

Op Central Customer Agreement

1. Governing documents

- 1.1 Op Central offers the Software and Services to the Customer for use by its Users on the condition that:
- (a) the Customer reads and accepts this Op Central Customer Agreement (**Agreement**) and agrees to be bound by its terms; and
 - (b) the Customer and each User reads the Op Central User Terms published on the Op Central website at <https://goo.gl/zGi7Sk> (**User Terms**) and agrees to be bound by its terms.
- 1.2 The Agreement incorporates details of the Software and Services as set out in the Service Offer, including:
- (a) the Software modules licensed by Op Central under this Agreement;
 - (b) the Services to be provided by Op Central under this Agreement;
 - (c) the Fees payable by the Customer to Op Central;
 - (d) any associated Payment Terms;
 - (e) any specified Minimum Term; and
 - (f) any specified Maximum Users limit.
- 1.3 A Customer is deemed to have accepted this Agreement and the User Terms when the Customer does any of the following:
- (a) accepts a Service Offer provided by Op Central by signing it (online or offline);
 - (b) responds via email to indicate an acceptance of Service Offer, if such an email is sent in direct response to a Service Offer being sent;
 - (c) installs, uses or accesses the Software or Services;
 - (d) allows, authorises or enables any User to install, use or access the Software or Services; or
 - (e) acknowledges the Agreement and/or User Terms when using the Software or Services (for example, as part of a registration or login screen).
- 1.4 The terms of the Service Offer shall prevail to the extent of any inconsistency with this Agreement.
- 1.5 The terms of this Agreement shall prevail to the extent of any inconsistency with the User Terms in respect of any matters relating to the Customer's use of the Software or Services.
- 1.6 The Customer must procure and otherwise ensure that each User complies with the User Terms in all respects. You acknowledge and agree that You will be responsible for, and indemnify Op Central against, any claims made against Op Central, and all losses and damages sustained by Op Central (whether directly, indirectly, consequentially or in any other way) arising from or otherwise connected to any breach of or other failure to comply with the User Terms by a User.

2. Accounts

- 2.1 Op Central will set up a Customer Account associated with the Customer, and provide the relevant Customer contact with login details allowing the Customer to access administrative features of the Software, such as:
- (a) creating, modifying and deleting User Accounts; and
 - (b) setting restrictions on Users accessing selected features of the Software.

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- 2.2 Each User Account must be linked to a specific User and may not be used by any other person.
- 2.3 The Customer shall ensure that its Customer Account and each User Account are protected at all times from misuse or any form of unauthorised use or access. The Customer shall be solely responsible for the use, supervision, management and control of its accounts. The Customer is responsible for all activities that occur under the accounts regardless of whether the activities are undertaken by the Customer, its employees, permitted users or a third party with access to the relevant login details. The Customer must notify Op Central immediately if it believes an unauthorised third party may be using or attempting to use one of its accounts. Op Central is not responsible for unauthorised access to an account.

3. Licensed Material including Software

- 3.1 In consideration of the Customer's payment of the Fees to Op Central, Op Central grants the Customer and each User a limited, non-exclusive, non-transferable licence to access and use Licensed Material solely for the Permitted Purpose and in accordance with this Agreement.
- 3.2 The Customer may only access the Software:
- (a) using the allocated Administrator Account or User Account;
 - (b) subject to any limitations, such as Maximum Devices or Maximum Users permitted; and
 - (c) in accordance with any instructions or directions given by Op Central or within the Software or Documentation in relation to the use of the Software.
- 3.3 The Customer is responsible for obtaining and maintaining all Customer Systems and other things necessary to enable the effective use of the Software and Services. Without limiting the foregoing:
- (a) the Customer must ensure the Software will be compatible with the Customer Systems;
 - (b) where access to or use of the Software requires an internet connection, the Customer or User will be responsible for all internet connection costs;
 - (c) the Customer or User may be required to install the Software, or parts of it, on the Customer Systems in order to utilise the Software; and
 - (d) the Customer or User may be required to install or update third-party software on a Device, in accordance with clause 4, in order to access or use the Software.
- 3.4 The Customer must not:
- (a) copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, tamper with or create derivative works of the Software, or any part thereof, except as permitted under the Copyright Act;
 - (b) make any part of the Software available to any third party, other than making the Software available to permitted Users in accordance with this Agreement;
 - (c) copy, rent, lease, lend, sell, resell, distribute, transfer or transfer all or any part of the Software or Licenced Material except as permitted under the Copyright Act;
 - (d) provide access to the Software or Licenced Material to any person other than permitted Users each with their own User Account;
 - (e) allow any person other than the nominated User to use or access a User Account;
 - (f) sub-license or sub-contract any of its rights under this Agreement without the written consent of Op Central, which may be withheld in its absolute discretion;

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- (g) attempt to circumvent usage limits or quotas (including but not limited to any Maximum Devices and Maximum User limits) or avoid incurring Fees;
- (h) make the Software available over a network where it could be used in excess of any usage limits or quotas;
- (i) merge all or any part of any software contained in or provided in connection with the Software with any other software without Op Central's prior written permission;
- (j) commercially exploit the Software;
- (k) distribute or transmit any part of the Software by any means.
- (l) link to, frame or mirror any part of the Software without Op Central's written consent;
- (m) remove, obliterate or alter any proprietary notice on the Licenced Material; or
- (n) use or encourage, promote, facilitate or instruct others to use Software or any other software provided in connection with Software for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful or offensive.

3.5 Customer shall also be responsible for maintaining the security of Customer Systems and Customer Data. The Customer shall notify Op Central immediately if the Customer becomes aware of any unauthorised use of the whole or part of the Software by any person.

4. Third-party software

4.1 In order to obtain, install, update, access, use, or continue to access or use the Software and Services, the Customer and/or the User may also be required to update third-party software (such as the operating system and web browser) on the Device. The Customer acknowledges and agrees that:

- (a) Op Central is not responsible for such third-party updates;
- (b) such third-party updates may be subject to their own terms and conditions, which Op Central strongly recommends the Customer review prior to implementing the third-party update; and
- (c) if the Customer is unable or unwilling to obtain or install such third-party updates, the Customer may be unable to obtain, install, update, access, use, or continue to access or use the Software and/or Services.

4.2 Any Bundled Software provided by Op Central is generally subject to a licence from the third-party manufacturer. In the absence of a discrete licence from the manufacturer to the Customer:

- (a) the Customer is permitted to use the Bundled Software under the same terms as the licence for Software in clause 3 (**Licence Terms**); and
- (b) the Customer agrees to be legally bound by the provisions of the Licence Terms for the use of the Bundled Software.

5. Services

5.1 Subject to the terms of this document, Op Central grants the Customer a non-exclusive, non-transferable licence to use the Services. The Customer must only use the Services in connection with Software offered by Op Central and for the Permitted Purpose.

5.2 The Customer acknowledges and agrees that it uses the Services at its own risk.

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- 5.3 To the fullest extent permitted by applicable law, Op Central does not accept liability for any claims or losses arising directly or indirectly from:
- (a) a failure to provide any Software or Service, or any part thereof;
 - (b) corruptions to or loss of data, errors or interruptions occurring in the course of using, or as part of, any Service or Software;
 - (c) any suspension or discontinuance of any Service, or any part thereof; or
 - (d) any use of the Services by other users, including any use of the Services by other users in manner which contravenes this document.

6. Updates

- 6.1 Op Central may, at its discretion:
- (a) provide Updates to the Customer and Users; and
 - (b) withdraw or disable previous versions of Software, Bundled Software or Documentation from being used by a Customer and Users.
- 6.2 Op Central:
- (a) is under no obligation to provide any Updates;
 - (b) can offer optional paid Updates;
 - (c) can use Updates to add, remove, modify or otherwise alter features of the Software at its sole discretion, and that such changes will not be a breach of this document;
 - (d) can require the Customer and/or the User to install Updates to the Software in order to continue using the Software and Services; and
 - (e) can provide Updates in such a manner that the Software is unable to be reverted to its previous state.
- 6.3 The terms of this Agreement will govern any Updates, unless such an Update is accompanied by a separate licence supplied by Op Central, in which case the terms of that licence will govern to the extent provided for.
- 6.4 Unless otherwise specified in the Service Offer or agreed pursuant to a separate written agreement between You and Op Central, Op Central will not be obliged to support the Software or the Service, whether by providing advice, training, error-correction, Updates or otherwise, or to provide any hosting, telecommunication, internet or other services in relation to the use of the Software or the Service by the Customer or any User.

7. User interaction

- 7.1 The Software and/or Services may enable the Customer and Users to communicate with other Users, or to post materials that may be made available publicly or to specific Users.
- 7.2 The Customer acknowledges and agrees that:
- (a) the Customer will not use the Software or Services to create, post or transmit:
 - (i) any Intellectual Property or other material owned by another person or entity that is contrary to their rights;
 - (ii) any unsolicited advertising or promotional material;

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- (iii) any material or information which is offensive, defamatory, obscene, unlawful, vulgar, harmful, threatening, abusive, amounts to harassment or is otherwise objectionable; or
- (iv) any material which contains viruses or other computer code, files or programs which are designed to limit or destroy the functionality of other computer software or hardware;
- (b) any Content may be removed by Op Central without notice at any time, if the Content breaches obligations under 7.2(a);
- (c) Op Central does not accept any responsibility or liability for the accuracy of Content made by other users of the Software or Services, and Op Central is not liable for any loss or damage of any kind, or any claim, resulting from any action taken or reliance made by the Customer or any User regarding any Content; and
- (d) Op Central is not responsible for resolving any disputes the Customer or Users may have with other users of the Software or Services.

8. Privacy

8.1 The Op Central undertakes to comply with the terms of its Privacy Policy, which can be viewed at [Privacy Policy \(ideagen.com\)](https://www.ideagen.com/privacy-policy).

8.2 In addition to the uses of information set out in Op Central's Privacy Policy, and notwithstanding anything to the contrary in this Agreement, Op Central may:

- (a) collect and analyse data relating to the provision, use and performance of various aspects of the Software, Services and related systems and technologies, including:
 - (i) technical information about the Software, Services, Devices, system and application software, peripherals;
 - (ii) information concerning Customer Data; and
 - (iii) data derived from (i) and (ii);
- (b) use such data to improve and enhance the Software and Services and for other development, diagnostic and corrective purposes in connection with Op Central's offerings; and
- (c) disclose such data in aggregate or other de-identified form in connection with Op Central's business.

9. Intellectual property

9.1 The Op Central retains all right, title and interest to all Intellectual Property subsisting in the Licensed Material, and any part thereof.

9.2 This document does not constitute a transfer or conveyance of any Intellectual Property owned by Op Central, including but not limited to Intellectual Property associated with the Licensed Material, and its functionality, features and content.

9.3 The Customer acknowledges that the Licensed Materials provided in the course of the Services are protected by copyright and may also be protected as other forms of Intellectual Property owned by Op Central. The Customer covenants that the Customer and Users will not during or at any time after the termination of this Agreement undertake or permit any act which infringes or attempts to infringe those

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Intellectual Property rights and, without limiting the generality of the foregoing, the Customer specifically acknowledges that the Customer and Users must not copy the Software except as otherwise expressly authorised or acknowledged by this Agreement.

9.4 In relation to any Content, the Customer:

- (a) grants Op Central a limited, non-exclusive, transferable, irrevocable, royalty-free licence to use the Content for the purposes of Op Central performing its obligations (including under this Agreement and any other agreement with the Customer) and facilitating the operation of the Software and Services;
- (b) represents and warrants that the Content does not violate the law (including privacy laws), misappropriate the rights of any third party, or otherwise violate a term of this Agreement;
- (c) represents and warrants that the Customer owns all Intellectual Property in the Content or is otherwise authorised to add or upload the Content to the Software; and
- (d) acknowledges that Op Central reserves the right to remove any Content without notice.

10. Confidentiality

10.1 Each party must keep the Confidential Information of the other party confidential. No party may use or disclose the Confidential Information of any other party for any purpose other than that which the information was disclosed.

10.2 The obligations of confidentiality under this Agreement are ongoing and survive any expiration or termination of this Agreement.

10.3 Each party may only disclose the other party's Confidential Information to those of its employees, contractors or professional advisers who need to know the information for the purposes of performing their obligations under this Agreement and who are aware of the confidential nature of the information.

10.4 The Receiving Party must immediately notify the Disclosing Party if it suspects, or becomes aware of, any actual or potential disclosure, storage, copying, access to, use or loss of the Disclosing Party's Confidential Information except in accordance with this Agreement.

10.5 The Customer must not, without the prior written consent of Op Central:

- (a) enter into commercial competition with Op Central or contribute in any way towards the creation, success, marketing or business activities of any organisation that could reasonably be considered in commercial competition with Op Central.
- (b) contact any:
 - (i) client, supplier or other contractor of Op Central or any of its Related Bodies Corporate;
 - (ii) person who is a participant in any joint venture, partnership or similar arrangement with Op Central or any of its Related Bodies Corporate; or
 - (iii) any government, semi government, statutory, administrative, fiscal or judicial agency or body,

to discuss that person's relationship with Op Central in terms which use or refer to Op Central's Confidential Information; or

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- (c) contact any officer or employee of Op Central or any of its Related Bodies Corporate to discuss:
 - (i) Op Central's Confidential Information; or
 - (ii) the operations, affairs, business or strategic plans of Op Central or any of its Related Bodies Corporate,other than those officers or employees nominated in writing by Op Central.

10.6 The parties acknowledge that damages may be inadequate compensation for breach of this clause 10. Subject to the court's discretion, the Disclosing Party and its Related Bodies Corporate may seek specific performance, injunctive relief or similar remedy as a remedy for any conduct or threatened conduct which is or would be a breach of this clause 10 in addition to any other remedies available at law or in equity under or independently of this agreement.

11. Publicity

- 11.1 Op Central may publicise the fact that it provides the Software and Services to the Customer as part of marketing the Software and Services. This includes the use of the Customer's logo(s), the logo(s) used by the Customer within the Op Central portal and/or the Customer's brand name(s); on the Company's website, marketing materials, case studies, demonstration of capability and presentations.
- 11.2 The Customer may not make any public statement or make any representation in relation to this Agreement or any part to it without the prior written consent of Op Central.
- 11.3 At the request of either party, both parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the commencement of this Agreement, and the Customer otherwise agrees to reasonably cooperate with the Company to serve as a reference account upon request.

12. Fees

- 12.1 The Customer must pay the relevant Fees to Op Central in accordance with the Payment Terms.
- 12.2 The rights of the Customer and its Users to use and continue to use the Software and Services will be subject to payment of the relevant Fees by the Customer. If the Customer fails to pay the applicable Fees within the Payment Terms, Op Central may disable the Software and discontinue the Services to the Customer and its Users.
- 12.3 Unless otherwise specified by Op Central in writing at the time of providing a Service Offer, the Service Offer is valid for a period of 30 days from the date issued.
- 12.4 The Customer will be liable to pay the Fees for the Minimum Term (if any) regardless of any introductory offer by Op Central to provide the Software or Services at no cost for a limited period. Subject to clause 14, the Customer will not be entitled to avoid liability for Fees by terminating this Agreement before the end of the Minimum Term.
- 12.5 Op Central reserves the right to review and adjust the Fees. Op Central may increase the fees in respect of an Agreement no more than once in any 12 month period to incorporate any CPI increase in the preceding 12 month period by reference to the Australian Bureau of Statistics. Such increase shall be applied on each anniversary of the commencement date of the relevant Agreement. .
- 12.6 Payments via credit card will incur an additional charge of 1.75% of the Fee paid.
- 12.7 If the Customer pays Fees up-front in advance in accordance with the Payment Terms:

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- (a) the Customer must pay the Fees payable up-front at the commencement of this Agreement; and
- (b) until payment of the total Fees payable is received by Op Central:
 - (i) the licences granted by Op Central under this Agreement will not commence; and
 - (ii) Op Central will be under no obligation to commence or perform the Services.

12.8 If the Customer pays Fees in arrears in accordance with the Payment Terms:

- (a) Op Central will issue an invoice for any goods or services provided in advance of payment;
- (b) where any part of an invoice is in dispute:
 - (i) the Customer must notify Op Central in writing within 14 days of the date of issue identifying any disputed amount in writing to Op Central; and
 - (ii) the Customer must pay any balance not in dispute in accordance with the Payment Terms.

12.9 If the Customer pays Fees on a recurring subscription basis in accordance with the Payment Terms:

- (a) payments must be received by Op Central in advance for each subscription period; and
- (b) if payment is not received by Op Central by the start of a subscription period:
 - (i) Op Central may suspend or terminate access to the Software and the provision of Services under this Agreement, both to the Customer and its Users; and
 - (ii) the Customer agrees Op Central will not be liable for damages caused by such suspension or termination.

12.10 The Customer must pay interest on any money due and payable under this Agreement but unpaid, and on any interest payable but unpaid. The interest payable under this clause 12.10:

- (a) will be calculated at 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Commonwealth Bank of Australia; and
- (b) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money become merged.

12.11 Op Central may monitor the Customer at any time during the Term as required to ensure compliance with any usage limits. The Customer will provide all assistance reasonably requested by the Company in connection with any such audit.

12.12 If the Customer exceeds a usage limit, Op Central will be entitled to invoice the Customer for additional quantities of the applicable software and/or services which will be charged at Op Central's then current standard rates retrospectively from the point at which the usage limits were exceeded until the end of the Minimum Term and/or Renewal Term (as applicable).

13. Tax

13.1 Unless otherwise stated, any amount specified as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

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- 13.2 If a party (**Supplier**) makes a taxable supply under this Agreement, then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 13.3 Notwithstanding the foregoing, the Recipient is not obliged to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- 13.4 If an adjustment event arises in relation to a taxable supply made by a Supplier, the amount paid or payable by the Recipient pursuant to clause 13.2 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- 13.5 If a third party makes a taxable supply and this Agreement requires a party to this Agreement ('payer') to pay for, reimburse or contribute to ('pay') any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
- 13.6 This clause 13 does not merge on completion and will continue to apply after expiration or termination of this this Agreement.
- 13.7 Words or expressions used in this clause 13 that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning given to them in that Act.

14. Effective date and termination

- 14.1 The licences granted under this Agreement are effective on the date the Customer enters into this Agreement, and will remain in force until terminated in accordance with its terms.
- 14.2 The Customer may terminate this Agreement at the end of the Minimum Term or any subsequent Renewal Terms, by giving at least ninety (90) days prior written notice prior to the end of that term; or
- 14.3 Op Central may terminate this Agreement immediately if:
- (a) the Customer is in breach of any term of this Agreement, or threatens to breach any term of this Agreement;
 - (b) the Customer fails to pay the Fees in accordance with the Payment Terms;
 - (c) the Customer becomes the subject of insolvency proceedings or threatens to do so; or
 - (d) the Customer is dissolved, or threatens to be dissolved.
- 14.4 Upon termination:
- (a) the Customer and each User must destroy any remaining copies of the Software and any Documentation, or otherwise return or dispose of such material in the manner directed by Op Central;
 - (b) the Customer must pay to Op Central any and all outstanding Fees payable under this Agreement, including:
 - (i) any outstanding Fees for the Software and Services already provided to the Customer, whether or not they were invoiced prior to termination;
 - (ii) if Fees are payable for on a recurring subscription basis other than in accordance with clause 14.2(b), Fees in respect of the current subscription period as at the date of termination; and

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- (iii) if the Agreement is terminated before the end of the Minimum Term other than in accordance with clause 14.2(b), Fees in respect of the remainder of the Minimum Term.

Any Fees payable under this clause 14.4(b) are due immediately upon termination.

- (c) Any Customer Data uploaded to the software will be permanently deleted following termination of the Agreement and it is the Customer's responsibility to extract any such Customer Data from the software prior to such termination. Op Central will have no obligation to maintain Customer Data or any other information submitted by the Customer following such termination and may delete or destroy all copies in Op Central's systems or otherwise in Op Central's possession or control provided in the Agreement, unless prohibited by applicable law.
- (d) If the Customer requires any assistance from Op Central in relation to the extraction of Customer Data from the software, it must notify Op Central at least 30 days prior to the effective date of termination of the Agreement. Any such assistance will be at Op Central's discretion and Op Central will be entitled to charge the Customer for any costs and expenses incurred in the provision of the same.

14.5 Termination pursuant to this clause 14 will not affect any rights or remedies which either party may have otherwise under this Agreement or at law.

15. Acknowledgement and warranties

15.1 The Customer acknowledges that:

- (a) it is the Customer's responsibility to ensure its systems will be compatible with, and suitable for its use of, the Software and Services;
- (b) the Software and Services cannot be guaranteed to be error free and uninterrupted;
- (c) the Software and Services may be temporarily unavailable for maintenance, and although Op Central will endeavour to provide advance notice of any scheduled service disruption, this will not be possible for unscheduled emergency maintenance or unexpected disruptions;
- (d) no data transmission over the internet can be guaranteed as totally secure;
- (e) the Customer and Users must take precautions to ensure that their processes for accessing the Software and Services do not expose them to the risk of viruses, malicious computer code or other forms of interference which may damage their Devices or interrupt access to the Software; and
- (f) any errors or disruptions outside Op Central's reasonable control will not constitute a breach of this Agreement by Op Central.

15.2 Op Central strongly recommends the Customer regularly backs up Customer Data to an independent storage facility to guard against catastrophic loss of data. Op Central does not warrant or guarantee that the Software, or any backups maintained by the Software, will be failsafe or effective in any given situation. Op Central shall not be responsible for any costs, loss or damage associated with loss of data.

15.3 Except as expressly provided to the contrary in this document, and to the full extent permitted by applicable law, Op Central will not be liable for any loss, including special, indirect or consequential

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damages (such as loss of profits), or claim, arising out of breach of this Agreement or arising out of the supply of defective Software or Services.

- 15.4 Without limiting clause 15.3, to the full extent permitted by applicable law, Op Central's liability for any term, condition, guarantee or warranty that is implied by law and cannot lawfully be excluded by Op Central, including the consumer guarantees set out in the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and all similar or equivalent legislation, rules and regulations is limited to (at Op Central's option):
- (a) in the case of goods, including the Software (to the extent the Software is considered a good under applicable law) – repairing, replacing or supplying equivalent goods, or paying the cost of any of those remedies to You; or
 - (b) in the case of services, including the Services – supplying the services again or paying the cost of having the services supplied again.
- 15.5 Without limiting or affecting any other provision of this document, to the full extent permitted by applicable law, Op Central's maximum aggregate liability to the Customer for any losses it incur or claims it makes against us is limited to the Fees paid by the Customer in relation to the preceding one-month period.
- 15.6 The Customer acknowledges that it:
- (a) has exercised its independent judgment in acquiring the Software and the Services; and
 - (b) has not relied on any representation made by Op Central which has not been stated expressly in this Agreement or applicable Service Offer .
- 15.7 The Customer will indemnify and keep indemnified Op Central, its successors in title, their Related Bodies Corporate and their respective officers, employees and agents (**those indemnified**) from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of those indemnified arising from any action, claim, demand, suit, action or proceeding whatsoever, whether presently existing or arising at any time in the future and whether referable to events or circumstances which have already occurred or which may occur in the future, where such loss or liability arose from:
- (a) any breach of this Agreement by the Customer;
 - (b) any act or omission of the Customer contrary to this Agreement or which would constitute a breach if it was done or omitted to be done by the Customer; or
 - (c) any act or omission of the Customer or a User contrary to the User Terms or which would constitute a breach if it was done or omitted to be done by the Customer or a User; or
 - (d) any warranty given by the Customer proving to have been false, misleading or inaccurate when made.

Op Central is entitled to enforce any indemnity as trustee on behalf of those indemnified.

16. General

- 16.1 Op Central may assign this Agreement at any time. The Customer may assign this Agreement only with the prior written consent of Op Central, which consent shall not be unreasonably withheld.
- 16.2 Op Central may subcontract any of its obligations under this Agreement to any person and may permit any of its rights under this Agreement to be exercised by its Related Bodies Corporate. Op Central holds the benefit of this Agreement on trust for any of its Related Bodies Corporate.

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- 16.3 The failure or delay by a party to exercise any right under this Agreement will not be taken as a waiver of the right. No waiver of any right is effective unless made in writing. Waiver of any particular right does not in any way release any other party from strict compliance in the future with the same or any other obligation.
- 16.4 This Agreement is governed by and is to be construed under the laws in force in the State of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 16.5 If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction, that provision or part must, to that extent, be treated as deleted from this document for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.
- 16.6 Clauses 3.4, 3.5, 3.6, 5.3, 9.3, 9.4, 10, 14.4, 14.5, 15 and this clause 16.6 survive termination of this Agreement.
- 16.7 Upon the expiration of the Minimum Term, this Agreement will automatically renew for successive renewal terms of one year ("Renewal Term"). Either party may terminate this Agreement, effective only upon the expiration of the then current Minimum Term or Renewal Term (as applicable), by notifying the other party in writing at least ninety(90) days prior to the expiry of that term.

17. Definitions and interpretation clauses

17.1 Definitions

In this Agreement:

- Bundled Software** means third-party software provided by Op Central as part of a bundle of utility software relating to Op Central's Software.
- Confidential Information** means business, technical or financial information of a party (**Disclosing Party**), including:
- (a) in case of Op Central:
 - (i) all information regarding features, functionality and performance of the Software and Services, planned improvements, features and functions which may be scheduled or discussed as possibly being developed in future; and
 - (ii) all information, know-how, ideas, concepts, lists, format, systems, technology, industrial, marketing, Intellectual Property and commercial knowledge (and whether in tangible or intangible form, oral or visual form, or recorded or stored in a document) which relates directly or indirectly to the Op Central or any of its past, existing or future business, operations, administration or

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strategic plans or which is owned, used or licensed by Op Central;

- (b) in the case of the Customer, Customer Data that is marked or identified as 'Confidential', 'Secret', 'Not to be Disclosed' or 'Private', or is designated, described or referred to by the Customer in any document or correspondence as 'Confidential', 'Secret', 'Not to be Disclosed' or 'Private'.

But does not include:

- (c) information which is or becomes generally available in the public domain (other than through breach of this deed or an obligation of confidence);
- (d) information rightfully received by the other party (**Receiving Party**) from a third party (that is not a representative of the Disclosing Party) who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party; or
- (e) information which the Receiving Party can prove by contemporaneous written documentation was already known to it at the time of disclosure by or on behalf of the Disclosing Party (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality).

Content	means any information and material in any form entered or uploaded into the Software by the Customer or a User.
Copyright Act	means the <i>Copyright Act 1968</i> (Cth).
Customer, You or Your	means a customer of Op Central who has accepted a Service Offer to provide the Software and Services under this Agreement.
Customer Account	means an account associated with the Customer allowing the Customer to use the Software to administer its associated User Accounts.
Customer Data	means data provided by the Customer to Op Central to enable the provision of the Software and/or Services under this Agreement.
Customer Systems	means all: <ul style="list-style-type: none">(a) hardware and equipment, including computers, laptops, tablets, telephones, modems and peripherals;(b) infrastructure;

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- (c) network connections, including internet connections; and
- (d) third-party software, including operating systems and web browsers,

owned, controlled or used by the Customer or its Users to access or use the Software and Services, and includes a Device.

Device

means a single device owned or controlled by the Customer or a User and used to access or use the Software and Services.

Documentation

means any instruction manuals and other supporting documentation provided by Op Central in relation to the Software.

Fees

means the fees specified in the Service Offer or as otherwise agreed in writing between Op Central and the Customer.

Intellectual Property

means any and all intellectual and industrial property rights anywhere in the world (including present and future intellectual property rights) including (but not limited to) rights in respect of or in connection with:

- (a) any related Confidential Information, trade secrets, know-how or any right to have information kept confidential;
- (b) copyright (including future copyright and rights in the nature of or analogous to copyright);
- (c) trade marks, service marks and other related marks; and
- (d) all associated goodwill,

whether or not existing at the date You agree to these terms and whether or not registered or registrable and includes any and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights and includes all renewals and extensions.

Licensed Material

means:

- (a) the Software;
- (b) any Bundled Software licensed in accordance with clause 4.2(a);
- (c) any Documentation; and
- (d) any Updates to any of (a)–(c) provided by Op Central.

Maximum Devices

means the maximum number (if any) of Devices permitted to access or use the Software pursuant to this Agreement, as specified in a Service Offer or otherwise agreed in writing between Op Central and the Customer. A different number of Maximum Devices may apply to different Software modules.

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Maximum Users	means the maximum number (if any) of Users permitted to use the Software pursuant to this Agreement, as specified in a Service Offer or otherwise agreed in writing between Op Central and the Customer. A different number of Maximum Users may apply to different Software modules.
Minimum Term	means the minimum term (if any) specified in a Service Offer or otherwise agreed in writing between Op Central and the Customer. In the event that the customer has received an initial fee free period or period of discounted license fees, the minimum term will commence at the commencement of paying the full license fees offered on the service offer. The minimum term is the minimum number of months that the customer is required to pay the full agreed licensing fees to Op Central per the service agreement. Any time period wherein monthly license fees are not charged or wherein these fees are temporarily discounted, will not count towards the Minimum Commitment Period. Any fee free period, payment free period or period of discounted fees at the start of the contract period is in addition to the minimum term commitment.
Op Central	means Vortilla Holdings Pty Ltd ABN 23 087 711 993 of Suite 20, 25 Claremont St, South Yarra, VIC 3141, Australia.
Payment Terms	means the fees specified in the Service Offer or as otherwise agreed in writing between Op Central and the Customer.
Permitted Purpose	means the use of functions within the Software for the creation and management of data and content created by and published within the Software.
Related Body Corporate	has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
Service Offer	means a document setting out details of the proposed offer for Op Central to provide Software and/or Services to a Customer for use by the Customer's Users, and may include an order form, a proposal document or a page on Op Central's website.
Services	means services provided by Op Central to a Customer in conjunction with the Software, if any, which may include: <ul style="list-style-type: none">(a) set-up and implementation services;(b) support services; and(c) any other services Op Central agrees to provide to the Customer.
Software	means the software application licensed by Op Central to which this document applies.

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Term	means the initial Minimum Term and any subsequent renewal terms
Update	means an update, modification, alteration, enhancement or new releases of Software or Documentation supplied by Op Central that replaces or supplements a previous version.
User	means a natural person permitted by the Customer to use the Software or Services.
User Account	means an account associated with a particular User.

Interpretation

In this Agreement unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any government agency (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 17.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to time in Melbourne, Victoria, Australia;
- (k) a reference to an agreement other than this Agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (m) a provision of this Agreement may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this Agreement or the preparation or proposal of that provision;

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- (n) a reference to a body, other than a party to this Agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (o) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (p) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day; and
- (r) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.