Event.

10.9 Neither party's liability in relation to any event or series of related events will exceed the total amount paid and payable by the Customer to the Supplier under the Agreement during the 6 month period immediately preceding the event or events giving rise to the claim.

11. TERMINATION

11.1 Either party may terminate this Agreement at any time by giving at least 30 days' written notice to the other party, such notice to expire at any time after the end of the Minimum Term.

- 11.2 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of this Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).

- 11.3 Either party may terminate this Agreement immediately by giving written notice to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
 - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

12. EFFECTS OF TERMINATION

- 12.1 Upon termination of this Agreement, all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6.4, 10, 12 and 15.

- 12.2 Termination of this Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

- 12.3 Upon termination of this Agreement by the Customer under Clause 11.2 or Clause 11.3, the Customer will be entitled to a refund of any Charges paid by the Customer to the Supplier in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Supplier (such amount to be calculated by the Supplier using any reasonable methodology).

13. NOTICES

- 13.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by post, or sent by fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address as notified by one party to the other in accordance with this Clause.

- 13.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by post, 96 hours after posting; and
 - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

14. DATA PROTECTION

- 14.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Supplier under or in connection with this Agreement.

- 14.2 The Supplier warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Supplier on behalf of the Customer; and
 - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Supplier on behalf of the Customer.

15. GENERAL

- 15.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

- 15.2 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

- 15.3 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

- 15.4 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

- 15.5 The Customer hereby agrees that the Supplier may freely assign any or all of its contractual rights and/or obligations under this Agreement to any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any contractual rights or obligations under this Agreement.

- 15.6 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 15.7 Subject to Clause 10.1:
 (a) this Agreement constitutes the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.
- 15.8 This Agreement will be governed by and construed in accordance with the laws of Australia and the courts of Australia will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

SCHEDULE 1 - SERVICES

1. REMOTE SUPPORT SERVICE

- 1.1 The Supplier will make available, during Business Hours, a telephone and email helpdesk facility for the purposes of:
 (a) assisting the Customer with the proper use of the Software and/or Hardware;
 (b) determining the causes of errors in the Software and/or Hardware; and/or
 (c) fixing problems with the Software and/or Hardware.
- 1.2 The Supplier will use all reasonable endeavours to assist with issues raised by the Customer promptly.
- 1.3 In the first instance, all support requests will be provided remotely via telephone, email or remote connection to the Customer's computer(s).
- 1.4 If the Supplier determines that physical access to the Software/Hardware is required, then either
 (a) a call-out can be scheduled for an on-site visit; or
 (b) the Customer can deliver the Hardware to the Supplier's address;
 in each case by mutual agreement between both parties.

2. LIMITS ON SERVICES

- 2.1 There is no set limit as to the amount of Remote Support that the Customer may receive each calendar month, however the Supplier retains the right to invoke a "fair usage policy" such that if the demands of the Customer are so excessive that they are impacting on the Supplier's business or causing other customers to be neglected, then the Supplier may defer carrying out the Services for a reasonable period of time.
- 2.2 Where the total person-hours spent by the Supplier (a) on-site performing the Services; or (b) in-store following the delivery of the Hardware, during any one calendar month exceed 3 hours, then:
 (a) the Supplier will cease to have an obligation to provide those Services to the Customer during that period; providing that
 (b) the Supplier agrees to provide additional Services to the Customer during that period, but the provision of such services will be subject to payment by the Customer at the Supplier's standard hourly rate .
- 2.3 There is no limitation on the number of call-outs that the Customer may have each calendar month, and no charge is made for the call-out service in each case when the Supplier deems that a call-out is required.
- 2.4 The Supplier will have no obligation under this Agreement to provide Services in respect of any fault or error caused by:
 (a) the improper use of the Software or Hardware;
 (b) the use of the Software or Hardware otherwise than in accordance with its documentation.

SCHEDULE 2 - CHARGES

1. MONTHLY SUPPORT CHARGE

- 1.1 (a) On the Effective Date; and
 (b) on the first day of each following calendar month while this agreement is in effect,
 the Customer shall pay a Charge depending on how many computers/laptops are being covered by this Agreement :-
 (i) 1-3 computers – **\$60 AUD**
 (ii) 4-6 computers – **\$75 AUD**
 (iii) 7-9 computers – **\$90 AUD**
 (iv) 10+ computers – amount agreed at time of signing Agreement : \$_____ **AUD**
- 1.2 The monthly support charge is in respect of the Services to be provided (detailed in Schedule 1) during that calendar month (such amount to be pro-rated by the Supplier in the event that this Agreement came into force or was terminated during a calendar month) and explicitly excludes the provision of any additional hardware or software.
- 1.3 In the event that the Customer acquires additional computers/laptops which he wishes to be covered by this Agreement, it is the Customers responsibility to inform the Supplier so that the monthly support charge (set out in this Schedule Paragraph 1.1) can be adjusted if necessary.

2. OTHER CHARGES

Where other Charges are to be made by reference to an hourly rate, the Supplier's standard hourly rate is **\$80 AUD**.

3. VARIATION OF CHARGES

The Supplier may vary the Charges payable under Paragraphs 1 and 2 by giving to the Customer not less than 30 days' written notice of the variation.

AGREEMENT:

The parties have indicated their acceptance of this Agreement by signing below...

The Supplier

SIGNED by _____ [print name]

duly authorised for and on behalf of **COMPUTING INNOVATIONS** (the Supplier)

_____ [signature]

Date:

The Customer

SIGNED by _____ [print name]

duly authorised for and on behalf of the Customer

_____ [signature]

Date: