# Schedule 10 Software Licensing and Subscriptions

## 1 Facilitating Orders as a Reseller

1.1 We are an authorised reseller of various Software programs provided by Third-Party Software Providers.  Under our reseller agreements with those Third-Party Software Providers, we are authorised to market, promote and facilitate our customers to enter into agreements directly between the customer and the Third-Party Software Provider for the Software (**TPSP Agreement**), either on the basis of:

(a) a Perpetual License, with periodic Support Services; or

(b) an As A Service Subscription.

1.2 For any Software that we provide under a Service Agreement:

(a) we will provide you with a Service Order that sets out the details of the Software and/or Support Service and/or As A Service Subscription, the Support Services Period, the Subscription Period, the License Metric or Usage Metric, the Fees payable and any other terms and conditions that you may need to agree to in order to acquire the Software and/or Support Services and/or As A Service Subscription from the Third-Party Software Provider;

(b) you must pay all Fees and charges for the Perpetual License with Support Services, or As A Service Subscription, set out on the Order directly to us;

(c) As A Service Subscription Fees are based on consumption/usage; and

(i) are variable, dependant on the Third-Party Software Provider's Suggested Retail Price less the negotiated blueAPACHE discount;

(ii) our invoice, calculated from usage statistics received from the Third-Party Software Provider, is final and binding;

(d) the Fees may be varied for third party cost variations or exchange rate variations as set out in the General Terms and Conditions;

(e) upon us notifying you that the Service Order has been accepted by the Third-Party Software Provider, you:

(i) must immediately enter into the TPSP Agreement directly with the Third-Party Software Provider; or

(ii) authorise us to act as your lawful agent to enter into any TPSP Agreement with the Third-Party Software Provider that the Third-Party Software Provider requires to be entered into prior to delivering or providing you with access to the Software or the As A Service Subscription (as applicable);

(f) it is the Third-Party Software Provider that is "supplier" of the Software, Support Services and/or As A Service Subscription under the terms of the TPSP Agreement, and you must seek any remedy for defective Software and/or Support Services and/or As A Service Subscription, directly from the Third-Party Software Provider and not from us;

(g) we are not responsible for Third-Party Software Provider's technical support services, nor are we responsible for whether any defect is resolved or a workaround is provided;

(h) you must comply with the terms and conditions in the TPSP Agreement, including any License Metric or Usage Metric set out on the Service Order.

1.3 In order to access and use each As A Subscription Service each user must have its own device with a web browser of the type that is supported by blueAPACHE.  Customer acknowledges and agrees that it is Customer's and its users' responsibility to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if blueAPACHE updates the browsers that it supports, and that all capital and on-going cost for such items are the responsibility of Customer and its users.

## 2 Renewal of Support Services or Subscriptions

2.1 You authorise and request us (as your lawful agent) to automatically renew the Support Services Period for the Support Services for a Perpetual License or the As A Service Subscription's Subscription Period (as applicable) for successive renewal terms each equal in length to the initial term, at the Fee calculated as the Third-Party Software Provider's Suggested Retail Price less the negotiated blueAPACHE discount, on the Third-Party Software Provider's then current TPSP Agreement, until you cancel the underlying TPSP Agreement in accordance with its terms or in terms of clause 6 of this Schedule, whichever applicable.

2.2 The monthly fee will reflect any increase or decrease in the number of users, if applicable, and any pro-rata charges for new users added during the previous month.

2.3 Any decrease in the number of users will not result in a pro-rata refund.

2.4 The Service Agreement, including the relevant details on the original Service Order, including any License Metric or Usage Metric, any renewal notice and the then current agreement between you and the Third-Party Software Provider will apply to each renewal.

2.5 Subject to clause 6, you may revoke your authority for us to renew the TPSP Agreement at any time by giving us at least 20 Business Days written notice prior to the next renewal date.

## 3 Constraints in Reseller Agreements

3.1 You acknowledge and agree, and/or will comply with, and/or permit us to comply with (as applicable), some or all of the following requirements (as may be required by the relevant reseller agreement):

(a) you must only use (and if applicable, install) the Software in Australia, the United Kingdom, or the United States of America;

(b) Third-Party Software Provider may change its prices on no less than 30 days' notice. No Fees are valid under a Service Order for any period that exceeds 30 days from date of communication of the Fees;

(c) we are required to comply with the Third-Party Software Provider reseller program manual, which may change at any time. We reserve the right to vary any Service Order to reflect any such change to the extent that the change is lawfully imposed on us;

(d) Third-Party Software Provider may prohibit us from taking further orders from Third-Party Software Provider for Perpetual Licenses, Support Services or As A Service Subscription for any reason;

(e) Third-Party Software Provider retains the right to modify or provide a new release of any Perpetual License or As A Service Subscription at any time and in any way, including by adding or removing features or functionality, without liability;

(f) where Third-Party Software Provider allows a subscription for an As A Service Subscription to be terminated prior to the end of its full Subscription Period Third-Party Software Provider may allow a refund of the Fees paid for the subscription, subject to an early termination charge. If this occurs then you must immediately pay us any amount due for the original Subscription Period (whether already invoiced or to be invoiced), less any amount that we receive from Third-Party Software Provider as an early termination charge. Upon cancellation you must download all your data from the Software or As A Service Subscription within 90 days of termination, or other such time period as determined by the Third-Party Software Provider, at your own cost;

(g) to the extent permitted by law, the Third-Party Software Provider assumes no liability for any Software for which it does not own the Intellectual Property Rights;

(h) we are not permitted to modify the TPSP Agreement that Third-Party Software Provider requires you to enter into in any way;

(i) any renewal of a TPSP Agreement will be at Third-Party Software Provider's then current terms;

(j)     your subscription may be disabled at any time and for any reason, and in this case we may suspend our billing to you for support services for the period of suspension if Third-Party Software Provider similarly suspends billing us;

(k)     we are required to provide certain information relating to its commercial and contractual dealings with you to Third-Party Software Provider, and must allow Third-Party Software Provider to audit the use of the Software, Support Services or an As A Service Subscription and information relating to its commercial and contractual dealings with you, including information that may be confidential to you;

(l)     we must advise Third-Party Software Provider promptly of any known or suspected violations of the TPSP Agreement by you;

(m)     if we are compelled by a law enforcement agency to disclose customer data to law enforcement, we will promptly notify you and provide you with a copy of the demand, unless legally prohibited from doing so;

(n)     to the extent required by law, you must notify the individual users of the Software that their data may be processed for the purpose of disclosing it to law enforcement or other governmental agencies as directed by us, and shall obtain the users' consent to the same;

(o)     Third-Party Software Provider may provide you with communications regarding the operation, delivery of the Software, Support Services or an As A Service Subscription and/or the TPSP Agreement and/or technical support issues;

(p)     if the reseller agreement between us and Third-Party Software Provider is terminated in certain circumstances then Third-Party Software Provider may:

(i)     take over the supply of products, or continue to allow us to supply products, for a period of up to 12 months;

(ii)     communicate with you about alternative arrangements for continued supply of products, including introducing alternative resellers to you or for Third-Party Software Provider to supply the products directly.

## 4     Software Delivery

4.1     For Software that is licensed as a Perpetual License:

(a)     we must make the Software available to you by download (or will deliver the media for the Software to you, as applicable), and provide you with any License Key that may be needed to access the Software, promptly following the Managed Service Commencement Date;

(b)     you are responsible for downloading, copying and installing the Software. You must follow any instructions provided by us when installing the Software.

4.2     For each As A Service Subscription, we must provide you with any License Key that may be needed to access the Software promptly following the Managed Service Commencement Date.

## 5     Ancillary Services

5.1     Unless expressly stated otherwise on the Service Order, any Ancillary Service provided under a Service Agreement is provided as time and materials based Ancillary Service at Time and Materials Rates. In this case we will charge you for all time spent on the Ancillary Service (including travelling time to and from your Premises) at the Time and Materials Rates and you must pay for such time whether it is less than, or more than, any estimate given. We shall use our best efforts to advise you in advance if we believe that any estimate will be exceeded.

5.2     You must pay all our expenses incurred in providing the Ancillary Service in accordance with our then current expenses policy. Any work that is performed outside of our normal business hours, including on evenings, weekends and public holidays, will be charged at our then current overtime Professional Service Rates.

## 6 Termination for Convenience

6.1 Where you enter into a TPSP Agreement on the basis of a Perpetual or Subscription License with a committed term, you may terminate the TPSP Agreement for convenience by giving us 30 days written notice. Early termination will attract an Early Termination Payment calculated using the following formulae:

Early Termination Payment = (A*B) + C,

where;

"A" is the Minimum Spend;

"B" is the remaining term of the Minimum Service Period; and

"C" is any outstanding Fees for work done or planned.

## 7 Additional Defined Terms

For the purpose of this Schedule only, the following terms have the meaning given to them in this clause, unless the context requires otherwise:

7.1 **As A Service Subscription** means the right of access and use of certain Software via the internet and any accompanying Support Services that are provided together for the Subscription Period under a TPSP Agreement and are described on the Service Order.

7.2 **License Key** means any form of lock, password or other mechanism that may be used to control access to, or manage use of, the Software or an As A Service Subscription.

7.3 **License Metric** means a License limitation that is used to determine the maximum usage rights of the Perpetual License and is used in calculating the Fees that are payable. For clarity, where there is a License Metric of "10 Named Users" this means that you may use the Perpetual License for up to 10 Named Users.

7.4 **Perpetual License** means a License for Software that is granted under a TPSP Agreement.

7.5 **Support Services** means any error correction, help desk, online support information or self-help services, and any updates and new releases that may be made generally available to supported customers of the Software (and for As A Service Subscriptions also include how the underlying infrastructure is managed and supported).

7.6 **Support Services Period** for:

(a) a Perpetual License: commences on the Managed Service Commencement Date and continues for a period of 12 months, (or such other period as set out on the Service Order), or where Support Services for a Perpetual License are being renewed, the Support Services Period is the period set out in the notice of renewal provided under clause 2.1 of this Schedule;

(b) an As A Service Subscription: is the Subscription Period, including any renewal.

7.7 **Subscription Period** for an As A Service Subscription means the period from the Managed Service Commencement Date until the date that is 12 months later (or such other period set out in the Service Order), and any renewal of that Subscription Period as set out in the Service Order or the Service Agreement.

7.8 **Third-Party Software Provider** means a third-party owner of the Intellectual Property Rights in certain Software, or an authorised distributor of that Software.

7.9 **TPSP Agreement** mean an agreement between you and the Third-Party Software Provider for Third-Party Software Provider, together with (as the content requires) the details of the transaction that are set out on the Service Order, including name and description of the Software, Support Services or the As A Service Subscription, any License Metric or Usage Metric, the Software Support Period, the Subscription Period and the Fees, charges and Taxes.

7.10 **Usage Metric** means the metric that is used to define the use right granted for an As A Service Subscription.