Customer Contract

1 Background

1.1 Datanova Cloud is involved in providing the Goods and Services described in the Customer Order and the Statement of Works.

1.2 The Customer has engaged Datanova Cloud to provide the Goods and Services to it in accordance with the terms and conditions set out in this Agreement.

1.3 By completing the Customer Order and approving the Statement of Works, the Customer accepts this engagement on the terms and conditions set out in this Agreement.

2 Definitions and Interpretation

2.1 The following definitions apply to this Agreement:

(a) **Agreement**: means:

  i. this Customer Contract (Terms and Conditions) inclusive of the Customer Order;

  ii. the Statement of Works referred to the Customer Order;

  iii. any attachments; and

  iv. any other document that is expressly incorporated by reference.

(b) **Approved Amount**: for Approved Expenses means the monetary amount described in Item 9 of the Customer Order which Datanova Cloud may spend on individual purchase transactions that are necessary for the delivering the Goods and Services without obtaining approval.

(c) **Approved Expenses**: means approved expenses included in Item 8 of the Customer Order or are otherwise authorised under clause 8.2.

(d) **Australian Consumer Law**: has the meaning given to it under the *Competition and Consumer Act* 2010 (Cth) as implemented under the *Fair Trading Act* 1989 (Qld).

(e) **Business Day**: means any day that is not a Saturday, Sunday or public holiday in Maroochydore, Queensland.

(f) **Claim**: includes any claim, action, demand, application, proceeding, judgment, enforcement hearing and enforcement order.

(g) **Commencement Date**: means the commencement date in the Customer Order.

(h) **Completion Date**: means the completion date in the Customer Order.

(i) **Confidential Information**: means any information which by its nature is confidential, is received on the express or implied understanding that it is confidential, or is marked as being confidential, and may include:

  i. information about processes and policies, commercial operations, financial arrangements or affairs;

  ii. the terms of this Agreement;

  iii. Personal Information; and

  iv. Records,

but does not include:

  v. information that is publicly known for reasons other than as a result of a breach of this Agreement; or

  vi. any other information that is received through a third party and which is not governed by an obligation of confidence.

(j) **Contact Person**: means the Customer's nominated representative as described in the Customer Order.

(k) **CPI**: means the Consumer Price Index for All Groups (Brisbane) as published by the Australian Bureau of Statistics.

(l) **Current CPI**: means for the Review Date, the CPI for the last quarter ending before the Review Date.

(m) **Customer**: means the Customer as described in the Customer Order and as the context requires, includes any employee, officer, agent, contractor, or sub-contractor of the Customer.

(n) **Datanova Cloud**: has the meaning given to it in the Customer Order and as the context requires, includes any employee, officer, agent, contractor, sub-contractor or a related entity of Datanova Cloud.

(o) **Establishment Fee**: means the amount Datanova Cloud charges for Software Development Services and System Integration for any software or application that is developed or created for the Customer that is not the FlowLogic Application.

(p) **Existing Material**: means any material which contains Intellectual Property Rights in existence before the Commencement Date, and as the context requires, may include the FlowLogic Application and the FlowPoint Application.

(q) **FlowLogic Application**: is a mobile, cloud based application that includes the following functions:

i. case management and customer relationship management (CRM) for participants, workers and business that work in health and social care including NDIS and My Aged Care;

ii. easy to use business intelligence dashboards for performance that lets end users to view items such as outstanding processes, caseloads, watchlists, and open, completed and skipped tasks;

iii. rostering, time entries, billing, human resources, and reporting functions;

iv. all data historically recorded that shows when records were edited and who they were edited by;

v. compiling, collecting and storing all information quickly including critical incident information; and

vi. use of the application on different mobile devices and interfaces including web browsers, desktops, laptops, mobile or tablet devices.

(r) **FlowLogic Establishment Fee**: means the amount Datanova Cloud charges for Software Development Services, Software Support Services and System Integration for the **FlowLogic** Application.

(s) **FlowLogic User**: means any worker who:

i. logs onto the **FlowLogic** Application in any calendar month; or

ii. does not log onto the **FlowLogic** Application but who has work related data entered into the **FlowLogic** on their behalf in any calendar month.

(t) **FlowLogic User Fee**: is the monthly licence fee that is payable by the Customer for each **FlowLogic** end user.

(u) **FlowPoint Application**: is a self-service customer portal application that integrates with **FlowLogic** and makes access and use of data imported into FlowCare easier.

(v) **FlowPoint Establishment Fee**: means the amount Datanova Cloud charges for Software Development Services, Software Support Services and System Integration for the FlowPoint Application.

(w) **FlowPoint User Fee**: means the licence fee that is payable by the Customer for each FlowPoint end user.

(x) **Force Majeure Event**: means any event beyond the reasonable control of the affected party which:

i. adversely affects that party's ability to meet any obligation under this Agreement; and

ii. could not be mitigated or prevented by reasonable due diligence or precautionary measures adopted by the affected party,

and may include natural disasters or acts or god, health pandemics, acts of terrorism, deliberate vandalism, riots, civil disturbance, industrial disputes, and strikes (other than strikes involving the affected party or its employees, officers, agents, contractors or sub-contractors).

(y) **Goods**: means goods sold by Datanova Cloud to the Customer under this Agreement.

(z) **GST**: means goods and services tax imposed through GST Law.

Customer Contract

(aa) **GST Law**: means *A New Tax System (Goods and Services Tax) Act* 1999 (Cth), any regulations passed under this Act, or any statutory instrument amending, consolidating, or replacing it.

(bb) **Intellectual Property Rights**: means all registered and unregistered rights in Australia and throughout the world for:

- **i.** copyright;
- **ii.** trademarks or service marks;
- **iii.** designs;
- **iv.** patents;
- **v.** semiconductors or circuit layouts;
- **vi.** source codes and object codes;
- **vii.** trade, business or company names;
- **viii.** indications of source or appellations of origin;
- **ix.** trade secrets;
- **x.** know-how and confidential information;
- **xi.** the rights to registration of any of the above; and
- **xii.** the right to bring an action for infringement of any of the above,

but excludes Moral Rights.

(cc) **Key Person**: means the nominated representative for Datanova Cloud as described in the Customer Order.

(dd) **Loss**: includes any loss, liability, tax, prohibition, penalty, fine or expense.

(ee) **Mediation and Conciliation Rules**: means the rules for mediation as published by the Resolution Institute at https://www.resolution.institute/resources/rules-for-dispute-resolution-processes/mediation-rules (as amended from time to time).

(ff) **Moral Rights**: means the moral rights conferred under the *Copyright Act* 1968 (Cth), including the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed;

(gg) **New Material**: means Intellectual Property Rights subsisting in any material that come into existence through the provision of Goods and Services under this Agreement.

(hh) **Optional Conditions**: when marked in Item 18 of the Customer Order means special conditions which apply to certain kinds of Goods and Services including:

- **i.** Part 1: Software Development Services;
- **ii.** Part 2: Software Support Services;
- **iii.** Part 3: System Integration;
- **iv.** Part 4: Modifications and Upgrades;
- **v.** Part 5: Data Services; and
- **vi.** Part 6: SaaS.

(ii) **Personal Information**: means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

(jj) **PPSA**: means the *Personal Property Securities Act* 2009 (Cth).

(kk) **Previous CPI**: means for the Review Date, the CPI number for the last quarter ending one year prior to the Review Date.

Customer Contract

(ll) **Purchase Price**: for Goods means:

    i. a fixed amount; or

    ii. in the case of Goods that are to be supplied by unit or in volume, the method of calculation relied on to determine the total price,

as described in the Customer Order.

(mm) **Reasonable Refusal**: for Goods means the Goods:

    i. are faulty or defective;

    ii. are not of an acceptable quantity or quality; or

    iii. do not comply with the relevant description.

(nn) **Records**: means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available in connection with the performance of this Agreement.

(oo) **Review Date**: with respect to reviewing the pricing relied on to calculate the Purchase Price/Service fee, means the end of each financial year.

(pp) **Services**: means:

    i. the services described in the Customer Order; and

    ii. any tasks connected with performing the Services,

and includes any individual service items that are requested by the Customer during the Term and which are included in the Statement of Works.

(qq) **Service Fee**: with respect to services means the applicable amount or method of calculation included in the Customer Order and as the context requires, may include any of the following:

    i. Establishment Fee and User Licence Fee;

    ii. FlowLogic Establishment Fee and FlowLogic User Fee or MAU (Monthly Active User); or

    iii. FlowPoint Establishment Fee and FlowPoint User Fee.

(rr) **Specifications**: means any technical or other specification related to the manufacture and/or use of the Goods or the provision of Services, as made available at the time of purchase.

(ss) **Statement of Works**: means the Customer Order, or in some cases following the receipt of the Customer Order, a statement or description (usually in the form of a proposal or project implementation plan that is prepared under clause 4 in consultation with the Customer) which describes:

    i. the scope of the Goods and Services to be provided;

    ii. any specific performance requirements or milestones;

    iii. any specifications and other functionality considerations; and

    iv. any service level standards.

(tt) **Term**: means the period running from the Commencement Date till the Automatic Renew Date.

2.2 In this Agreement unless the context otherwise requires:

(a) words importing a gender include any other gender;

(b) words in the singular include the plural and vice versa;

(c) all dollar amounts refer to Australian currency;

(d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating, or replacing it;

(e) a reference to an individual or person includes a corporation or other legal entity;

Customer Contract

(f)　a reference to "consent" means prior written consent;

(g)　clause headings have been included for convenience only and are not intended to affect the meaning or interpretation of this Agreement;

(h)　if any expression is defined, other grammatical forms of that expression will have corresponding meaning;

(i)　if a party includes two or more persons, this Agreement will bind them jointly and each of them severally;

(j)　any reference to 'notice' under this Agreement means written notice; and

(k)　if there is inconsistency between the various parts that form this Agreement, priority will be determined according to the following:

　　i.　special conditions in Item 17 of the Customer Order (if applicable);

　　ii.　any applicable Optional Conditions;

　　iii.　the Customer Contract (Terms and Conditions);

　　iv.　the Statement of Works;

　　v.　any other attachments; and

　　vi.　any other document incorporated by way of reference.

3　Term

3.1　This Agreement will operate for the Term unless it is the subject of an earlier termination under clause 18.

3.2　This Agreement will continue to operate until:

(a)　the Goods and Services have been properly provided; and

(b)　the Customer has given the Key Person notice that all Goods and Services have been properly provided.

4　Statement of Works

4.1　The terms and conditions in this Agreement become applicable when Datanova Cloud provides the Customer with a Statement of Works and:

(a)　the Statement of Works is accepted by the Customer without variation;

(b)　the Customer varies the Statement of Works and Datanova Cloud confirms its acceptance of each of the variations in writing; or

(c)　if mutual agreement cannot be reached on each of the variations initially, after the Statement of Works is subsequently renegotiated and agreed to by the parties.

4.2　To remove doubt, the Statement of Works can be negotiated and agreed to at the time this Agreement is formed, or at a later time.

4.3　In exchange for payment of the Services Fee and/or the Purchase Price (as the case may be), Datanova Cloud agrees to provide the Customer with Goods and Services in accordance with the Statement of Works.

5　Representatives

5.1　The Contact Person is the Customer's main contact person for all exchanges of correspondence between the Customer and Datanova.

5.2　The Key Person is the main contact person for Datanova Cloud for all exchanges of correspondence between Datanova Cloud and the Customer.

5.3　The Key Person must:

(a)　liaise with and report to the Contact Person about the provision of the Goods and Services by Datanova Cloud and the development of any key performance requirements;

(b)　at the Contact Person's reasonable request, attend meetings with or provide written reports to the Contact Person; and

(c) comply with any reasonable request or direction given by the Contact Person in relation to the provision of the Goods and Services.

5.4 Datanova Cloud and/or the Customer may permanently or temporarily replace the Contact Person and/or the Key Person subject to giving the other party notice of the replacement which includes:

(a) the contact details for the new Contact Person and/or Key Person; and

(b) if the replacement person is temporary, the term of appointment.

6 Provision of Services

6.1 This clause 6 applies when the Agreement involves Datanova Cloud providing Services to the Customer.

6.2 Upon finalising the Statement of Works, and subject to this Agreement, Datanova Cloud must:

(a) ensure that all Services are provided at times, intervals and any reasonable instructions given by the Customer;

(b) make proper investigations and enquiries to inform itself of the Customer needs in relation to the Services; and

(c) ensure that due care, professional skill, expertise and diligence is exercised in connection with the Services.

6.3 Datanova Cloud warrants that:

(a) all services will be provided to a high quality and professional standard;

(b) all persons engaged to carry out the Services on its behalf are competent, and have the necessary and appropriate qualifications, licenses, admissions, memberships, skills, and expertise to successfully perform the Services; and

(c) all Services will be carried out in accordance with any deliverables agreed to by the parties.

6.4 The Customer also agrees to:

(a) do all things and execute all documents;

(b) provide such information and assistance reasonably required (including outlining and explaining any performance obligations in connection with particular service items);

(c) pay any applicable Service Fees; and

(d) comply with all protocols for communication (as advised by Datanova),

to ensure the Services can be properly performed by Datanova.

7 Sale of Goods

7.1 Clause 7 applies when the Agreement involves a sale or supply of Goods by Datanova Cloud to the Customer.

7.2 Datanova Cloud agrees to supply Goods to the Customer in accordance with this clause 7.

Title

7.3 Legal and equitable title in the Goods passes to the Customer upon payment of the full Purchase Price to Datanova.

7.4 Subject to full payment of the Purchase Price, title of the Goods will be supplied free of any encumbrances and other adverse interests.

7.5 The Customer acknowledges that until full payment of the Purchase Price is received by Datanova, and in circumstances where the Customer receives early delivery of the Goods:

(a) the Customer holds the goods as bailee for Datanova;

(b) a fiduciary relationship exists between the Customer and Datanova Cloud for the goods; and

(c) subject to any express agreement to which enables the Customer to use the Goods for the intended purpose before title passes, the Customer keeping the Goods in the condition in which they were provided by Datanova Cloud until such a time that title in the Goods passes to the Customer.

Risk

7.6 Risk in the Goods passes to the Customer upon the earlier of the following:

(a) the Customer collects the Goods from Datanova;

(b) Datanova Cloud delivering the goods to the Customer; or

(c) upon legal and equitable title in the Goods passing to the Customer.

Acceptance

7.7 Subject to this Agreement, within two days of receiving the Goods from Datanova, the Customer must:

(a) carry out a physical inspection of the Goods; and

(b) notify Datanova Cloud if the Goods do not comply with the description, conditions or warranties set out in this Agreement.

7.8 To the fullest extent permitted by law, the Goods are accepted by the Customer within two business days of:

(a) the Customer collecting the Goods from Datanova; or

(b) Datanova Cloud delivering the Goods to the Customer,

regardless of whether a physical inspection is carried out under clause 7.7.

Use

7.9 The Customer agrees that to the fullest extent permitted by law, they will only use the Goods:

(a) for the intended purpose for which they are designed;

(b) in the correct way; and

(c) in accordance with any relevant specifications, professional advice or user documents provided by Datanova.

7.10 To the fullest extent permitted by Law, if the Customer:

(a) uses the Goods in a way that is inconsistent with 7.9, or

(b) damages the goods through their own negligence or failure to properly maintain the goods,

then all Customer warranties and all statutory warranties under the Australian Consumer Law will be invalidated.

7.11 The Customer fully releases Datanova Cloud from all Loss suffered by the Customer (or any person claiming through the Customer) as a consequence of any breach of clauses 7.9 and 7.10.

Delivery

7.12 Where Datanova Cloud has agreed to deliver the Goods, Datanova Cloud will make all reasonable efforts to have the Goods delivered to the Customer in accordance with the Customer's instructions.

7.13 Despite clause 7.12, Datanova Cloud is not liable for:

(a) any failure to deliver or any delay in delivery for any reason;

(b) any damage or loss due to unloading or packaging; or

(c) except to the extent that such damage was caused by Datanova's own negligent act or omission, damage to property caused upon entering premises to deliver the Goods.

7.14 Any costs incurred by Datanova Cloud through any failure by the Customer to accept the goods at time of delivery will be reimbursed by the Customer to Datanova.

Customer Contract

7.15 The Customer acknowledges that where Datanova Cloud coordinates delivery of the Goods other than by way of a Reasonable Refusal:

(a) delivery charges and estimated delivery times depend on where the Goods are being delivered; and

(b) it is the Customer's responsibility to ensure that all delivery information is correct.

Representations and Fitness for Purpose

7.16 To the fullest extent permitted by law, all representations, warranties, guarantees and implied terms in relation to the Goods are excluded.

7.17 The Customer agrees that if it is aware (or should be aware) that the Goods are for a particular purpose, the Customer must clearly specify that purpose at the time of ordering the Goods and ensure this is included in the Statement of Works.

7.18 The Customer also acknowledges that:

(a) it has made its own enquiries in relation to the suitability and fitness of the Goods; and

(b) it does not rely on any warranty, condition, description, or representation by Datanova Cloud in relation to their suitability and fitness of the Goods for a particular purpose.

8 Payment and Review

Payment

8.1 Subject to clause 9 (GST), upon the receipt of a valid tax invoice and in consideration for the Services provided under this Agreement, the Customer will:

(a) pay Datanova Cloud the Service Fee/Purchase Price; and

(b) reimburse Datanova Cloud for any expenses that are Approved Expenses.

Approved Expenses

8.2 For Approved Expenses that are not specified on the Commencement Date, the Customer must pay all Approved Expenses that are reasonably and properly incurred by Datanova Cloud under the Approved Amount.

8.3 For all Approved Expenses that are over the Approved Amount, the Customer:

(a) must give its prior written approval to all expenses to be incurred by Datanova Cloud while performing the Services before they are actually incurred; and

(b) will not be liable to reimburse Datanova Cloud for any Approved Expenses over the Approved Amount expenses unless prior written approval is granted.

Method of Payment

8.4 Subject to paragraph 8.4 being satisfied, the Service Fee/Purchase Price will be payable by the Customer:

(a) at times and at intervals described in the Customer Order; or

(b) if no timeframes and intervals are included in the Customer Order, at monthly intervals and in arrears.

8.5 The Service Fee/Purchase Price will be calculated by using the total amount or method of calculation included in or referred to in the Customer Order.

8.6 The Customer is not obliged to pay Datanova Cloud for any part of the Goods and Services until Datanova Cloud has given the Customer a tax invoice compliant with GST Law.

8.7 All invoices submitted by Datanova Cloud must:

(a) describe (or be accompanied by documents which describe) goods or services to which the invoice relates;

(b) separately itemises any Approved Expenses (if applicable); and

(c) having regard to clause 9 (GST) must be in a format which specifically identifies any GST payable to enable to the Customer to claim an input tax credit.

8.8 Upon receiving an invoice, the Customer may ask Datanova Cloud to provide further information about certain service items to help the Customer to determine whether or not a particular amount is payable.

8.9 Datanova Cloud must promptly respond to any requests received under paragraph 8.7 by providing such information reasonably requested by the Customer.

8.10 If the invoice is correct, the Customer must pay a correctly rendered tax invoice:

(a) within 7 days of the date of each invoice; or

(b) if additional information is requested under paragraph 8.7, within 7 days of the Customer receiving that additional information.

8.11 If the invoice is incorrect, the Customer must notify Datanova Cloud within 3 days after receiving any invoice the Customer discovers are incorrect.

Fee Review

8.12 For any Goods and Services for which there is no pre-agreed fixed pricing arrangement, Datanova Cloud reserves the right to review and increase the pricing or rates relied on to calculate any Service Fees/Purchase Price payable under this Agreement on each Review Date in accordance with the greater of the following:

(a) fixed increases of 3%; or

(b) CPI which involves taking those amounts in the pricing schedule relied on to calculate the Service Fee/Purchase Price/Monthly Active User (MAU) for the previous year, multiplying those amounts by the Current CPI, and dividing them by the Previous CPI.

9 GST

9.1 Terms used in this clause have the meaning given to them in GST Law and all amounts payable under this Agreement are excluding GST.

9.2 Where the Goods and Services provided under this Agreement are:

(a) a taxable supply; and

(b) the consideration for that supply excludes GST,

the recipient must pay an amount equal to the GST in addition to the consideration payable for the supply.

9.3 The amount of GST will be calculated at the prevailing GST rate.

9.4 If the GST rate is varied, the consideration payable for any supply under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.

9.5 Where GST applies to a supply made under this Agreement, the supplier will deliver to the recipient a valid tax invoice or adjustment note at, or before the time payment for the supply is required.

9.6 If an adjustment event occurs in connection with any taxable supply made under this Agreement:

(a) the amount payable by the recipient will be recalculated to reflect the adjustment event; and

(b) payment for the adjustment event will be made by the recipient to the supplier or by the supplier to the recipient (as the case requires).

9.7 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed will be the sum of:

(a) the amount of the expense or outgoing less any input tax credits for the expense or outgoing to which the other party is entitled; and

10 Intellectual Property

10.1 Title to and ownership of all Intellectual Property Rights in New Material developed through Goods and Services developed or provided under this Agreement will vest in Datanova Cloud upon its creation.

Customer Contract

10.2 In exchange for the Service Fee/Purchase Price and subject to the Customer performing its obligations under this Agreement, Datanova Cloud gives the Customer a non-exclusive, non-transferrable, licence for the relevant Term to use, the New Material (to the extent it incorporates the Existing Material) for commercial purposes.

10.3 To remove doubt, the Customer is not permitted to sub-licence the New Material developed through the Goods and Services developed or provided under this Agreement without Datanova's written consent.

10.4 Paragraph 10.1 does not affect the ownership of any Existing Material belonging to another party that is used in connection with performing the Services under this Agreement.

10.5 For Existing Material belonging to the Customer, the Customer grants Datanova Cloud a perpetual, non-exclusive, non-transferrable, royalty free licence to use any Existing Material belonging to the Customer for:

(a) performing the Services under this Agreement and achieving any purpose of the Customer which forms the basis for providing of any service items; and

(b) developing any New Material which may result from the performance of those Services under this Agreement.

10.6 For Existing Material belonging to Datanova Cloud, Datanova Cloud grants the Customer a non-exclusive, non-transferrable licence:

(a) to use Existing Material that is licensed under this Agreement; or

(b) which is incorporated into New Material that results from the Services performed under this Agreement,

for the Term.

10.7 Each party warrants that it owns or is legally authorised to use all Existing Material provided by it that used in connection with creating or providing the Goods and Services.

10.8 This clause survives the expiry or early termination of this Agreement.

10.9 To remove doubt, each party warrants that all employees, officers, agents, contractors, or sub-contractors involved in the provision of Goods and Services under this Agreement will be bound by this clause.

11   Confidential Information

11.1 Parties must ensure that Confidential Information is kept confidential and is not disclosed to any person except:

(a) to its employees, officers, agents, contractors, and sub-contractors to the extent needed for the performance of this Agreement;

(b) where disclosure is authorised or required by law; or

(c) with the disclosing party's consent.

11.2 Each party must:

(a) ensure that all Confidential Information is kept reasonably secure;

(b) ensure that all Confidential Information is only used for purposes directly related to the provision and use of Goods and Services, and only the relevant purpose for which it is originally disclosed;

(c) immediately notify the other party if it becomes aware of any breach of this clause, or if a disclosure of Confidential Information is required by law;

(d) if requested by the disclosing party:

i. deliver or destroy all documents, records or files in its possession or control which contain Confidential Information in accordance with the disclosing party's instructions; or

ii. obtain from its officers, employees, agents, contractors and sub-contractors a deed of confidentiality in a form acceptable to the Customer.

11.3 To remove doubt, each party warrants that:

(a) all employees, officers, agents, contractors, or sub-contractors involved in the provision or receipt of Goods and Services under this Agreement will be bound by this clause; and

Customer Contract

(b)   they will immediately notify the other party upon discovering there has been a breach of this clause.

12   Personal Information

12.1   This clause 12 applies if:

(a)   Datanova Cloud (in providing the Goods and Services under this Agreement) will in any way deal with Personal Information for the Customer; or

(b)   the Goods and Services under this Agreement will involve:

i.   the transfer of Personal Information from the Customer; or

ii.   a storage of Personal Information belonging to a third party that is received by the Customer; or

iii.   the provision of services to a third party for the Customer.

12.2   Unless authorised by law, Datanova Cloud must:

(a)   ensure that Personal Information is protected against loss and unauthorised access, use, modification, disclosure, or other misuse;

(b)   not use Personal Information other than for the purposes directly related to providing the Goods and Services under this Agreement;

(c)   not disclose Personal Information without the prior written consent of the Customer;

(d)   ensure that access to Personal Information is restricted to those persons who require access to perform their duties under this Agreement;

(e)   ensure that its employees, officers, agents, contractors, and sub-contractors comply with the same obligations imposed on Datanova Cloud under this clause;

(f)   fully and promptly cooperate with the Customer to enable the Customer to respond to any applications or privacy complaints which require access to, or amendment of, a document containing a person's Personal Information;

(g)   immediately notify the Customer if Datanova Cloud becomes aware or any unlawful use or disclosure of Personal Information in its possession or control;

(h)   comply with such other privacy and security measures required by the Customer as agreed to in writing from time to time; and

(i)   if requested by the Customer, promptly return or destroy any record, document or file which contains Personal Information in accordance with the Customer's instructions upon the expiry or termination of this Agreement.

12.3   Datanova Cloud must also:

(a)   ensure its employees, officers, agents, contractors, and sub-contractors are bound by this clause; and

(b)   immediately notify the Customer upon becoming aware of any breach of this clause.

13   Security and Access

13.1   Datanova Cloud must, when using the Customer's premises, facilities or other resources belonging to the Customer:

(a)   comply with this Agreement; and

(b)   comply with the Customer's rules, directions, and procedures, including those relating to security or workplace health and safety and data security.

14   Data Security

14.1   When Datanova Cloud is involved in the provision of Goods and Services that include the management, maintenance, storage and transfer of Customer data, Datanova Cloud agrees that it will:

(a)   do all things reasonably necessary to ensure the Customer data is kept and remains secure; and

(b) notify the Customer if there has been a breach of data security and will do all things reasonably necessary to remedy the breach.

15 Suspensions and Variations to Services

15.1 Subject to this clause 15 and clause 20 (**Force Majeure**), the Customer may at any time and by giving notice, ask Datanova Cloud to vary the scope as to the provision of the Goods and Services by:

(a) increasing the volume of any part of the Goods and Services or by asking Datanova Cloud to perform additional work;

(b) increasing the number of users of any software application belonging to Datanova Cloud that is licensed under this Agreement; or

(c) changing the character or content of any part of the Goods and Services.

15.2 Upon receiving a notice under clause 15.1, Datanova Cloud must notify the Customer of whether it accepts or rejects the Customer's request for a variation (whether it be with or without conditions) and explain the reasons in support of the decision.

15.3 Where:

(a) the Customer gives Datanova Cloud notice to amend the Statement of Works; and

(b) the variation is accepted by Datanova,

the total Service Fee/Purchase Price for the additional Goods and Services may be proportionately adjusted by using the applicable method of calculation for the Goods and Services at the relevant time.

15.4 Datanova Cloud also reserves the right to adjust the Service Fee/Purchase Price when additional Goods and Services become necessary because:

(a) the Customer has requested that additional works to be performed;

(b) there is inconsistency between the Customer's actual requirements and the requirements as scoped under the Statement of Works and the Customer is the source of the inconsistency; and

(c) there are other variables which have resulted in the need for additional works, including:

i. any failure, damage or misuse of the Goods and Services by the Customer or any third party engaged by the Customer;

ii. any rectification works which become necessary because of Customer fault;

iii. any act or omission by the Customer or any third party engaged by the Customer, which invalidates any consumer warranties and/or statutory warranties under the Australian Consumer Law;

iv. not complying with any specifications, instructions for use or professional advice that is provided in connection with the Goods and Services;

v. functionality impairments and disruptions that arise with the Customer's hardware, software or other equipment for which Datanova Cloud is not responsible;

vi. functionality impairments and disruptions which arise through damage, power shortages or another failure for which Datanova Cloud is not responsible;

vii. delays in providing the instructions needed to provide the Goods and Services by the Customer;

viii. the nature and complexity of the works is materially different from those agreed to under the Statement of Works;

ix. other works which fall outside the scope of the Statement of Works become reasonably necessary including Customer training; and

x. unexpected or unusual issues in connection with the Goods and Services.

15.5 If a Customer:

(a) breaches its payment obligations under clause 8; and

(b)   the invoice for which payment is required has not been paid by no later than 14 days from the date of each invoice,

then in addition to the other right available to Datanova Cloud under this Agreement, Datanova Cloud may suspend the provision of future Goods and Services under this Agreement until all outstanding payments are up to date.

16   Release and Indemnities

Datanova Cloud Release and Indemnity

16.1   Subject to clause 16.3 - 16.5 and to the fullest extent permitted by law, Datanova Cloud indemnifies and releases the Customer for Loss resulting from any Claim related to:

(a)   any act or omission which amounts to a breach of Datanova's obligations under this Agreement;

(b)   any unlawful act or omission connected with Datanova's actual performance of its obligations under this Agreement;

(c)   any neglect or default connected with Datanova's actual performance of its obligations under this Agreement;

(d)   any neglect or default in connection with the supply of the Goods and Services; and

(e)   all costs (including legal costs on a standard basis) that are reasonably and properly incurred by the Customer because of Datanova's breach of this clause 16.1.

16.2   Datanova's liability under clause 16.1 will be proportionately reduced to the extent that the Customer's officers, employees, agents, contractors, or sub-contractors contribute to the Loss that is the subject of the Claim.

Exclusions

16.3   In no event will Datanova Cloud be liable for any Loss that is the subject of any Claim related to:

(a)   faulty design;

(b)   negligent or misleading advice;

(c)   in the case of Goods supplied, any direct or indirect Loss resulting from the Customer's actual or attempted failure to use the relevant Goods in the prescribed way;

(d)   any indirect, special or consequential Loss or injury to any person, corporation or other entity; or

(e)   any act or omission by the Customer or any third party engaged by the Customer to which clause 15.4(c) applies.

Australian Consumer Law

16.4   If this Agreement is a supply of Goods and Services under the *Competition and Consumer Act* 2010 (Cth):

(a)   nothing contained in this Agreement excludes or modifies any condition, warranty, or other obligation in relation to this Agreement where it is unlawful to do so; and

(b)   to the fullest extent permitted by law, Datanova's sole liability for breach of any such condition, warranty or obligation is limited to:

i.   the replacement of the goods or the supply of equivalent goods, or payment of the cost of replacing or acquiring equivalent goods;

ii.   the repair of the goods or payment of the cost of having the goods repaired;

iii.   the supply of the Services again;

iv.   the payment of the cost of having the Services supplied again.

16.5   If this Agreement is not a supply of goods or services to a consumer as defined in the *Competition and Consumer Act* 2010 (Cth):

(a)   Datanova Cloud will not liable for any consequential loss resulting from negligence, breach of contract or any other theory of liability; and

(b)   to the fullest extent permitted by law, Datanova's liability in connection with its supply, or any failure to supply the Goods and Services is limited to the amount (or the aggregate of the amounts) payable by the Customer under this Agreement.

Customer Indemnity

16.6   To the fullest extent permitted by Law, the Customer indemnifies Datanova Cloud from all Loss resulting from any Claim, which arises because the Customer, or any third party engaged by the Customer:

(a)   damages any equipment, hardware and software (**IT Systems**) belonging to Datanova Cloud that is in the Customer's possession or control;

(b)   causes data loss or a severe functionality disruption which renders Datanova's IT Systems fully or partially inoperable through:

i.   any wilful act or negligence;

ii.   not complying with any specifications, instructions for use or professional advice provided by Datanova Cloud with respect to the Goods and Services;

iii. not updating or maintaining any part of the Customer IT Systems that integrates with Datanova Cloud IT Systems for purposes related to the Goods and Services;

iv.   any virus that is uploaded onto Datanova's IT Systems and which is proven to originate from the Customer IT Systems, the Customer or any third party engaged by the Customer;

v.   any breach of data security which is caused by the Customer, any third party engaged by the Customer, or which originates from the Customer IT Systems; or

(c)   any other breach of clause 15.4(c) for which the Customer is responsible.

16.7   The Customer's liability under clause 16.6 will be proportionately reduced to the extent that the Datanova's employees, officers, agents, contractors, or sub-contractors contribute to the Loss that is the subject of the Claim.

17   Insurances

17.1   Datanova Cloud must take out and maintain the following insurance for the duration of this Agreement:

(a)   workers' compensation insurance under the *Workers' Compensation and Rehabilitation Act* 2003 (Qld);

(b)   public liability insurance valued at $10 million per occurrence; and

(c)   professional indemnity valued at $1 million per occurrence.

17.2   Datanova Cloud must also ensure that any contractor or sub-contractors engaged by it to assist in the provision of the Goods and Services are also adequately insured for their activities.

18   Termination

18.1   The Customer may only terminate this Agreement by giving 30 days written notice to Datanova Cloud if:

(a)   Datanova Cloud breaches an essential term of this Agreement that cannot be remedied;

(b)   Datanova Cloud breaches any other term of this Agreement that is not remedied within 30 days of Datanova Cloud receiving written notice from the Customer about the breach;

(c)   Datanova Cloud:

i.   becomes bankrupt or insolvent;

ii.   becomes subject to any form of external administration;

iii. enters into an arrangement with its creditors or takes advantage of any laws in force in connection with insolvent debtors; or

iv.   is wound up either voluntarily or involuntarily.

(d)   The Customer has sought other software arrangements.

18.2 Datanova Cloud may also terminate this Agreement by giving written notice if:

(a) the Customer breaches an essential term that cannot be remedied; or

(b) the Customer breaches any other term of this Agreement that is not remedied within 30 days of the Customer receiving written notice from Datanova Cloud about the breach.

18.3 Termination of this Agreement will not:

(a) affect any claim or action either party may have against the other by reason of any prior breach of this Agreement; or

(b) relieve either party of any obligation under this Agreement which survives its early termination or expiry.

19 Dispute Resolution

19.1 If a party considers that a dispute has arisen in relation to this Agreement, that party must give notice to the other party setting out details of the dispute.

19.2 If a party receives a notice under clause 19.1, each party must appoint a representative with authority to resolve the dispute, and the representatives must meet within 14 days.

19.3 If a dispute is not resolved within 30 days after a notice is given under subclause 19.1:

(a) the dispute is hereby submitted to mediation; and

(b) the mediation must be conducted in Brisbane; and

(c) the Mediation and Conciliation Rules, to the extent they apply to mediations, are to govern the mediation (and are incorporated into this agreement to that extent).

19.4 A party must not commence proceedings in any court against the other party to bring, assert or recover a Claim from the other party under this agreement unless:

(a) the Claim is for the recovery of a debt payable under this Agreement; or

(b) the Claim is the subject matter of a dispute that has been submitted to mediation under subclause 19.3, and the mediation has been terminated under the Mediation and Conciliation Rules; or

(c) the Claim is for an equitable or interlocutory remedy or relief, such as an injunction or specific performance.

20 Force Majeure

20.1 If either party is unable to meet an obligation or deliverable under this Agreement by the relevant due date because of a Force Majeure Event, the non-affected party must extend the due date for the relevant obligation or deliverable by a period equal to the period of delay, subject to the affected party:

(a) giving the non-affected party written notice of the Force Majeure Event within 7 days of its occurrence along with other evidence demonstrating the existence of the Force Majeure Event;

(b) continuing to perform any obligations under this Agreement that are not affected by the Force Majeure Event;

(c) using its best endeavours to overcome the effects of the Force Majeure Event as soon as possible; and

(d) notifying the non-affected party as soon as it is no longer affected by the Force Majeure Event.

21 Personal Property Securities Act (PPSA)

21.1 To the extent that any reservation in favour of Datanova Cloud under this Agreement constitutes a security interest under the PPSA (and if the Customer is in default) Datanova Cloud may:

(a) take steps to register their security interest on the personal property securities register; and

(b) if the Customer is in default:

i. take possession of the Goods;

ii. enter the Customer's premises for that purpose;

     iii.   appoint any person to be a receiver of all or any of the Goods, subject to a security interest being created by this document.

21.2   Until legal and equitable title passes to the Customer, the Customer must not do anything:

    (a)   to further encumber the Goods; or

    (b)   that will result in the security interest granted in favour of Datanova Cloud as ranking in priority behind any other security interest.

21.3   The Customer:

    (a)   waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under this Agreement; and

    (b)   contracts out of its right to receive any other notice or statement under any other applicable provisions in the PPSA.

21.4   To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 96, 117, 118, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143, and these sections will not apply to this Agreement.

22   Notices

22.1   Any notice, request, notification, consent, or approval (**notice**) under this Agreement must be in writing and may be sent by prepaid postage, fax, email or delivered by hand to the following respective addresses:

    (a)   for the Customer – as set out in the Customer Order;

    (b)   for Datanova Cloud – as set out in the Customer Order,

or at such other address as a party may subsequently give notice of to the other party.

22.2   A notice will be deemed to be given:

    (a)   if posted - two days after the date of posting;

    (b)   if delivered - on the date of delivery;

    (c)   if faxed - on the date the sender's facsimile machine notes a complete and successful transmission; or

    (d)   if emailed - on the date of the email;

22.3   Notwithstanding paragraphs 22.1 and 22.2, any fax or email that is received after 5:00 pm will be deemed to be given on the next business day.

23   Miscellaneous

23.1   **Entire Agreement**: This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, and agreements between the parties.

23.2   **No Partnership, Joint Venture, Employment or Agency**: The parties agree that:

    (a)   the relationship under this Agreement is one of principal and contractor;

    (b)   they are not in partnership or joint venture with each other; and

    (c)   they will not represent themselves or allow themselves to be represented as a partner or joint venturer, employee, or agent of the other party.

23.3   **Delay not to constitute waiver**: Any failure by a party at any time to enforce a clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.

23.4   **Waiver to be in writing**: No provision of this Agreement will be deemed to be waived unless that waiver is in writing and signed by the waiving party.

23.5   **Waiver limited to specific occasion**: A waiver by a party of a breach of any provision under this Agreement will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

Customer Contract

23.6 **Governing law**: This Agreement is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.

23.7 **Compliance with all laws**: Datanova Cloud must comply with all relevant laws in the provision of the Goods and Services.

23.8 **Severability**: If any part of this Agreement is determined to be invalid, unlawful or unenforceable for any reason, then to the full extent permitted by law:

(a) the offending provision will be severed from the rest of the Agreement; and

(b) the remaining terms and conditions will continue to be valid and enforceable.

23.9 **Further Assurances**: Each party must do all things and execute all documents reasonably required to give effect to this Agreement.

23.10 **Assignment**: The Customer may not assign or novate any right, title, interest, and obligation under this Agreement without the prior written consent of Datanova. Datanova Cloud may assign or novate this Agreement at any time without the Customer's consent.

23.11 **Records**: Datanova Cloud must keep and maintain Records of all Goods and Services provided in accordance with good professional practice.

23.12 **Contracting Out**: Datanova Cloud is free to engage and use any contractor or sub-contractor to assist in the provision of all or any part of the Goods and Services under this Agreement and which it regularly uses without the Customer's consent.

24 Clauses Surviving Termination

24.1 The following clauses will survive termination or expiration of this Agreement:

(a) clause 10: Intellectual Property;

(b) clause 10: Confidential Information;

(c) clause 12: Personal Information;

(d) clause 16: Release and Indemnity;

(e) clause 16.7: Insurances; and

(f) clause 23.9: Further Assurances.

25 Guarantee and Indemnity

Interpretation

25.1 The following definitions apply for the purposes of this guarantee and indemnity (Guarantee), in addition to the definitions in the Agreement which also apply to the Guarantee except to the extent provided otherwise below:

(a) comply includes perform, adhere to, observe, and carry out an obligation, law or agreement.

(b) costs include legal costs and outlays on a full indemnity basis.

(c) guaranteed obligation means an obligation of the Customer under this Agreement:

i. to pay or repay any part of the secured amount; or

ii. to pay or repay any money which would be payable under, or as damages for breach of, a provision of the Agreement if the provision was not void, avoided, illegal or unenforceable; or

iii. to pay money as interest, costs or otherwise, other than as specified in paragraphs 25.1(c) i or ii, in connection with or because of an amount falling within one or more of those paragraphs,

and includes, for example, obligations to indemnify.

(d) Guarantor means each person named as a guarantor on an execution page for this Guarantee and includes:

i. each person comprising the Guarantor individually;

      ii.   every combination of those persons together; and

      iii.   each of those persons' respective legal personal representatives, successors and permitted assigns, both individually and together in every combination.

(e)   obligation includes requirement, restriction, stipulation, covenant, and provision (whether positive or negative in character).

(f)   right includes a power or remedy however arising.

(g)   secured amount, at a particular time, means all amounts of money outstanding or contingently payable by the Lessee to the Lessor under the Lease, including:

      i.   money payable under an obligation to indemnify; and

      ii.   amounts that have not been quantified.

Background

25.2   The Guarantor has requested the Customer enter into the Agreement with Datanova.

25.3   By executing this Guarantee the Guarantor:

(b)   confirms that request; and

(c)   acknowledges that Datanova Cloud has entered, or will enter, into the Agreement because of that request.

25.4   It does not matter whether Datanova Cloud executes the Agreement before or after the execution of this Guarantee by any person comprising the Guarantor.

Guarantee

25.5   The Guarantor guarantees to Datanova Cloud the due and punctual compliance by the Customer with the guaranteed obligations.

25.6   If the Customer does not duly and punctually comply with a guaranteed obligation, the Guarantor must immediately pay to Datanova Cloud the amount required to make good, or compensate Datanova Cloud for, the non-compliance.

Indemnity

25.7   The Guarantor indemnifies Datanova Cloud against:

(a)   any costs, losses, damages, or expenses paid or incurred by Datanova Cloud as a result of, or in connection with, the Customer's failure to duly and punctually comply with a guaranteed obligation;

(b)   any liability of Datanova Cloud arising directly or indirectly from the Customer's failure to duly and punctually comply with a guaranteed obligation; and

(c)   any costs and expenses (calculated on an indemnity basis) paid or incurred by Datanova Cloud in relation to the liability referred to in paragraph (b).

25.8   The Guarantor indemnifies Datanova Cloud in respect of any guaranteed obligation which Datanova Cloud cannot enforce, or the Customer cannot comply with:

(d)   because a provision of this Agreement purporting to give rise to, or relating to, the guaranteed obligation is void, avoided, illegal or unenforceable; or

(e)   for any other reason.

25.9   As a principal debtor, the Guarantor agrees to comply with a guaranteed obligation referred to in subclause 25.8 as if it was set out at length in the Guarantee (with any necessary modifications).

Customer Contract

1   Part 1: Software Development Services

1.1   Part 1 applies if Software Development Services is:

(a)   marked in Item 18 of the Customer Order; and

(b)   relevant to the Goods and Services described in Item 3 of the Customer Order and the Statement of Works.

Definitions

1.2   The following definitions apply to this Part 1:

(a)   **Designated Operating Environment**: means the hardware and software environment in which the product software, licensed software or Developed Software is to be used by the Customer.

(b)   **Development Services**: means the Services described in the Statement of Works and provided by Datanova Cloud to produce the Software Solution.

(c)   **Developed Software**: means:

    i.   software that is to be developed; or

    ii.   the customised or modified parts of licensed software that is to be customised or modified, except for minor customised or modified parts as detailed in the Statement of Works;

(d)   **Software Solution**: means a product which is a developed or modified software solution specified in the Statement of Works to be created by Datanova Cloud for the Customer, and may include:

    i.   Personal Computer (PC) applications;

    ii.   website applications; or

    iii.   mobile device applications.

(e)   **User**: means a person who may use the Software Solution for the purpose of performing their work;

(f)   **Warranty Period**: for the Software Solution means the first thirty (30) days after the Software Solution is accepted by the Customer.

Service Period

1.3   Datanova Cloud will provide Development Services for

(a)   a specific service period is one is nominated in the Statement of Works; or

(b)   for the Term if a specific servicing period is not nominated.

Provision of Development Services

1.4   Datanova Cloud will supply to the Customer the Development Services in accordance with the Customer Contract.

1.5   Datanova Cloud will also develop, install (if applicable) and test the Software Solution to ensure its conformity with the Statement of Works and any design specifications.

Nature of Development Services

1.6   Datanova Cloud must, in accordance with the Statement of Works:

(a)   implement all activities necessary for performance of the Development Services; and

(b)   perform any other services specified in the Statement of Works.

1.7   The Statement of Works, insofar as it includes Development Services will include information about the following processes:

(c)   assessing and defining the Customer's existing IT system or the Designated Operating Environment, if necessary;

(d) identifying the Customer's goals, requirements and expectations for the Software Solution which will include a statement of Datanova's understanding of the Customer's and/or User's experience and requirements in relation to the Software Solution;

(e) identifying;

 i. the roles and responsibilities of the parties,

 ii. the objectives to be met by Datanova;

 iii. the scope and parameters of the Software Solution;

 iv. any milestones or deliverables;

 v. any resources required including resources that are to be made available by the Customer; and

 vi. the complexity of the Services;

(f) development of a strategy for creating the and implementing the Software Solution and which;

 i. identifies the Services to be performed;

 ii. identifies the procurement of necessary products;

 iii. identifies any stages of development, methodology, implementation, and acceptance of the Software Solution; and

 iv. includes a payment schedule (if the Service Fee is calculated by using a method of calculation).

(g) if required, development of a design specification for the Software Solution at the Customer's cost;

(h) development of the Software Solution itself (including prototyping if applicable); and

(i) testing and acceptance of the Software Solution by the Customer.

Design Specification

1.8 If required, and at the Customer's cost, Datanova Cloud will prepare a design specification for the Software Solution that is consistent with the Statement of Works:

(a) on the date specified in the Statement of Works; and

(b) which enables the Software Solution to be installed in the Designated Operating Environment.

1.9 The design specification will include technical explanation on how the Software Solution complies with the functions, specifications and deliverables included in in the Statement of Works.

1.10 Datanova Cloud will:

(a) use its best endeavours to ensure the Customer is kept informed while preparing the design specification; and

(b) upon completion of the design specification (or the final design as the case may be) provide it to the Customer so it can be approved.

1.11 If the Customer has any objection to the design specification provided by Datanova Cloud before approval:

(a) it must notify Datanova Cloud promptly of any alterations it reasonably requires; and

(b) upon being notified, Datanova Cloud must not unreasonably refuse to amend the design specifications to take into account the Customer's reasonable requirements.

1.12 Once the design specification is mutually agreed to by both parties, it will become part of the specifications in the Statement of Works and will vary and previous specifications to the extent applicable.

Methodology

1.13 Datanova's methodology for the development of the Software Solution will:

(a) identify and control software components of, and changes to the Software Solution to maintain the integrity and traceability of the Software Solution at all Stages of development;

(b) ensure control, development and supply of documentation relating to the Software Solution;

(c) ensure that the Software Solution is written and documented, as far as practicable, in a way which would enable future modification without further reference to Datanova;

(d) where applicable, reference and document procedures for corrective action for the Software Solution and associated documentation prior to acceptance; and

(e) comply with the Statement of Works.

Source Code

1.14 Datanova Cloud will provide the source code to the Customer in a format which is suitable for compilation and use in the Designated Operating Environment at the completion of the Customer Contract.

1.15 When applicable and necessary, Datanova Cloud will also inform the Customer about the nature and use of software tools, methodologies or other devices owned by Datanova Cloud or any other Party, in the production of the Software Solution.

1.16 If Datanova Cloud owns the software tools, methodologies, user documents or other devices required to use, maintain, or enhance the Software Solution, Datanova Cloud must, upon being requested in writing at any time during the Term, provide a licence to the Customer to use all material to which this clause 1.15 applies, for purpose of using, maintaining, and enhancing the Software Solution.

Use before Customer Acceptance

1.17 The Customer may not use the Software Solution in a production environment prior to acceptance unless such use is contemplated under the Statement of Works.

2 Part 2: Software Support Services

2.1 Part 2 applies if Software Support Services is:

(a) marked in Item 18 of the Customer Order; and

(b) relevant to the Goods and Services described in Item 3 of the Customer Order and the Statement of Works.

2.2 The following definitions apply to this Part 3 (Software Support Services):

(a) **Developed Software**: means:

   i. software that is developed; or

   ii. the customised or modified parts of licensed software or product software but for minor modifications.

(b) **Software Support Services**: means services provided by Datanova Cloud to the Customer in connection with the Supported Software.

(c) **Supported Software**: means the software (including packaged software, licensed software or Developed Software) described in the Statement of Works that is the subject of Software Support Services, and when specified, may include updates, new releases, modifications and enhancements.

Service Period

2.3 Datanova Cloud will provide Software Support Services for:

(a) the specific servicing period if one is nominated in the Statement of Works; or

(b) for the Term if a specific servicing period is not nominated in the Statement of Works.

Supported Software

2.4 Datanova Cloud agrees that through provision of the Software Support Services, the Supported Software will remain in conformity with the Statement of Works.

2.5 Datanova Cloud may also:

(a) offer the Customer any updates and new releases for the Supported Software at a price to be confirmed by Datanova; and

(b) offer training to the Customer (to be provided through a train-the-trainer model) on how to use the Supported Software following the installation of the Supported Software or any update or new release.

2.6 Where the Customer accepts an update or new release:

(a) Datanova Cloud will deliver the update or new release to the Customer;

(b) if Datanova Cloud is to install the update or new release, a Services Fee will be charged for any installation costs and training (if applicable); and

(c) the Statement of Works (inclusive of any specifications) will be deemed to be amended to the extent that the new specifications for the update or new release supersede the original specifications.

2.7 Datanova Cloud will carry out the Software Support Services to a standard that ensures continuity in performance of the Supported Software in accordance with the Statement of Works.

2.8 To remove doubt, Software Support Services do not include services that involve correcting faults, errors or defects caused by:

(a) operating the Supported Software in a manner which contravenes the Customer's obligations as specified in the Agreement.

(b) failure by the Customer to operate the Supported Software in accordance with the Statement of Works to the Customer;

(c) use by the Customer of the Supported Software in an environment other than that contemplated under the Statement of Works;

Customer Contract

(d) failure by the Customer to use the Supported Software in conformity with any user documentation provided to the Customer; or

(e) any modifications to Support Software by the Customer or a third party which have not been authorised by Datanova.

3   Part 3: System Integration

3.1   Part 3 applies if System Integration is:

(a)   marked in Item 18 of the Customer Order; and

(b)   relevant to the Goods and Services described in Item 3 of the Customer Order and the Statement of Works.

Definitions

3.2   The following definitions apply to this Part 3:

(a)   **Configuration**: means the various items of operationally related hardware and software specified in the Statement of Works.

(b)   Datanova Cloud **Supplied Equipment**: means equipment that is to be supplied by Datanova Cloud in connection with the Goods and Services under the Customer Contract.

(c)   **Designated Operating Environment**: means the hardware and software environment in which product software, licensed software or any Developed Software is to be used by the Customer;

(d)   **Developed Software**: means:

i.   software that is developed; or

ii.   the customised or modified parts of licensed software or product software but for minor modifications.

(e)   **Integration/Integrate**: for the IT System means the implementation and setting to work of the IT System;

(f)   **Minimum System Configuration**: means a group of operationally related items of hardware and software agreed between the parties as described in the Statement of Works, as being the configuration which meets the minimum processing needs of the Customer; and

(g)   **IT System**: means the Customer supplied equipment as integrated with the Customer supplied items in accordance with the Statement of Works.

Scope

3.3   Datanova Cloud will, under this Agreement, supply and Integrate the IT System to comply with the Statement of Works.

Datanova Cloud as Agent

3.4   The Customer authorises Datanova Cloud to acquire as agent of the Customer, any goods and services needed to complete the System Integration in accordance with the approved expenses provisions in the Customer Contract.

3.5   If specified in the Statement of Works, Datanova:

(a)   maybe appointed as agent to manage any existing maintenance obligations for Customer supplied items; and

(b)   if appointed, will provide and maintain Customer supplied items during the Term.

Acceptance Testing

3.6   Datanova Cloud may also be engaged to carry out a test to ensure the Customer's IT System:

(a)   operates in the intended way;

(b)   is able to be properly used for the intended purpose; and

(c)   functions in a way that is consistent the Statement of Works and any service level standards (**Acceptance Test**).

3.7   The Customer must provide Datanova Cloud with any data that maybe reasonably necessary to carry out any Acceptance Testing.

Customer Contract

3.8 The IT System will be deemed to be accepted by the Customer upon the earlier of the following (**Acceptance Date**):

  (a) the Customer notifying Datanova Cloud that it is satisfied with the outcomes of the acceptance testing within three business days of its completion; or

  (b) Datanova Cloud (acting reasonably) successfully completing an acceptance test to an agreed standard (or if there is no agreement a reasonable standard), notifying the Customer of the outcome of the test, and the Customer not responding within three business days.

3.9 If the outcome of any Acceptance Testing is not satisfactory, Datanova Cloud and the Customer will do all things reasonably necessary to work towards resolving any issues so that the IT System functions in the intended way.

System Warranty

3.10 Subject to any Law, Datanova Cloud warrants that for 30 days from the Acceptance Date (Warranty Period), the System will continue to operate in the intended way, for the intended purpose and will comply with the Statement of Works and any specifications.

3.11 The Customer's warranty will be invalidated when the Customer or any third party:

  (a) damages the IT System through negligence;

  (b) the IT System is damaged by acts of god or events normally covered by contents insurance;

  (c) does not maintain the IT System in the recommended way;

  (d) uses the IT System in a way which contravenes the Customer's obligations as specified in the Agreement;

  (e) uses the IT System in a way that is inconsistent with the Statement of Works, any specifications, any service level standards, or any applicable user documents that has been supplied and made known to the Customer; or

  (f) makes a major modification or upgrade to various parts of the IT System which have not been authorised, approved or carried out by Datanova; or

  (g) breaches clause 15.4(c) of the Customer Contract.

Customer Contract

4   Part 4: Modifications and Upgrades

4.1   Part 4 applies if Modifications and Upgrades is:

(a)   marked in Item 18 of the Customer Order; and

(b)   relevant to the Goods and Services described in Item 3 of the Customer Order and the Statement of Works.

Definitions

4.2   The following definitions apply to this Part 5:

(a)   **Designated Operating Environment**: means the hardware and software environment in which product software, licensed software or Developed Software is to be used by the Customer;

(b)   **Developed Software**: means:

     i.   software that is to be developed; or

     ii.   licensed software or product software that is to be customised or modified,

     under the Statement of Works.

(c)   **Development Services**: means modifications and upgrades provided by Datanova Cloud to produce a Software Solution for the Customer.

(d)   **Software Solution**: means a product that is developed or modified and which is created by Datanova, as described in the Statement of Works.

Service Period

4.3   Datanova Cloud will to provide Development Services for:

(a)   a specific servicing period if one is nominated in the Statement of Works; or

(b)   for the Term if a specific servicing period is not nominated.

4.4   Datanova Cloud agrees to develop and install a Software Solution (if applicable) and will test the Software Solution to ensure it is in conformity with the Statement of Works.

4.5   Datanova's methodology for developing a Software Solution will:

(a)   identify and control software components of, and changes to, the Software Solution to maintain the integrity and traceability of the Software Solution at all stages of development;

(b)   ensure control, development and supply of documentation for the Software Solution;

(c)   ensure that the Software Solution is written and documented, as far as practicable, in a way which would enable future modification;

(d)   reference and document procedures for corrective action for the Software Solution and associated documentation prior to acceptance by the Customer including:

     i.   adopting a system to report problems and deficiencies;

     ii.   examining problems and preparing deficiency reports to determine causes, and preparing and documenting any corrective measures;

     iii.   analysis of any deficiency trends to ensure the Software Solution conforms with the Statement of Works and any specifications;

     iv.   review of corrective measures to determine their effectiveness; and

(e)   provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance.

Customer Contract

4.6 Datanova Cloud will:

(a) in circumstances where the Software Solution involves a development of a source code, provide the source code to the Customer in a format which is suitable for use in the Customer's Designated Operating Environment; and

(b) inform the Customer as to the nature and use of software tools, methodologies or other devices owned by Datanova Cloud or any other party, in the production of the Software Solution so that the Software Solution can be maintained and enhanced.

Customer Contract

Part 5: Data Services

5.1 Part 5 applies if Data Services is:

(a) marked in Item 18 of the Customer Order; and

(b) relevant to the Goods and Services described in Item 3 of the Customer Order and the Statement of Works.

Definitions

5.2 The following definitions apply to this Part 6:

(a) **Customer Data**: means the data specified in the Statement of Works

(b) **Data Migration Software**: means the software created or procured for the purpose of carrying out a Data Conversion and Migration.

(c) **Data Services**: mean the Services specified in the Statement of Works in connection with Customer Data and may include Data Cleansing, Data Conversion and Migration and Data Warehousing.

Service Period

5.3 Datanova Cloud agrees to provide Data Services for:

(a) a specific servicing period if one is nominated in the Statement of Works; or

(b) for the Term if a specific servicing period is not nominated.

Data Cleansing

5.4 If Data Cleansing is specified in the Statement of Works as a required Data Service, Datanova Cloud will cleanse the Customer Data to achieve accuracy and consistency in the Customer Data by:

(a) eliminating duplicate records;

(b) correcting misspellings and errors;

(c) ensuring that there are consistent descriptions, punctuation, and syntax;

(d) resolving any other accuracy and consistency issues in relation to the content; and

(e) undertaking any other relevant actions, as specified in the Statement of Works.

Data Conversion and Migration

5.5 If Data Conversion and Migration is specified in the Statement of Works as a required Data Service, Datanova Cloud will:

(a) assess and define the situation;

(b) develop a Data Conversion and Migration strategy that is appropriate for the Customer's needs and have it approved by the Customer; and

(c) carry out all activities reasonably necessary under the Data Conversion and Migration strategy for the conversion and migration of the Customer Data (including developing or using any Data Migration Software if applicable).

5.6 If specified in the Statement of Works, the Customer will extract and provide the Customer Data to Datanova Cloud for the purpose of completing the Data Conversion and Migration.

Data Warehousing

5.7 If Data Warehousing is specified in the Statement of Works as a required Data Service, Datanova Cloud will:

(a) assess and define the Customer's requirements;

(b) develop a Data Warehousing strategy that is appropriate for the Customer's needs and have it approved by the Customer;

(c) carry out all activities reasonably necessary under the Data Warehousing strategy for establishing the Data Warehouse; and

(d) manage the Data Warehouse once it is established.

5.8 Datanova Cloud will ensure the Data Warehouse:

(a) provides a consolidated view of the Customer Data;

(b) promotes data integration between people, applications and processes;

(c) simplifies, cleanses, and enriches the Customer Data;

(d) is specifically structured for dynamic queries, facilitates analytical processing and encourages widespread ad hoc reporting;

(e) enables the Customer to run efficient queries over data;

(f) improves query performance and response times;

(g) reduces data processing from the Customer's operational environment; and

(h) performs any other function specified in the Statement of Works.

6   Part 6: Software as a Service (SaaS)

6.1   Part 6 applies if Software as a Service is:

    (c)   marked in Item 18 of the Customer Order; and

    (d)   relevant to the Goods and Services described in Item 3 of the Customer Order and the Statement of Works.

Definitions

6.2   The following definitions apply to this Part 6:

    (d)   **Customer Data**: means the data specified in the Statement of Works.

    (e)   **Data Cleansing Service**: means the data cleansing services to be performed in respect of the Customer Data as described in the Order Form.

    (f)   **Data Migration Software**: means the software created or procured for the purpose of carrying out a Data Conversion and Migration.

    (g)   **Disaster**: means an Unexpected Event or other event which has the potential to cause the Customer to be unable to use or receive the benefit of the whole or a substantial part of the Software as a Service or which has the potential to substantially interfere with the usual operations of the Customer.

    (h)   **Infrastructure**: means the hardware, software, communications services and other resources, services and facilities (whether of Datanova Cloud or a third party provider) for Datanova's provision of the Software as a Service.

    (i)   **Location**: means the physical location, as specified in the Order Form, at which the Customer Data will be stored, hosted and processed as part of the Software as a Service.

    (j)   **Minimum Subscription Period**: means the period commencing on the start date of the Subscription Period as specified in the Order Form.

    (k)   **Minimum System Requirements**: means the minimum requirements for the Customer's IT System and Networks to access and use the Software as a Service in accordance with the applicable requirements and Service Levels.

    (l)   **Network**: means any network that connects the computers to facilitate electronic exchange of information and includes the Internet, virtual private networks and telecommunications services.

    (m)   **Reseller**: means any entity who provides, or facilitates the provision of, the Software as a Service to the Customer under the Agreement as Datanova, but is not the Third Party Provider or a Related Body corporate of the Third Party Provider.

    (n)   **Scheduled Downtime**: means a planned period of non-Availability of the Software as a Service.

    (o)   **Service Levels**: means the service levels in respect of the Software as a Service as described in the Order Form or as provided by Datanova Cloud from time to time.

    (p)   **Subscription Period**: means each period during which Datanova Cloud will provide the Software as a Service to the Customer as specified in the Order Form.

    (q)   **Software as a Service**: means the applications described in the Order Form.

    (r)   **Third Party Provider**: means an entity who owns the Intellectual Property Rights in the Software as a Service. Third Party Provider does not include a Reseller or a Related Body Corporate of Datanova.

    (s)   **Transition-In Plan**: means the plan or Statement of Works set out or attached to the Order Form for implementing the Software as a Service on the Customer's Network.

    (t)   **Transition-In Services**: means the transition-in services set out in the Transition-In Plan.

    (u)   **Transition-Out Services**: means the assistance reasonably requested by the Customer to transition the provision of the Software as a Service to the Customer or its nominee and such other services as may be further specified in the Transition-Out Plan.

(v) **Unit**: means, where applicable, each unit of the Software as a Service ordered or used by the Customer, as specified in the Order Form.

(w) **Workaround**: means a fix or alternative procedure to temporarily address a Defect.

Software as a Service

6.3 Datanova Cloud must provide the Software as a Service to the Customer during the Subscription Period.

6.4 The first Subscription Period will start on the date specified in the Order Form.

6.5 At the end of each Subscription Period, the Software as a Service will be automatically renewed for a further Subscription Period, unless either party has:

(a) exercised a right to terminate; or

(b) notified the other party that it does not wish to renew the Software as a Service.

6.6 Each further Subscription Period will be on the same terms, subject to a change in level of Software as a Service in accordance with the Agreement.

6.7 Unless otherwise agreed, any non-renewal will take effect, and the last day of the supply of Software as a Service will be the end of the Subscription Period in which a valid notice of non-renewal is given.

6.8 Datanova Cloud must provide the Software as a Service to the Customer for at least the Minimum Subscription Period.

Supply of Software as a Service

6.9 Datanova Cloud must perform and provide the Software as a Service:

(a) in accordance with the Customer Contract including the requirements and the Service Levels; and

(b) using the Infrastructure and to a standard specified in the Order Form.

Minimum System Requirements

6.10 The Customer must:

(a) ensure that the Customer's IT System and Network used by the Customer to access the Software as a Service complies with Minimum System Requirements; and

(b) use the Software as a Service in accordance with any usage restrictions or guidelines as provided by Datanova.

Transition-In Services

6.11 If specified in the Statement of Works that Transition-In Services are required, Datanova Cloud must provide the Transition-In Services to transition the Customer to the Software as a Service in accordance with the Transition-In Plan.

6.12 The Customer must perform all services, functions and tasks assigned to the Customer in the Transition-In Plan.

6.13 Datanova Cloud must use:

(a) its best endeavours to complete the Transition-In Services by the date specified in the Statement of Works; and

(b) promptly notify the Customer of anything it becomes aware of that is likely to delay Datanova Cloud in completing the Transition-In Services by that date.

6.14 If specified in the Statement of Works, Acceptance Tests must be conducted for the Transition-In Services. If Acceptance Tests are conducted for the Transition-In Services, the Subscription Period will commence on the date the Acceptance Test is carried out unless the Order Form specifies otherwise.

6.15 If the Statement of Works specifies that Acceptance Tests are not required, once Datanova Cloud has completed the Transition-In Services, Datanova Cloud must notify the Customer in writing that the Transition-In Services are complete and the date the Subscription Period will commence.

Customer Contract

Data Migration and Data Cleansing

6.16 If the Statement of Works says that Data Migration Services and Data Cleansing Services are to be performed by Datanova, Datanova Cloud must perform the Data Migration Services or Data Cleansing Services as specified in the Statement of Works.

6.17 The Customer must provide any assistance related to the Data Migration Services or Data Cleansing Services that is required by Datanova, including:

(a) extraction of the Customer Data; and

(b) providing it to Datanova Cloud for data migration and conversion or data cleansing.

6.18 If the Data Migration Services includes Datanova Cloud providing to the Customer any software tools, object libraries, methodologies or other devices owned by Datanova Cloud or any other party (**Data Tools**), the Data Tools will be provided to the Customer as Software as a Service in accordance with this Part 6.

Location and Customer Data

6.19 Clauses 6.19 to 6.25 apply if Datanova Cloud will process, store or host any Customer Data as part of the provision of Software as a Service.

6.20 If specified in the Statement of Works, Datanova Cloud must allow the Customer to specify the Location. If the Customer specifies a jurisdiction that is outside Australia, the Customer consents to the transfer of Personal Information included in the Customer Data outside of Australia.

6.21 The Customer agrees that Datanova Cloud may perform certain aspects of the Software as a Service from locations outside the Location, and that those services may require access to the Customer's account details or Datanova's logs and data relating to the use of the Software as a Service.

6.22 Datanova Cloud must not change the Location unless it is required to comply with applicable Laws or a binding order of a governmental body, in which case:

(a) Datanova Cloud must promptly notify the Customer of the required change; and

(b) the Agreement will continue.

6.23 The Customer acknowledges and agrees that it is and remains responsible for the contents of the Customer Data.

6.24 Datanova Cloud must:

(a) comply with the procedures and requirements set out in the Statement of Works about the storage and back up of the Customer Data;

(b) provide or make available to the Customer tools and mechanisms on a self-service basis to enable the Customer to access and monitor the Customer Data; and

(c) if specified in the Order Form, provide the Customer within no later than 20 Business Days after the Customer request, with an up-to-date copy of all Customer Data which is held or used in or by the Software as a Service in an electronic format specified in the Order Form.

6.25 Upon termination of the Subscription Period, Datanova Cloud must return the Customer Data to the Customer or allow the Customer to extract the Customer Data in accordance with Datanova's procedures and requirements.

Limitation of Liability for Customer Data

6.26 To the fullest extent permitted by Law, the maximum liability of Datanova Cloud to the Customer, whether in contract, tort (including negligence) or otherwise for Loss or damage to Customer Data in Datanova's provision of the Software as a Service, is limited to the monetary value of the contract between Datanova Cloud and the Customer.

6.27 The limitation of liability under clause 6.28 does not apply to loss or damage that is caused or contributed to by any fraudulent act or omission of Datanova Cloud or its staff.

Security

6.28 Datanova Cloud must take all reasonable steps to ensure that no unauthorised party:

(a) is allowed physical or electronic access to the Infrastructure or the Customer Data or

(b) prevents or can prevent the Software as a Service from being available.

6.29 If Datanova Cloud will process, store or host any Customer Data in providing the Software as a Service, Datanova Cloud must:

(a) establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards to protect the Customer Data from destruction, loss or unauthorised access or alteration;

(b) remove all Customer Data from any media taken out of service and destroy or securely erase such media in accordance with Datanova's standard security policy; and

(c) provide or make available to the Customer tools and mechanisms on a self-service basis to enable the Customer to log access to and modification of Customer Data as specified in the Statement of Works.

Electronic Incidents

6.30 Upon receipt of a notification by Datanova Cloud of an electronic incident, and in consultation with Datanova, the Customer (acting reasonably) may require that:

(a) Datanova's ability to access, process or store Customer Data be suspended;

(b) Connectivity with Datanova Cloud be terminated; or

(c) Other appropriate action be taken pending such resolution,

providing that upon any such action by the Customer or required of Datanova Cloud by the Customer, Datanova Cloud will be relieved of its obligations under the Agreement to the extent it is unable to perform under such circumstances and so notifies the Customer.

Harmful Code

6.31 If any harmful code is found in the Infrastructure which affects the supply of the Software as a Service or Customer Data, Datanova Cloud must immediately use its best endeavours to eliminate the harmful code and mitigate any loss of productive use of the Software as a Service and any loss of Customer Data.

6.32 Where Datanova Cloud (acting reasonably) determines that the harmful code was introduced by the Customer, Datanova Cloud is entitled to charge the Customer for the costs and expenses that arise out of or in connection with resolving any issues presented by the harmful code.

Ancillary Services

6.33 Datanova Cloud must provide the ancillary services (if any) in connection with the Software as a Service as described in the Order Form.

Defects

6.34 After being notified of a defect or possible defect by Datanova Cloud in the Software as a Service by the Customer, Datanova Cloud must take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Software as a Service:

(a) in accordance with the Service Levels; or

(b) if no Service Levels apply, in a reasonable time and manner.

6.35 Datanova Cloud must:

(a) use its best efforts to minimise interruptions to the Customer's use of the Software as a Service for Scheduled Downtime; and

(b) if specified in the Order Form, give the Customer the specified prior notice of all Scheduled Downtime.

General Support

6.36 Datanova Cloud must provide the general support specified in the Order Form during the agreed hours of support.

Customer Contract

Service Levels

6.37 Datanova Cloud must:

(a) measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the Order Form; or

(b) provide or make available to the Customer tools and equipment on a self-service basis to enable the Customer to monitor Datanova's performance against the Service Levels.

Warranties

6.38 Datanova Cloud warrants that the Software as a Service will be performed:

(a) so as to meet or exceed the Service Levels (or if no service levels are agreed, within a reasonable time and manner); and

(b) in accordance with the Agreement.

6.39 Without limiting clause 6.38 Datanova Cloud does not guarantee that the Software as a Service will be error-free or will operate without interruption.

Exclusions from Software as a Service

6.40 Datanova Cloud is not in breach of its obligations to provide the Software as a Service, and is not responsible for any failure to meet Service Levels, to the extent that the breach of failure arises because of:

(a) any failure by the Customer to comply with its obligations under the Agreement;

(b) a failure of the Customer to ensure that the Customer's IT Systems and Network comply with Minimum System Requirements;

(c) any failure of the Customer to comply with the requirements specified in the Order Form or the Statement of Works;

(d) damage or unavailability caused by or use of the Software as a Service by the Customer other than in accordance recommended terms of use as provided or advised by Datanova;

(e) an unexpected event for which the Customer is responsible;

(f) any event or circumstance outside the reasonable control of Datanova Cloud which could not have been prevented or avoided by Datanova Cloud by reasonable diligence or reasonable precautions;

(g) in relation to the Service Levels as to Availability, the period of unavailability during Scheduled Downtime; or

(h) such other circumstance as specified in the Order Form.

6.41 Where Datanova Cloud (acting reasonably) determines that the breach or failure arises because of the circumstances set out in clause 6.40, then if the Customer requests Datanova Cloud to remedy the breach or failure, Datanova Cloud is entitled to charge the Customer for the costs and expenses in accordance with the Agreement for carrying out the relevant works.

Disaster Recovery

6.42 If specified in the Order Form, Datanova Cloud must implement, maintain and comply with disaster recovery procedures to ensure Datanova's provision of the Software as a Service through the Infrastructure continues without interruption if a Disaster occurs or affects the Infrastructure.

Changes to Level of Software as a Service

6.43 Where the Software as a Service is supplied to the Customer on a Unit basis, the Customer may use additional Units of the Software as a Service, in which case the number of Units will be adjusted as required by the Customer.

6.44 Notwithstanding clause 6.43 if the number of Units of the Software as a Service that are actually used by the Customer in a Subscription Period exceeds the number of Units purchased for that Subscription Period, the Customer will pay Datanova Cloud for the actual number of Units used.

Customer Contract

Changes to Software as a Service

6.45 Datanova Cloud may not change any aspect of the Software as a Service (including the functionality, accessibility, security, Availability or terms of service) except in accordance with the Agreement.

6.46 The Customer acknowledges that Datanova Cloud may provide the same Software as a Service to other customers, and may:

(a) implement changes, additions or deletions too the functions, features, performance, or other characteristics of the Software as a Service (including Service Levels); and

(b) correct errors or provide upgrades to the Software as a Service,

provided that the functionality, features or Service Levels of the Software as a Service used by the Customer do not materially decrease during the Subscription Period.

Ownership

6.47 The Customer acknowledges that it has not right, title or interest in the Software as a Service except its right to access and use the Software as a Service as set out in this Part 6 during the Subscription Period.

6.48 All Intellectual Property Rights in:

(a) the Software as a Service remain vested in Datanova Cloud or any licensor who licenses the Software as a Service to Datanova Cloud for commercial purposes; and

(b) any adaption, translation or derivative of the Software as a Service vests in, or is transferred or assigned to, Datanova Cloud immediately upon its creation.

Transition-Out Services

6.49 If specified in the Order Form, Datanova Cloud must provide the Transition-Out Services.

6.50 If Transition-Out Services are required, Datanova Cloud must:

(a) prepare and submit to the Customer for the Customer's review and approval a Transition-Out Plan which sets out:

    i. the period in which the Transition-Out Services will be provided and the extent to which the Software as a Service will continue to be provided during that period;

    ii. all works to be carried out by Datanova;

    iii. all Customer inputs that are relevant to transition-out, including all inputs to be provided by the Customer's replacement service provider (if applicable):

    iv. the amount payable (if applicable) for the Transition-Out Services; and

    v. such other matters required by the Customer;

(b) promptly make all changes to the Transition-Out Plan reasonably requested by the Customer;

(c) annually (or such other frequency agreed by the parties) review the Transition-Out Plan;

(d) amend the Transition-Out Plan as necessary, and submit the amended Transitional-Out Plan for review and approval by the Customer;

(e) on request, expiry, or termination of the Subscription Period, carry out the Transition-Out Services, to facilitate an orderly, prompt and efficient transition-out of the Software as a Service;

(f) continue to provide the Software as a Service to the extent and during the period specified in the Transition-Out Plan (and otherwise on the terms and conditions of the Agreement) until the Software as a Service is transitioned to the Customer or a replacement service provide;

(g) cooperate with the Customer and any replacement service provider as reasonably required for the proper performance of the replacement service provider's obligations and provide copies of all work in progress as relevant to the Software as a Service; and

(h) provide other termination or expiration assistance reasonably requested by the Customer.

Customer Contract

Customer Responsibilities

6.51 The Customer is responsible or:

    (a) all use of the Software as a Service (as applicable) by its staff; and

    (b) such other requirements relating to its use of the Software as a Service as specified in the Order Form.