

BLUEQ CUSTOMER AGREEMENT

BlueQ provides the BlueQ Application, an online qualification and credential management system. The Customer wishes to access and use the BlueQ Application and provide Authorised Users of the Customer with access to and use of the BlueQ Application.

The following terms and conditions (**Terms**), along with the Proposal and any notices posted by BlueQ on the BlueQ Website from time to time form the agreement between BlueQ and the Customer regarding the terms and conditions on which BlueQ will provide the Customer with access to and use of the BlueQ Application (**Agreement**).

By accepting or otherwise confirming acceptance of the Proposal the Customer acknowledges and agrees that it will be bound by this Agreement (including these Terms) and the Customer's access to and use of the BlueQ Application will be governed by this Agreement.

Any person who accepts the Proposal and agrees to the Terms on behalf of the Customer warrants to BlueQ that they are authorised on behalf of the Customer to accept the Proposal and Terms and to bind the Customer to the Agreement.

1. Definitions and interpretation

1.1 Definitions

In these Terms, unless the context otherwise requires:

- (a) **Additional Services** means any services which BlueQ agrees to provide to the Customer during the Term in addition to the Subscription Services, including the provision of consulting, customisation, implementation, training, integration or other services.
- (b) **Authentication Credential** means the username and password or other means of authentication which Authorised Users are required to provide in order to be able to access the BlueQ Application.
- (c) **Authorised Users** means the current or prospective employees or volunteers, agents, contractors or other representatives of the Customer or persons involved in the activities or operations of the Customer who are issued with an Authentication Credential to access the BlueQ Application, either on behalf of the Customer or on their own account.
- (d) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.
- (e) **BlueQ** means Clasity Pty Ltd (ACN 168 177 259) of 10/28 Down Street, Collingwood, Victoria 3066.
- (f) **BlueQ Application** means the qualification, credential and digital record creation, sharing, management, storage, verification and compliance software applications made available by BlueQ for use by the Customer and the Authorised Users from time to time.
- (g) **BlueQ Systems** means the computer servers or other hardware or systems used by BlueQ in connection with its provision of the Subscription Services.
- (h) **BlueQ User Documentation** means any manuals, guides, reference materials, reports or other similar documents in any form made available by BlueQ to the Customer in connection with the BlueQ Application.
- (i) **BlueQ Website** means the website located at <https://blueq.com.au> or the website located at such other URL that BlueQ notifies the Customer of from time to time.
- (j) **Commencement Date** means the commencement date set out in the Proposal or, if no date is set out in the Proposal, the date the Customer confirms its acceptance of the Proposal either in writing or electronically.
- (k) **Confidential Information** means any information provided by a party to the other party (whether provided before or after the Commencement Date) in connection with the Subscription Services, any Additional Services or this Agreement and in the case of BlueQ, includes the Proposal, the BlueQ User Documentation or any other information regarding the BlueQ Application but does not include information which is in or becomes part of the public domain, other than through a breach of this Agreement or of an obligation of confidence, or information which a party proves was independently acquired or developed without breaching any of the obligations set out in this Agreement.
- (l) **Consequential Loss** means:

- (i) all indirect and consequential Loss;
 - (ii) all Loss beyond the normal measure of damages; and
 - (iii) all Loss of revenue, Loss of data, Loss of reputation, Loss of profits, Loss of actual or anticipated savings, Loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, Loss of use, cost of capital or costs of substitute goods, facilities or services;
- (m) **Consumer** has the meaning given in section 3 of the Australian Consumer Law.
- (n) **Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.
- (o) **Customer** means the party named as the Customer in the Proposal.
- (p) **Customer Content** means any and all content uploaded to the BlueQ Application by or on behalf of the Customer or its Authorised Users, including all Data.
- (q) **Data** means all information, images, Documents and other data (whether relating to the Customer or its Authorised Users or otherwise) uploaded to the BlueQ Application by or on behalf of the Customer or its Authorised Users.
- (r) **Default Rate** means the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983 (Vic)*.
- (s) **Documents** means any qualification, credentials, certificates, certification, record of compliance, record of training or achievement, record of inspection or examination, record of attendance, means of identification, assessment, licence, permit, approval, consent or other record or document about a person or organisation (including the Customer) which is issued by a person, including an educational institution or Government Authority and, for the avoidance of doubt, includes (where relevant) criminal history record checks, working with children checks, passports, visas and immunisation records.
- (t) **Fees** means any fees or other amounts payable by the Customer to BlueQ under this Agreement, including the Set Up Fees, the Subscription Fees, the Optional Usage Fees and any fees for the provision of Additional Services.
- (u) **Force Majeure Event** means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared) civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood, earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment.
- (v) **Further Term** means consecutive periods of time (such as monthly or 12 monthly) as set out in the Proposal or agreed between the parties in writing commencing immediately after the expiry of the Initial Term or the previous Further Term (as applicable).
- (w) **Government Authority** means any governmental, semi-governmental, municipal, statutory, judicial or quasi-judicial authority, department, agency, body, entity, organisation, commission or tribunal. It also includes any self-regulatory organisation established under statute and any securities exchange.
- (x) **Improvement** means any modification, alteration, development, new use or other change to the BlueQ Application which makes it more accurate, more useful, more functional, more efficient, more cost effective or in any other way preferable.
- (y) **Initial Term** means the period of time set out in the Proposal or agreed between the parties in writing which begins from the Commencement Date (such as one month or 12 months).
- (z) **Insolvency Event** means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.
- (aa) **Intellectual Property** includes all patents, designs, copyright, trade marks or circuit layout rights and any right to apply for the registration or grant of any of the above.

- (bb) **Loss** means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and whether direct loss or Consequential Loss.
- (cc) **Optional Usage Fees** means fees for optional features of the BlueQ Application, as specified in the Proposal or otherwise agreed between BlueQ and the Customer from time to time.
- (dd) **Payment Facility** means any credit card, bank card, bank account or other payment facility, details for which are provided by the Customer to BlueQ in connection with the payment of the Fees.
- (ee) **PDH Services** means services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (ff) **Proposal** means the proposal provided by BlueQ to the Customer in respect of the Subscription Services and the Customer's access to and use of the BlueQ Application under which the Customer accepts and agrees to be bound by these Terms.
- (gg) **Set Up Fees** means the fees (if any) for setting up the BlueQ Application for use by the Customer and the establishment of the Customer's account, as specified in the Proposal or otherwise agreed between BlueQ and the Customer from time to time.
- (hh) **Subscription Fees** means the subscription fees payable for access to and use of the BlueQ Application and the provision of the Subscription Services, as specified in the Proposal or otherwise agreed between BlueQ and the Customer from time to time.
- (ii) **Subscription Services** means the services described in clause 3.2.
- (jj) **Support Hours** means the hours in which BlueQ will provide any applicable Support Services to the Customer, as published on the BlueQ Website and updated by BlueQ from time to time.
- (kk) **Support Services** means any technical or user support services in relation to the BlueQ Application that the Customer is entitled to receive under this Agreement.
- (ll) **Taxes** means any taxes, rates, levies imposts, duties or other charges assessed or payable to any Government Authority and includes any additional taxes, interest, penalties, charges, fees or other amounts imposed in relation to a failure to file a return or to pay the tax.
- (mm) **Term** means has the meaning given in clause 2.
- (nn) **Third Party Application** means any product, service, system, application or internet site integrated or interfaced with the BlueQ Application that is owned or operated by a Third Party Provider, and that is used by the Customer or any Authorised User in connection with the BlueQ Application.
- (oo) **Third Party Provider** means any third party that provides support, technology and/or other products or services that are used by the Customer or any Authorised User in connection with the BlueQ Application.
- (pp) **Trial Subscription** means any access to the version of the BlueQ Application and/or the Subscription Services that BlueQ makes available to customers on a trial basis from time to time.
- (qq) **Unacceptable Content** means any content which, in BlueQ's reasonably held opinion, is obscene, offensive, upsetting, defamatory, illegal or inappropriate, infringes or appears to infringe the intellectual property rights of any person or contravenes or appears to contravene any applicable laws, regulations or codes of conduct.
- (rr) **User Terms** means terms and conditions between BlueQ and the Authorised User regarding the Authorised User accessing and using the BlueQ Application.

1.2 Interpretation

In this Agreement, headings are inserted for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;

- (d) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency; and
- (e) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

2. Term

- (a) This Agreement commences on the Commencement Date and will continue for the Initial Term, unless terminated earlier in accordance with clause 14.
- (b) At the expiry of the Initial Term or any Further Term, this Agreement will automatically renew for each Further Term, unless a party provides written notice to the other party at any time prior to the expiration of the Initial Term or the then current Further Term (as the case may be) that the Agreement will not be renewed and will instead expire at the end of the Initial Term or that Further Term (as applicable).
- (c) The Customer may provide written notice under clause 2(b) by either:
 - (i) sending notice by email to accounts@blueq.com.au; or
 - (ii) clicking on the cancellation or other similar button (if any) located within the BlueQ Application.
- (d) If notice is provided in accordance with clause 2(b) then BlueQ will continue to provide the Subscription Services and the Customer will continue to pay the Fees in accordance with this Agreement until the end of the Initial Term or then current Further Term (as the case may be).

3. Subscription Services

3.1 Provision of Subscription Services

During the Term BlueQ will provide the Subscription Services to the Customer on the terms and conditions of this Agreement.

3.2 Subscription Services

The Subscription Services will consist of BlueQ:

- (a) setting up the BlueQ Application for use by the Customer and its Authorised Users (provided that any set up other than BlueQ's standard set up will constitute an Additional Service);
- (b) providing the Customer and its Authorised Users with access to and use of the BlueQ Application during the Term;
- (c) providing the Customer with access to and use of the BlueQ User Documentation during the Term;
- (d) providing Support Services to the Customer in accordance with clause 11 (if the Proposal specifies the Customer is entitled to Support Services or the parties otherwise enter into a written agreement regarding the provision of Support Services); and
- (e) any other services expressly set out in the Proposal.

3.3 Additional Services

- (a) In addition to the Subscription Services, if requested by the Customer and accepted by BlueQ, BlueQ may also provide Additional Services to the Customer.
- (b) Unless otherwise agreed, any Additional Services will be provided on the terms and conditions of this Agreement, provided that the Fees payable by the Customer for the Additional Services will be the Fees BlueQ notifies the Customer of (which notice BlueQ will endeavour to provide promptly after the Customer requests those Additional Services and before providing those Additional Services).

3.4 No exclusivity

The Customer acknowledges and agrees that all rights granted to the Customer under this Agreement (including all rights to use the BlueQ Application) are non-exclusive.

4. BlueQ Application

4.1 BlueQ may vary

BlueQ may vary the features, functions and other benefits available to Customers and Authorised Users in respect of the BlueQ Application and Subscription Services at any time and without any requirement to provide prior notice to the Customer.

4.2 BlueQ retains discretion

- (a) The Customer acknowledges that BlueQ retains the sole discretion regarding the features, functions and other benefits of the BlueQ Application and Subscription Services and nothing in this Agreement requires BlueQ to provide or maintain access to any features, functions or other benefits in respect of the BlueQ Application and Subscription Services.
- (b) The Customer also acknowledges and agrees that nothing in this Agreement limits BlueQ's right to suspend, discontinue, alter or limit access to any such features, functions or other benefits from time to time.

4.3 Trial Subscriptions

BlueQ may from time to time make the BlueQ Application, the Subscription Services or any part of the BlueQ Application or Subscription Services available as a Trial Subscription. Where the Customer uses the BlueQ Application, the Subscription Services or any part of the BlueQ Application or Subscription Services as part of a Trial Subscription, the Customer acknowledges and agrees that such use will be limited to the trial period nominated by BlueQ, may be subject to other restrictions or limitations determined by BlueQ.

5. Third Party Applications

The Customer acknowledges that the BlueQ Application may interact with Third Party Applications or require Third Party Applications or Third Party Providers be used to provide particular features or functionality. The Customer acknowledges that access to such Third Party Applications or services and any support for such Third Party Applications or services must be obtained directly from the relevant Third Party Provider at the Customer's cost. BlueQ does not make any representations or warranties regarding any such Third Party Applications or services and will not be responsible for any issues in respect of Third Party Applications or services or any Loss suffered by the Customer in connection with any Third Party Applications or services or the Customer's dealings with Third Party Providers.

6. Authentication Credentials

6.1 Provision of Authentication Credentials

The Customer and/or the Authorised Users will set the Authentication Credentials for use of the BlueQ Application.

6.2 Obligations of the Customer in relation to the Authentication Credentials

The Customer must:

- (a) ensure that Authentication Credentials set by the Customer or the Authorised Users comply with best practice regarding the strength and security of passwords;
- (b) ensure that each Authentication Credential is securely maintained and used only by the Authorised User to whom the Authentication Credential has been issued;
- (c) comply with any policies, guidelines or other requirements issued by BlueQ from time to time in any way relating to Authentication Credentials;
- (d) if an Authorised User ceases to be employed by or contracted to the Customer, ensure that the Authorised User is immediately unlinked from the Customer's account and not authorised to access and use the BlueQ Application on behalf of the Customer, however the Customer acknowledges that the Authorised User may continue to use the BlueQ Application (for example for personal use or where the Authorised User is linked to another organisation that uses the BlueQ Application);
- (e) immediately notify BlueQ if:
 - (i) an Authentication Credential is lost, stolen, missing or is otherwise compromised; or

- (ii) the Customer becomes aware of any breach of the provisions of this Agreement by the Authorised User, in which case the Authentication Credentials may be suspended until such time as the breach is remedied to BlueQ's satisfaction; and
- (f) not transfer or allow Authentication Credentials to be transferred between or amongst Authorised Users or other individuals or systems and take all reasonable steps to ensure that Authentication Credentials are not transferred.

6.3 Management of Authentication Credentials

The Customer acknowledges and agrees that BlueQ reserves the right at any time and from time to time to change and/or revoke Authentication Credentials by providing the Customer or the relevant Authorised User with written notice.

7. Customer responsibilities and obligations

7.1 Customer responsibilities

The Customer will be responsible for:

- (a) the day to day use of the BlueQ Application;
- (b) uploading all Data and other Customer Content into the BlueQ Application (other than where BlueQ uploads Data or Customer Content as an Additional Service to the Customer);
- (c) obtaining all consents, authorisations, permits or approvals (including any relevant consents from Authorised Users) necessary:
 - (i) for BlueQ and its personnel to access, use and disclose the Data and other Customer Content as contemplated in this Agreement;
 - (ii) for the Data and other Customer Content to be uploaded into the BlueQ Application;
 - (iii) for the Data and other Customer Content to be stored on the BlueQ Systems;
 - (iv) for BlueQ to disclose the Data and other Customer Content to third parties as contemplated or permitted by this Agreement; and
 - (v) to otherwise access and use the BlueQ Application as contemplated by this Agreement;
- (d) ensuring that all Authorised Users enter into and comply with the User Terms;
- (e) ensuring all Data and other Customer Content is complete, current, accurate and not misleading and does not infringe the Intellectual Property rights of any third party;
- (f) ensuring that the use of the BlueQ Application by the Customer and each of its Authorised Users and the uploading and storage of the Data and other Customer Content complies with all applicable laws, regulations or codes of conduct (including the Privacy Act 1988 (Cth) and any other applicable privacy laws);
- (g) satisfying itself that the BlueQ Application is compatible with its own hardware, software and internet and network capabilities and maintaining all hardware, software, Third Party Applications and other technology necessary to be able to access and use the BlueQ Application;
- (h) ensuring that it maintains back up or alternate systems for use if the BlueQ Application is unavailable or is otherwise unable to be used by the Customer;
- (i) ensuring no Unacceptable Content is uploaded to the BlueQ Application or stored in the BlueQ Systems;
- (j) ensuring that all Authorised Users are properly trained regarding the use of the BlueQ Application;
- (k) ensuring that each Authorised User has all licences, certifications, authorisations, permissions or other approvals required to be able to access and use the BlueQ Application; and
- (l) any acts or omissions committed by the Authorised Users or the other employees, officers, contractors or representatives of the Customer or any of its related parties in relation to the BlueQ Application.

7.2 Customer obligations

The Customer must, and must ensure that each Authorised User:

- (a) access and use the BlueQ Application only for the Customer's internal business purposes and, in the case of an Authorised User, that Authorised User's own personal and internal business purposes;
- (b) only use and copy the BlueQ User Documentation to the extent necessary to use the BlueQ Application and receive the Subscription Services;
- (c) providing all co-operation, assistance, system access and other inputs or assistance reasonably requested by BlueQ in relation to the provision of the Subscription Services or any Additional Services;
- (d) comply with all policies regarding the use of the BlueQ Application which BlueQ notifies the Customer of from time to time (which notification may be provided by BlueQ making the relevant policies accessible via the BlueQ Website);
- (e) not use the BlueQ Application in any way or for any purpose other than as contemplated by this Agreement and must not use the BlueQ Application in any manner which, in BlueQ's reasonably held opinion, is unreasonable, threatening or abusive;
- (f) comply with the *Privacy Act 1988* (Cth) and any other privacy laws, regulations and codes when using the BlueQ Application or doing anything permitted by, or in connection with, this Agreement;
- (g) not modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the BlueQ Application;
- (h) not attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the BlueQ Application;
- (i) not upload to the BlueQ Application any viruses, bugs, worms, trojan horses, harmful codes or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the BlueQ Application or the software or hardware of BlueQ or any third party;
- (j) not distribute any part of the BlueQ Application, BlueQ User Documentation or Subscription Services for commercial purposes or otherwise sub-licence or resell the BlueQ Application, BlueQ User Documentation or Subscription Services;
- (k) not create derivative works from all or any part of the BlueQ Application;
- (l) not transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the BlueQ Application or any compilation derived from the BlueQ Application;
- (m) not make any part of the BlueQ Application publicly available;
- (n) obtain from any individual whose personal information (as that term is defined in the *Privacy Act 1988* (Cth)) is to be uploaded to the BlueQ Application by or on behalf of the Customer (including by BlueQ), the consent of that individual to the relevant uploading, use, storage and disclosure of their personal information; and
- (o) not permit any person other than the Authorised Users to use the BlueQ Application and ensure that those Authorised Users, in using the BlueQ Application, comply with the terms and conditions of this Agreement as if they were the Customer.

8. Data and Customer Content

8.1 Accuracy of Data and Customer Content

- (a) The Customer acknowledges and agrees that:
 - (i) where any Data or other Customer Content is required to be provided to BlueQ before BlueQ can proceed with or complete the provision of the Subscription Services, the Customer must ensure that such Data and other Customer Content is supplied or made available to BlueQ within a reasonable time so as to enable BlueQ to deliver the Subscription Services;
 - (ii) BlueQ may disclose Data and other Customer Content to Government Authorities or other third parties to seek to verify the accuracy of the relevant Data and other Customer Content (where such disclosure is necessary for the provision of the Subscription Services) and the Customer consents, and must procure the consent of all Authorised Users, to all such disclosures; and

- (iii) the accuracy of any verification of Data and other Customer Content performed by BlueQ using information available from any publicly available databases or systems (including databases or systems made available by Government Authorities or other third parties) will be limited to the information contained in that database or system;
 - (iv) if BlueQ believes that any Data or other Customer Content is not accurate, current or complete then BlueQ may, but is not required to, update or vary that Data or other Customer Content. The Customer acknowledges and agrees that BlueQ is not liable for any loss or damage suffered by the Customer as a result of BlueQ updating or varying Data or Customer Content under this clause 8.1(a);
 - (v) the Customer acknowledges and agrees that BlueQ does not control, is not responsible for and provides no warranty as to the availability, accuracy, currency or completeness of the Data and other Customer Content or any information or Documentation that uses or is derived from the Data or other Customer Content (including any report prepared under clause 8.2(a)(ii)) or content in databases or systems made available by Government Authorities or other third parties and BlueQ is not responsible for the content of the Data and other Customer Content, and
 - (vi) the Customer must not make any claim against BlueQ in respect of the Data and other Customer Content or otherwise seek to hold BlueQ responsible for the provision, content, accuracy or reliability of the Data and other Customer Content.
- (b) The Customer acknowledges and agrees that the provision of the Subscription Services and Additional Services will be subject to and conditional on relevant, complete and accurate Data being made available from the BlueQ Application or otherwise being provided to BlueQ.
- (c) The Customer is responsible for:
- (i) verifying that any Data and other Customer Content which it is able to access via the BlueQ Application is accurate, current and complete; and
 - (ii) its use of the Data and other Customer Content.
- (d) The Customer acknowledges that the BlueQ Application may provide functionality that allows the Customer to:
- (i) issue a record of the Documents held by a person (including Authorised Users);
 - (ii) issue a record of the persons (including Authorised Users) who hold a specified Document; and
 - (iii) issue a record of the Documents held by the Customer;
 - (iv) allow the Customer to issue their own Documents to a person (including Authorised Users),
- The Customer is solely responsible for any such record or Document which is issued or created by or on behalf of the Customer using the BlueQ Application, including verifying the accuracy of the record or Document.

8.2 Back ups and archiving

- (a) The Customer acknowledges that:
- (i) BlueQ is under no obligation to provide back up, archiving, record keeping or other similar services in respect of the Data and other Customer Content and the Customer is responsible for implementing and maintaining its own back up, archiving, record keeping and data retrieval procedures in respect of the Data and other Customer Content and any report prepared under clause 8.2(a)(ii);
 - (ii) BlueQ may, in its absolute discretion, provide the Customer with a report setting out certain Data or other Customer Content held by BlueQ or otherwise stored on the BlueQ Application at the date of the report; and
 - (iii) BlueQ shall not be held liable for any Loss which the Customer may suffer as a result of any Data or other Customer Content that has been deleted, destroyed or otherwise lost (including where such Data or other Customer Content is deleted by an Authorised User).
- (b) Notwithstanding clause 8.2(a), the Customer acknowledges and agrees that BlueQ may, after the expiry or termination of this Agreement, keep and maintain copies of the Data and other Customer Content.

8.3 Availability of Data

The Customer acknowledges that:

- (a) subject to any applicable laws, BlueQ is under no obligation to delete, destroy or otherwise make unavailable any Data or other Customer Content including, without limitation, upon the expiry or termination of this Agreement; and
- (b) BlueQ may make available to an Authorised User any Data and Customer Content which is linked, about or otherwise connected to that Authorised User even after the expiry or termination of this Agreement.

9. Security of BlueQ Application

9.1 BlueQ's obligations

BlueQ will take all reasonable steps to ensure the security and safety of the Data and other Customer Content and information stored on the BlueQ Systems, including by implementing and maintaining reasonable and current data protection and virus screening procedures and technologies.

9.2 BlueQ's liability

Provided BlueQ complies with its obligations under clause 9.1, BlueQ will not be liable for any Loss suffered by the Customer which arises out of or in connection with:

- (a) any computer viruses being transferred by or obtained as a result of the use of the BlueQ Application;
- (b) any hacking into or other similar attacks on the BlueQ Application or the BlueQ Systems; or
- (c) any other data security issues in respect of the BlueQ Application or the BlueQ Systems.

10. Updates

The Customer acknowledges that nothing in the Agreement imposes obligations on BlueQ to develop, release or install for the Customer any updates, upgrades, patches, bug fixes, new releases or new versions in respect of the BlueQ Application (**Updates**), provided however that if BlueQ does develop or release any Updates, it may require that all such Updates be used by the Customer.

11. Support

11.1 Online technical support

During the Term, where the Customer is entitled to receive Support Services as part of the Subscription Services (as detailed in clause 3.2), BlueQ will, during the Support Hours, provide the Customer and its Authorised Users with technical support in relation to the use and operation of the BlueQ Application. Such technical support will comprise of BlueQ, during the Support Hours, receiving and responding to telephone, email and online technical support queries submitted by the Customer or its Authorised Users.

11.2 Support procedures

To be able to receive Support Services, the Customer and its Authorised Users must comply with all support procedures or directions which BlueQ notifies the Customer of from time to time.

11.3 No obligations to provide other services

The Customer acknowledges that the Support Services described in clause 11.1 are the only technical or user support services (if any) BlueQ will provide to the Customer as part of the Subscription Services.

11.4 BlueQ User Documentation

The Customer must use only the most recent version of the BlueQ User Documentation provided by BlueQ, and must follow BlueQ's instructions concerning the return or destruction of any superseded versions of the BlueQ User Documentation.

12. Fees and expenses

12.1 Fees and expenses payable

During the Term, the Customer agrees to pay to BlueQ the Subscription Fees for the provision of the Subscription Services. The Customer also agrees to pay any other amounts which may become payable to BlueQ under this Agreement including fees for Additional Services, the Set Up Fees or the Optional Usage Fees.

12.2 Payment Facility

Unless otherwise agreed by BlueQ, the Customer must, prior to the Commencement Date, provide BlueQ with details of its Payment Facility and a signed authority which enables BlueQ to direct debit the Fees from its Payment Facility in accordance with clause 12.3(b) below.

12.3 Payment of Fees

- (a) BlueQ will issue the Customer with a tax invoice for the Set Up Fees, the Subscription Fees, Optional Usage Fees and fees for Additional Services payable by the Customer (**Tax Invoice**) in accordance with the terms of payment set out in the Proposal.
- (b) Subject to clause 12.3(d), BlueQ may debit the relevant Fees from the Payment Facility within three days (or such other period determined by BlueQ) of the Tax Invoice being issued by BlueQ.
- (c) All payments must be made in Australian dollars and BlueQ may charge a reasonable fee for the costs incurred by BlueQ in converting any payment from the Customer to Australian dollars.
- (d) Where BlueQ agrees to amounts being paid by a method other than direct debit, all amounts payable by the Customer must be paid within 14 days of the date of the relevant amounts being invoiced to the Customer by BlueQ.

12.4 Failure to pay

If the Customer fails to pay any amounts due to BlueQ under this Agreement (including where any payment via a Payment Facility is declined or otherwise rejected) then, without prejudice to BlueQ's other rights regarding the non payment:

- (a) BlueQ may charge the Customer interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amount becomes overdue until BlueQ receives payment of all such amounts (including all interest) by way of cleared funds; and
- (b) BlueQ may issue a notice to the Customer stating that the Tax Invoice is overdue (**Overdue Notice**). If BlueQ does not receive payment of the relevant Fees within 14 days of the date of the Overdue Notice, BlueQ may cease providing the Subscription Services and any Additional Services and may disable the Customer's and any Authorised User's access to the BlueQ Application until such time as the outstanding amount is paid in full (together with any interest). BlueQ will not be liable for any Loss suffered by the Customer as a result of BlueQ exercising its rights under this clause 12.4(b).

12.5 Increases to fees

- (a) Unless otherwise expressly agreed in writing by BlueQ, BlueQ may increase the Fees payable by the Customer once in every 12 month period by providing notice in writing to the Customer at least 14 days before the end of the then Initial Term or Further Term (as the case may be).
- (b) Any increase in the Fees notified by BlueQ under clause 12.5(a) will become effective on and from the commencement of the next Further Term.

13. Unacceptable Content

13.1 BlueQ can notify Customer

If BlueQ reasonably believes that any Unacceptable Content has been uploaded into the BlueQ Application or is being stored on the BlueQ Systems, BlueQ may request the Customer either to remove the Unacceptable Content or disable access to the Unacceptable Content.

13.2 BlueQ can take action

BlueQ will have the right (but not the obligation) to remove Unacceptable Content from the BlueQ Application or BlueQ Systems or disable access to Unacceptable Content where the Customer has not complied with a BlueQ request under clause 13.1 within five days of the date of the request.

13.3 No obligation to monitor

Nothing in this Agreement imposes obligations on BlueQ to monitor the BlueQ Application for Unacceptable Content or otherwise monitor or screen Data and other Customer Content for Unacceptable Content

14. Termination

14.1 Termination without cause

Either party may terminate this Agreement at any time and without cause by providing the other party with no less than 31 days' written notice of termination.

14.2 Termination with cause

- (a) Without limiting clause 14.1, BlueQ may, by written notice to the Customer, terminate this Agreement with immediate effect:
 - (i) if the Customer fails to comply with any written notice issued by BlueQ requiring the Customer to remedy a breach, non-observance or non-performance of the Customer's obligations under this Agreement within 7 days of receiving that notice from BlueQ;
 - (ii) if the Customer commits a breach of this Agreement which is incapable of remedy;
 - (iii) if the Customer is the subject of an Insolvency Event; or
 - (iv) if the Customer uses the BlueQ Application in any way which BlueQ considers may damage the reputation, brand or goodwill of BlueQ or the BlueQ Application.
- (b) Without limiting clause 14.1, the Customer may, by written notice to BlueQ, terminate this Agreement with immediate effect in accordance with clause 22.7.

14.3 Consequences of termination

Upon termination or expiry of this Agreement taking effect:

- (a) the Customer must immediately:
 - (i) cease using the BlueQ Application;
 - (ii) pay to BlueQ all Fees, expenses or other sums payable to BlueQ under this Agreement which have accrued or are payable as at the date of termination;
 - (iii) pay to BlueQ an amount equal to the Fees which, had the Agreement not been terminated, would have been payable by the Customer to BlueQ had BlueQ, until the end of the then current Term, continued to provide the same Subscription Services for the remainder of the then current Term (provided the Customer will not be required to pay such amount if BlueQ terminates under clause 14.1);
 - (iv) return to BlueQ any BlueQ User Documentation in the Customer's possession or control; and
 - (v) provide BlueQ with written confirmation that it has completed its obligations under this clause 14.3(a);
- (b) if BlueQ terminates this Agreement under clause 14.1, BlueQ must refund to the Customer any amounts paid by the Customer to BlueQ in respect to the Fees which, calculated on a pro rata basis, BlueQ (acting reasonably) determines relate to the period from the date of termination to the end of the then current Term; and
- (c) BlueQ ceases to have any obligations under this Agreement with respect to the provision of Subscription Services or any Additional Services and may disconnect the Customer's access to the BlueQ Application and disable all Authentication Credentials.

14.4 Obligations continuing following termination

The termination or expiry of this Agreement does not operate to terminate any rights or obligations under this Agreement that by their nature are intended to survive termination or expiration, including the parties' rights and obligations under clauses 1, 7, 14.3, 14.4, 15, 16, 18, 19, 20 and 22, and those rights or obligations remain in full force and binding on the party concerned.

15. Confidentiality

15.1 Confidentiality obligations

Where a party (**Recipient**) receives Confidential Information from the other party under this Agreement or otherwise in connection with the Subscription Services, the Recipient must:

- (a) keep the Confidential Information confidential;
- (b) subject to clause 15.2, not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this Agreement; and
- (c) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

15.2 Permitted disclosure

Notwithstanding clause 15.1, the Recipient may use or disclose Confidential Information to the extent necessary to:

- (a) perform its obligations or exercise its rights under this Agreement (including, in the case of BlueQ, for the purposes of providing the Subscription Services);
- (b) comply with any law, binding directive of a regulator or a court order;
- (c) comply with the listing rules of any securities exchange on which its securities are listed; or
- (d) obtain professional advice in relation to matters arising under or in connection with this Agreement.

15.3 Promotion and marketing

The Customer agrees that, for the purposes of promoting and marketing BlueQ and the BlueQ Application, BlueQ is entitled to notify others of BlueQ's relationship with the Customer and BlueQ's provision of the Subscription Services and any Additional Services to the Customer.

16. Intellectual Property

16.1 BlueQ's Intellectual Property

- (a) The Customer acknowledges that nothing in this Agreement grants the Customer any ownership of or rights in respect of the Intellectual Property in the BlueQ Application or any BlueQ User Documentation, any Intellectual Property in any materials created as a result of the performance of the Subscription Services or the Additional Services or any Improvements to the BlueQ Application or BlueQ User Documentation created in connection with this Agreement.
- (b) Any Intellectual Property in respect of the BlueQ Application or BlueQ User Documentation (including in any Improvements) which is created by or vests in the Customer during the Term is assigned to BlueQ immediately upon the Intellectual Property being created or vesting in the Customer and the Customer agrees to do all things and execute all documents as is reasonably necessary to effect such assignment.
- (c) During the Term BlueQ grants the Customer a limited, non exclusive and revocable licence to use the Intellectual Property referred to in clause 16.1(a) solely to the extent such use is necessary for the Customer to receive the Subscription Services or Additional Services. Unless revoked earlier by BlueQ, the licence granted under this clause 16.1(c) terminates immediately upon the termination or expiry of this Agreement.

16.2 Customer Intellectual Property

- (a) BlueQ acknowledges that, as between BlueQ and the Customer, the Customer will own all Intellectual Property in respect of the Data and Customer Content.
- (b) The Customer grants BlueQ, and must procure from any Authorised User, a non-exclusive, irrevocable, royalty free licence to reproduce and otherwise exploit the Data and Customer Content and any other relevant Intellectual Property which is owned by, or licenced to, the Customer for:
 - (i) the purposes of providing the Subscription Services and any Additional Services to the Customer;
 - (ii) any purposes which BlueQ considers are ancillary to its provision of the Subscription Services or Additional Services or are otherwise necessary for the proper operation of the BlueQ Application;
 - (iii) the purposes of BlueQ undertaking data analytics or other similar activities;
 - (iv) any purposes relating to the development or improvement of the BlueQ Application or the other products and services of BlueQ; and
 - (v) any other internal business purposes of BlueQ, provided that BlueQ agrees that it will not commercially exploit the personal information of an Authorised User (unless it is de-identified) without that Authorised User's prior written consent.

- (c) The Customer grants BlueQ a non-exclusive, , royalty free licence to reproduce and otherwise exploit any Intellectual Property which is owned by, or licenced to, the Customer (including any logos or trade marks) for the purposes of BlueQ promoting and marketing BlueQ and the BlueQ Application.

17. Personnel and subcontractors

- (a) BlueQ reserves the right to determine which of its employees, agents, contractors or other representatives will be assigned to perform the Subscription Services and to replace or reassign those personnel during the Term.
- (b) The Customer agrees and acknowledges that BlueQ may subcontract the performance of any of its obligations or the exercise of any of its rights under this Agreement as BlueQ considers appropriate from time to time provided that BlueQ shall at all times remain responsible for all work of any subcontractors.

18. Warranties

18.1 Warranties excluded

Subject to clauses 19.1 and 19.2, BlueQ does not warrant or guarantee that:

- (a) the BlueQ Application will be compatible with, or capable of being used on or in connection with, the Customer's computer and communications systems;
- (b) the Customer's access to the BlueQ Application will be uninterrupted or error free;
- (c) the BlueQ Application and any Data and other Customer Content will be accurate, reliable or fit for any particular purpose; or
- (d) the Customer will derive any particular benefits from the provision of the Subscription Services.

18.2 Customer's warranty

The Customer acknowledges and warrants that:

- (a) it has relied on its own skill and judgment in the selection of the BlueQ Application; and
- (b) it has satisfied itself that the BlueQ Application is fit for all the purposes which the Customer requires it for.

19. Liability

19.1 Australian Consumer Law

If the Customer is a Consumer and BlueQ supplies PDH Services to the Customer, BlueQ acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Services supplied by BlueQ and nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of any such rights.

19.2 Non PDH Services

If the Customer acquires the Subscription Services from BlueQ as a Consumer and the relevant Subscription Services are non PDH Services, then BlueQ's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those Subscription Services is, at BlueQ's option, to:

- (a) the supplying of the relevant services again; or
- (b) the payment of the cost of having the relevant services supplied again.

19.3 Liability capped

Subject to clauses 19.1, 19.2 and 19.5 and notwithstanding any other provision of this Agreement, the maximum aggregate liability of BlueQ for any Loss or claim, however caused or arising, suffered by the Customer in connection with this Agreement is limited to the total amount of the Fees paid by the Customer to BlueQ under this Agreement during the 12 month period prior to the Customer first notifying BlueQ of the relevant Loss or claim. The limitation set out in this clause 19.3 is an aggregate limit for all claims or Loss, whenever made.

19.4 Commencement of claims

Any claim by the Customer against BlueQ for Loss however caused or suffered by the Customer in connection with this Agreement must be made within one year of the Customer becoming entitled to make the claim and any claim not made within this period is absolutely barred.

19.5 Consequential Loss

Neither party will be liable for any Consequential Loss (however caused) suffered or incurred by the other party in connection with this Agreement. This clause applies even if the party knew or ought to have known that the relevant Consequential Loss would be suffered. For the avoidance of doubt, nothing in this clause 19.5 applies to or limits the obligations of the Customer in relation to payment of Fees.

20. Indemnity

The Customer must indemnify and keep BlueQ indemnified against any Loss which arises directly or indirectly out of:

- (a) any breach of this Agreement by the Customer including any breach in respect of which BlueQ exercises a right to terminate;
- (b) the Customer, its Authorised Users or any other person in any way accessing or using the BlueQ Application;
- (c) any Unacceptable Content being uploaded into the BlueQ Application or stored on the BlueQ Systems;
- (d) any failure by the Customer to obtain any consent, authorisation, permit or approval required for BlueQ to provide the Subscription Services, including rights to use the BlueQ Application, Data and other Customer Content;
- (e) the uploading of the Data and other Customer Content into the BlueQ Application, storage of any Data and other Customer Content on the BlueQ Systems or use of the BlueQ Application by the Customer or its Authorised Users which does not comply with privacy or other laws of any applicable jurisdiction;
- (f) the Data and other Customer Content being stored or displayed on the BlueQ Application;
- (g) the Customer infringing the Intellectual Property of a third party (including any Authorised User); or
- (h) any negligent or unlawful acts of the Customer or any of its related parties or their respective Authorised Users, employees, officers, contractors or representatives,

except to the extent the relevant Loss arises as a direct result of any breach of this Agreement by BlueQ or any negligent or unlawful act of BlueQ or any of its personnel.

21. GST

21.1 Definitions and interpretation

Words and expressions used in this clause 21 which are not defined in this Agreement, but which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**), have the meaning given to them in the GST Act.

21.2 Consideration does not include GST

The consideration for any supply made under or in connection with this Agreement does not include an amount for GST, unless it is expressly stated in this Agreement to be inclusive of GST.

21.3 Recovery of GST

If GST is or becomes payable on any supply made under or in connection with this Agreement (not being a supply for which the consideration is expressly stated in this Agreement to be inclusive of GST), the party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply.

21.4 Adjustment of amount recovered for GST

If the amount for GST recovered by a party under this clause 21 differs from the amount of GST payable by the party or its representative member on the supply, the amount of the difference must be paid to or refunded by the party (as the case requires).

21.5 Reimbursement or indemnity payments

If a party is required under this Agreement to reimburse or indemnify another party for any amount incurred by the other party, the amount to be reimbursed or paid by the party will be the amount incurred reduced by an amount equal to any input tax credit that the other party or its representative member is entitled to claim for the amount incurred and increased by the amount of any GST payable in respect of the reimbursement or payment.

22. General provisions

22.1 Governing law

This Agreement will be construed and interpreted in accordance with the laws of the state of Victoria, Australia and each party submits to the non-exclusive jurisdiction of courts of that jurisdiction.

22.2 Assignment

The Customer may not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of BlueQ. BlueQ may assign, novate or otherwise deal with its rights under this Agreement at any time effective immediately upon BlueQ notifying the Customer of the assignment or novation.

22.3 Entire Agreement

This Agreement constitutes the entire Agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

22.4 Relationship between parties

This agreement does not create a relationship of employment, agency, partnership or joint venture between the parties.

22.5 Force Majeure

- (a) If a party is prevented, hindered or delayed from performing its obligations under this Agreement by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly.
- (b) If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.
- (c) This clause 22.5 does not apply to any obligation of the Customer to pay the Fees or other amounts payable to BlueQ under this Agreement.

22.6 Waiver

No failure to exercise or delay in exercising any right given by or under this Agreement to a party constitutes a waiver and the party may still exercise that right in the future.

22.7 Variation

- (a) BlueQ may vary this Agreement by providing written notice to the Customer of the variation and such variation shall become effective from the date upon which the Customer agrees to the variation.
- (b) The Customer acknowledges and agrees that:
 - (i) until the Customer confirms that it agrees to the variation, BlueQ may suspend the provision of Subscription Services to the Customer and/or may suspend the Customer's access to the BlueQ Application; and
 - (ii) if the Customer does not agree to a variation, it can terminate this Agreement by providing notice under clause 2 or 14.1.

22.8 Severability

If any provision of this Agreement is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.