END USER LICENCE AGREEMENT – TERMS AND CONDITIONS FOR MACROSINE

THIS AGREEMENT is between you ("**Customer**") and **Fujitsu Australia Ltd** (ABN 19 001 011 427) (ACN 001 011 427) or another member of Seller Group Companies identified in a Statement of Work ("**Seller**") and comes into effect on the Commencement Date

1. DEFINITIONS

1.1. Definitions:

"Additional Services" means services specified as such in a Statement of Work.

"ADC" means the Australian Disputes Centre if the Jurisdiction is Australia, or its equivalent in the Jurisdiction.

"Agreement" means this Agreement (inclusive of clauses 1-14), and any Statement of Works (including any variations thereto) referring to and entered into under this Agreement.

"Appliance" means a physical or virtual device, CPU, platform, storage or database when it is loaded into temporary memory, accessed, downloaded or installed, on the Customers premises or in Azure or a similar virtual platform.

"Business Days" means Monday to Friday in the Jurisdiction, excluding all national statutory holidays and locally observed anniversary days in the State or equivalent area.

"Business Hours" means 9:00am to 5:00pm during Business Days unless otherwise specified in a Statement of Work.

"Commencement Date" means the date of activation of the Software at the Delivery Address unless otherwise specified in a Statement of Work and the required Software is "in use" by the Customer on an Appliance.

"Commencement Date Additional Service" means the date specified in a Statement of Work in respect of that Additional Service.

"Charges" means the price or charge as shown in a Statement of Work.

"Data" means:

(i) all data managed or collected by Seller for the purposes of Seller performing its obligations under this Agreement, including (for the avoidance of doubt) information and data of the Customer (including Personal Information) stored in any database managed by Seller as part of any Service; and

(ii) all data, information, records, lists, configurations and works (including computer generated works) processed, transmitted or accessed by Seller in connection with the performance of the relevant Services.

"Deliverables" means an output from the delivery of:

(i) Software (including any modifications, enhancements, adaptations or developments of or to Software);

(ii) Additional Services; and/or

(iii) any additional chargeable items as described in a Statement of Work.

"Delivery Address" means the physical address in the Jurisdiction, or the e-mail address(es) to which Deliverables are to be delivered as specified in a Statement of Work or notified in writing by the Customer to Seller.

"Environment" means the information technology and telecommunications infrastructure used in a Customer's organisation (including, cloud service, software, equipment, systems and networks and any other third-party infrastructure or environment).

"GST" any goods and services tax, value added tax or tax of similar effect.

"Heuristic Update" mean an automatic or otherwise update applied to the Software, typically to inform the software of the latest vulnerabilities.

"Insolvency Event" means in relation to either party:

(i) the presentation of an application for a party's liquidation that is not discharged within thirty (30) days of filing, or which is not demonstrated prior to the expiry of that thirty (30) day period as being an application that is frivolous or vexatious;

(ii) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of a party's creditors;

(iii) the appointment of a liquidator, receiver, statutory manager, or similar official;

(iv) the suspension or threatened suspension of the payment of a party's debts;

(v) other than for the purposes of restructuring or amalgamation, cessation of the whole or any relevant part of a party's business; or

(vi) the enforcement of any security against the whole or a substantial part of a party's assets.

"Intellectual Property Rights" means copyright, trade mark, design, patent, semiconductor, circuit layout rights or other intellectual property rights, whether registered or unregistered, arising under statute or otherwise.

"Jurisdiction" means Australia unless otherwise stated in a Statement of Work.

"Licence" means a licence(s) for any Software provided by Seller (as licensor or reseller) as described in clause 4 and in a Statement of Work.

"Licence Period" means the Subscription period identified as such in a Statement of Work.

"On-Site" means the Customer's premises as agreed between the parties in the relevant Statement of Work.

"Panel Agreement" means an existing agreement between Seller and Customer who is a government customer under which Statements of Work for the provision of software are placed.

"Permitted Purpose" has the meaning set out in clause 3.7.a).

"Personal Information" means personal information as defined in current relevant legislation in the Jurisdiction.

"Prepaid Period" means the period the Customer is required to pay in advance for the provision of Services or Licence(s).

"Pre-existing IP" means Intellectual Property Rights owned or licensed to a party which existed at the time of execution of

this Agreement or is created by a party outside of this Agreement, including all adaptations, modifications and new versions of those materials.

"Related Body Corporate" has the meaning set out in the *Corporations Act 2001* (Cth)) in Australia or if the Jurisdiction is not Australia means the equivalent meaning under legislation in the stated Jurisdiction.

"Seller Group Companies" means any company which is a member of Seller's group of companies or is wholly owned by Fujitsu Australia Ltd ABN 19 001 011 427 or Fujitsu New Zealand Limited.

"Services" means the Software and includes any Additional Services specified in a Statement of Work or Statement of Work.

"Software" means software specified in the Schedule, in object code form together with its associated documentation as updated by Seller during the Licence Period.

"Statement of Work" means a document, including a Statement of Work or a quote, executed by Seller and the Customer (with the exception of quotes which may be executed only by the Customer) for the provision of Deliverables and/or Services which references this Agreement.

"Subscription" means the periodic Charge payable for the Software as set out in a Statement of Work.

"Taxes" means taxes, duties, fees or other government imposts, levies or charges, incurred by Seller as a result of the execution or performance of this Agreement, but does not mean GST or taxes assessed on the profits of Seller.

"Term" means the period identified pursuant to clause 12.1.

"Third-Party Licence" has the meaning described in clause 4.1.

"User" means any person using, or interacting with, the relevant Services.

"$" denotes currency in the Jurisdiction unless otherwise stated in a Statement of Work.

1.2. Interpretation: In this Agreement, unless the context requires otherwise:

a) Words importing one gender include all other genders;

b) Words importing the singular or plural number include the plural and singular number respectively;

c) Headings in this Agreement (including words in bold at the commencement of clause or sub-clauses) are inserted for convenience only and will not affect the construction or interpretation of those provisions.

1.3. In the event of any inconsistency or ambiguity between the terms set out in:

a) The main body of this Agreement (including any amendments agreed between the parties in writing);

b) Any of the Statement of Works; and

c) Any Panel Agreement,

the terms and conditions shall prevail in that order of precedence unless otherwise expressly indicated in this Agreement or otherwise agreed in writing to the contrary.

2. PANEL AGREEMENTS

2.1. If the Software is ordered under a Panel Agreement the terms and conditions of that existing agreement will apply to the extent of any conflict with the liability cap or clauses 6, 7, 11,

13 and 14 or where specified in a special condition set out in a Statement of Work executed by the Seller.

3. PROVISION OF SOFTWARE

3.1. **Commencement and Termination:** Subject to the execution of a Statement of Work, the payment of the Subscription and compliance by Customer with the terms of this Agreement Seller will:

a) install all required Software (excluding Microsoft products) either on premises or in a third-party virtual environment in accordance with the Statement of Work;

b) provide the Customer with Software, including Software support from the Commencement Date; and

c) withdraw Software at the end of the Licence Period.

3.2. **Documentation:** Where a Third-Party Licensor provides Seller with any documentation and/or information relating to the operation of the Software which is not provided to the Customer, Seller will provide the documentation and/or information to the Customer.

3.3. **Minimum operating environment**: Customer must maintain any applicable minimum operating environment specified in the Statement of Work and acknowledges that it may not be able to access and use the Software if it does not comply with this clause 3.

3.4. Seller may by notice to the Customer modify the minimum operating environment.

3.5. **Helpdesk:** Seller must provide help to a User during Business Hours for general assistance related to the Software unless otherwise as specified in a Statement of Work.

3.6. During the Licence Period Seller will:

a) use reasonable commercial endeavours to investigate any errors in the Software provided as part of the Software and correct or circumvent any Software error or malfunction during Business Hours; and

b) provide, at no additional cost automatic Heuristic Updates and maintenance updates for the Software as is generally made available by Seller (or any Third-Party Licensor) to its customers from time to time at no additional cost.

c) Provide new versions of the Software following consultation with the Customer.

3.7. **Scope of use:** Customer must:

a) only access and use the Software as installed by Seller:

i) for its own internal business purposes in the Jurisdiction and not access, use or reproduce any part of the Service for any other purpose (except, for security or back-up purposes); and

ii) in accordance with any operating instructions and procedures and documentation that Seller notifies to it from time to time, including procedures and policies relating to security, access and passwords

("**Permitted Purpose**");

b) not allow or permit any other person directly or indirectly, including its employees, agents, contractors or any of its Related Body Corporate to:

i) access or use the Software other than for the Permitted Purpose;

ii) integrate or merge any part of the Service with another information, system or software program without the prior written consent of Seller.

iii) copy, alter, modify, reproduce, translate, reverse engineer, decompile, disassemble, create derivative works based on, sublicense, or distribute the Software;

iv) rent or lease any rights in the Software in any form to any third-party or make the Software available or accessible to third parties outside the Customer's managed service provider environment and organisation;

v) transfer assign or sublicense right to any other person or entity (except as necessary pursuant to a machinery of government change if Customer is a government agency);

vi) remove any proprietary notice, labels, or marks on the Software and containers;

vii) use the Software to determine, or disclose the results of, any benchmarking or performance measurements against competing products;

viii) interfere with a platform for use of the Software;

ix) use automated means to access online portions of the platform for the Software;

x) use the Software for third-party training, commercial time-sharing or service bureau use or (except as expressly set out in a Statement of Work) or use the Software to provide services to third parties;

xi) share non-public features or content of the Software with any third-party;

xii) access the Software in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Software, or to copy any ideas, features, functions or graphics of the software; or,

xiii) engage in web scraping or data scraping on or related to the software, including without limitation, collection of information through any software that simulates human activity or any bot or web crawler.

3.8. Unless otherwise specified in the Statement of Work, Software support does not include Customer provided hardware or software maintenance.

3.9. Software support Services do not include:
 a) correction of any operator error;
 b) failure of the Software due to third-party equipment or non-compliance by Customer with the terms of this Agreement including installation by the Customer on an Appliance not authorised by Seller;
 c) fault or negligence of Customer or a third-party; or
 d) improper use or misuse of the Service or associated equipment by Customer or a third-party.

4. SOFTWARE LICENCE

4.1. **Third-Party Licences:** Certain Software may be supplied by Seller as part of the Software which a third-party has given Seller the right to sell to the Customer. Such Software may be subject to licensing terms provided by that third-party, including an end user licence agreement supplied with the Software in shrink-wrapped or other form, which totally replaces the Licence set out in this clause 4 with respect to that Third Party Software. The Customer agrees to be bound by such Third-Party Licence terms and to indemnify and keep Seller indemnified against any loss or damage Seller may incur or suffer as a result of the Customer's failure to observe or perform those Third-Party Licence terms.

4.2. **Third-party warranties:** Where Seller supplies or makes available any Software that has been procured from a third-party, to the extent permitted by law, Seller will assign the benefit of any warranties given to Seller by the third-party, to the Customer, and to the extent that is not possible, will hold those warranties for the benefit of the Customer.

4.3. Prior to Software being licenced to the Customer and if requested, Seller will provide the Customer with a link to or a copy of the Third-Party Licence software terms (provided Seller is able to obtain a copy of such terms or they are publicly available), so far in advance as it is reasonably able to, so that the Customer may review them. In the event that the Customer does not agree to the relevant terms governing use of the Software, Seller may not be able to supply the Software.

4.4. **Delivery**: Seller will use all reasonable endeavours to install the Software on the date(s) specified in a Statement of Work.

4.5. **Intellectual Property**: Ownership of all Intellectual Property Rights in Software shall remain with Seller or its licensors.

4.6. **Terms of Licence:** Seller grants to the Customer a non-transferable, revocable (in the event of failure to comply with the terms of this Agreement) non-exclusive licence in the Jurisdiction from the Commencement Date to
 a) use the Software for its own internal business purposes; and
 b) operate the Software in the manner and for the purposes specified in an Agreement; and make copies of the Software solely for the Customer's own backup purposes.

4.7. The Customer will reproduce and include on all copies of the Software any copyright or trade mark notices or legends which appear on the initial copy of the Software supplied by Seller.

4.8. **Warranty:** Seller warrants
 a) to the best of its knowledge, the Services do not infringe any Intellectual Property Rights of any third-party.
 b) that during the Licence Period, the Software will operate in substantial conformity with its published specifications.

Provided that this warranty does not apply where the Software or the Appliance on which the Software is authorised to be used has been altered by a third-party not authorised by Seller.

4.9. Where the Software does not operate in accordance with clause 4.8.b), Seller will (as the Customer's sole remedy and Seller's sole liability) use all reasonable commercial endeavours to investigate the error or malfunction responsible for such non-conformity and to correct or circumvent it provided that the Customer notifies Seller of such non-conformity during the Licence Period.

4.10. The Customer acknowledges that, due to the nature of Software, the operation of the Software may not be uninterrupted or error free, and that not all errors are able to be rectified by error correction or avoidance action.

4.11. **Authorised Equipment:** Where a Statement of Work specifies Authorised Equipment:

a) the Licence in clause 4.6 will be restricted to installation into, operation on and/or transmission to for execution on the nominated numbers of Appliances;

b) the Customer is not authorised to temporarily transfer the licence in respect of the Software to a nominated alternate unit of the Authorised Equipment while the nominated unit or an associated unit required for use of the Software is temporarily inoperable until operable status is restored and processing on the nominated alternate unit is completed;

c) where the Customer upgrades or modifies the Authorised Equipment then, subject to payment to Seller of any applicable additional licence and/or support charges appropriate to the upgrade or modification, the Customer may transfer the licence granted under clause 4 to the upgraded or modified unit which will then become the Authorised Equipment; and

d) where the Authorised Equipment has been supplied by the Customer or by a third-party and the Customer proposes to modify it in any manner (whether by replacement, upgrade, downgrade or otherwise) the Customer's licence to use the Software will not apply to the modified Authorised Equipment unless the Customer has obtained Seller's prior consent.

4.12. **Periodic Charges:** Where a Subscription Charge is indicated in a Statement of Work, the Licence granted in clause 4 is granted only for the Prepaid Period.

4.13. **Termination:** Seller may not terminate any Licence except for breach by the Customer of the terms of the License or this Agreement. If Seller terminates a Licence for breach, Seller may exercise any other right or remedy available to it. Promptly following the termination of this Agreement or the Licence, the Customer will return or destroy the original and all copies of any Software received from Seller or made pursuant to this Agreement or the Licence to which the Software relates as Seller directs, and certify (if required) to Seller in writing that such action has been taken. This requirement will apply to all copies on any media including translations whether partial or complete, and whether or not merged into other software material as authorised by Seller.

4.14. **Assignment to Licensors:** If for any reason Seller loses the right to license or resell any Software to the Customer, Seller reserves the right to assign its rights and novate its obligations under this Agreement to its licensors and the Customer consents to such assignment and/or novation.

4.15. **Disposal of Media:** The Customer will ensure, prior to disposing of any physical media, that any Software contained on it has been erased or otherwise destroyed.

4.16. **Audit:** Seller and its licensors will be entitled on reasonable notice to the Customer to audit or have audited, the number of Users, copies or installations of the Software used and maintained, and the use of the Software by the Customer. The Seller must comply with the reasonable security requirements of the Customer and the Customer is entitled to have a Customer representative present.

5. OPEN-SOURCE SOFTWARE

5.1. The Software supplied may contain open-source software components that are distributed under the GNU General Public License, the PostgreSQL License or any other open source or third-party software license applicable to such open source software components. Seller will take all reasonable steps to identify such components. Seller does not make any representations or warranties with respect to such components, which are to the extent permitted by law provided as is.

6. ADDITIONAL SERVICES

6.1. **Seller responsibilities**: Seller will provide the Additional Services described in a Statement of Work from the Commencement Date Additional Service.

6.2. **Customer Responsibilities**: The Customer will carry out the tasks specified as the Customer's responsibility (if any) set out in a Statement of Work.

6.3. **Completion**: Seller will be deemed to have completed the Additional Services:

a) when Seller has complied with the acceptance/completion criteria (if any) specified in a Statement of Work; or

b) if no acceptance/completion criteria have been specified, when Seller completes the requirements as set out in a Statement of Work.

6.4. **Changes:** The Customer may at any time request, and Seller may at any time recommend, changes to the Additional Services. Neither party will be obliged to agree to any requested or recommended change, but neither party will unreasonably withhold its agreement to any such change. Seller will advise the Customer of the likely impact of any requested or recommended change to the Charges and any other relevant matter. Any agreement to a requested or recommended change will only become valid as an amendment to a Statement of Work once it has been expressed in writing and signed by authorised representatives of both parties.

7. CHARGES AND PAYMENTS

7.1. **Invoicing:** Seller may invoice the Customer, as applicable for Charges for Additional Services:

a) at the times, and upon the achievement of the payment milestones, if any, set out in the relevant Statement of Work; or

b) if no invoice times or payment milestones are set out in the relevant Statement of Work

for any Services (including disbursements for that month) monthly in arrears.

7.2. **Subscriptions:** Seller may invoice the Customer for Charges relating to Subscriptions for Software in advance of installation unless otherwise specified in a Statement of Work.

7.3. **Payment:** The Customer will pay all correctly rendered invoices within thirty (30) days of the date of such invoice or such shorter period as may be specified in a Panel Agreement.

7.4. The Customer shall inform Seller of any billing discrepancies or disputes about an invoice within 10 days of receipt. The Customer shall pay all undisputed amounts to Seller in accordance with the payment terms in the Agreement. Any

disputed invoice will be dealt with in accordance with clause 13.6.

7.5. **Taxes**:

a) All Taxes applicable to the supply of Services will be paid by the Customer. Where applicable, all Charges include customs duty and sales tax. The Charges do not include GST and where applicable, the Customer must pay GST in addition to the Charges. Taxes are calculated at the rates current at the date of the relevant invoice. If at any time after that date any existing Taxes are varied or abolished, or any new Taxes are incurred, the total Charges will be adjusted accordingly.

b) Any amount of GST which the Customer is invoiced in accordance with paragraph a) above (the "GST Amount") must be paid by it in full and without deduction regardless of any entitlement it may have to a credit or offset however arising.

7.6. **Exchange Rate**: Where the Charge in respect of any Services is subject to an exchange rate variation as specified in the Statement of Work, the initial exchange rate will be stated in a Statement of Work, or, if the rate is not stated, the closing exchange rate for the relevant currency published by the relevant Reserve Bank in the Jurisdiction on the date of the Statement of Work.

8. DELIVERABLES - GENERAL

8.1. **Alternative Deliverables**: Seller may:
a) substitute the Deliverables; or
b) modify any Deliverables;
or any component either of the above, provided that the substituted or modified item is substantially equivalent or superior in performance and functionality to the item which the substituted or modified item replaces.

8.2. **Access and facilities**: In connection with the provision of any Deliverable, the Customer will, as required:

a) follow the service guidelines and procedures issued by Seller (or any third-party provider) from time to time;

b) provide Seller with safe access to all Customer premises at which Seller is required to perform any work and provide access to all relevant information, Data, equipment, Environments, Users and Software;

c) make accessible Customer personnel who are familiar with the Customer's operations, equipment, software and applications;

d) for On-Site Services, provide suitable working space and facilities and suitable safe storage for service equipment, diagnostic materials, spare parts and manuals;

e) implement all Seller maintenance levels and corrective code for Software, as advised by Seller;

f) make the latest versions of software used by the Customer available to Seller;

g) assist with diagnosing and identifying faults and consent to and arrange for the temporary disconnection and isolation of any equipment or software which is not supplied or maintained by Seller;

h) consider and respond (including providing any relevant approvals) in a timely manner to all items submitted to it by Seller; and

i) manage all other suppliers of equipment, software and services that impact upon the delivery of the Deliverables to minimise interference with Seller's performance of its obligations under this Agreement.

8.3. In addition to its other obligations under this Agreement, the Customer will:

a) not use, and not allow anyone that has access to or uses the Services or Seller's infrastructure (including any third-party cloud infrastructure) to use them for illegal, fraudulent or destructive purposes, including unauthorized or attempted unauthorized access, alteration, spamming, abuse or destruction of information; and

b) not insert, or permit to be inserted or introduced into any of Seller's infrastructure (or any third-party cloud infrastructure) any disabling code.

8.4. Security breach: if either party becomes aware or suspects that any unauthorized person has obtained, attempted to obtain, or may obtain access to any information or has used or attempted to use any Data for purposes not authorised or permitted by this Agreement:

a) that party will immediately notify the other party; and

b) that party will take such steps as are reasonably commercially available to it to limit the extent of the breach.

8.5. In the event of a security breach under clause 8.4, the parties will cooperate with each other in respect of any investigation into the cause of the breach including such changes as may be reasonably necessary or available to prevent, as far as is practicable, the occurrence of the same or similar breaches of security in the future.

8.6. **Service hours:** Seller will perform Services during Business Hours unless otherwise specified in a Statement of Work.

8.7. **Exclusions**: Unless otherwise agreed in writing, Seller may make an additional charge for work resulting from any of the following:

a) improper installation of Software which was not installed by Seller;

b) modifications or alterations to or work carried out on Software not performed or authorised by Seller;

c) use of Software in combination with equipment, software, accessories or services not supplied or authorised by Seller;

d) failure to observe the instructions or specifications of the relevant manufacturer or licensor for the Software;

e) misuse, abuse, accidental damage or negligent use or operation of Software; or

f) non-installation of applicable software or engineering changes provided by or on behalf of Seller.

8.8. **Security, health and safety:** If the Customer **requires** Seller to comply with any security or health and safety policies of the Customer (including new versions or updates to any of the foregoing) that are relevant to the provision of the Deliverables and Services, such policies must be notified to Seller in writing before commencement of the provision of the Services or Deliverables, and Seller must be afforded an opportunity to review them. Should these not be provided by the Customer, Seller will follow its own health and safety policies.

8.9. **Diagnostic Materials**: Seller may provide to the Customer diagnostic materials which include (but are not limited to) diagnostic and test routines, software, manuals, documentation and data. These diagnostic materials may be held at the Customer's site as an aid to the provision of Services by Seller. The Customer will care for and use the diagnostic materials solely in the manner and for the purposes specified by Seller. Whether or not any

diagnostic materials are specified in a Statement of Work, Seller grants no ownership or licence of them to the Customer and they remain the exclusive property of Seller (or its licensors). The Customer will keep the diagnostic materials confidential and the results obtained by their use.

8.10. **Resale and Exports**: Customer acknowledges that Software, documentation and other materials provided by Seller ("**Covered Products**") may be subject to export control laws and regulations of the United States and other countries. Upon delivery of Covered Products to the Customer, the Customer is responsible for compliance with all applicable export control laws and regulations. The Customer must not export, re export or transfer directly or indirectly any Covered Products in contravention of such export control laws and regulations. If the Customer wishes to resell or export any Equipment, Software or materials, Customer will first obtain all consents and licences as may be required from time to time under local laws and regulations and under the laws and regulations of any other country, including but not limited to the Export Administration Regulations of the United States of America, that may affect or regulate such export. The Customer must also obtain Seller's prior consent before exporting Software.

8.11. **Laws**: Each party shall comply with all mandatory national and international laws and regulations applicable to their respective obligations and rights under this Agreement. The Customer shall remain solely responsible for the compliance with law applicable to its own business and operation and for ensuring that the Deliverables fulfil all legal and regulatory requirements applicable to Customer.

8.12. **Subcontractors**: Seller may subcontract, without the prior written consent of the Customer, any element of the Services.

8.13. **Offshoring data**: For the purposes of Seller performing its obligations under this Agreement, Seller may transfer, provide access to, or store the following data, outside of Australia or New Zealand

a) data that relates to the administration and management of the Agreement (such as for the billing functions, monthly reporting, register management, administration and support of Seller systems, performance reporting and the production of the minutes of meetings and other similar support function roles which may use anonymised or de-identified data);

b) Offshore access for third-party suppliers, to provide support for the Deliverables or Services;

c) Offshore resources (both personnel and infrastructure) for the Services.

8.14. Clause 8.13 will not apply to:

a) Any data that is entered into or stored in any of the Customer's infrastructure or systems managed or supported by Seller as part of a Software;

b) Any data provided by the Customer which Seller is required to manage as part of the Services under this Agreement;

c) Any commercially sensitive information relating to the Customer including in relation to its business, operations, facilities, customers, clients, personnel, suppliers, assets and programs in whatever form that information may exist.

9. LIMITATION OF LIABILITY

9.1. Except as expressly provided in this Agreement, and to the full extent permitted by law, all express or implied warranties, representations, terms and conditions regarding Deliverables and their use (including without limitation their merchantability or fitness for any particular purpose), or regarding this Agreement are expressly excluded. Without limiting the foregoing, the Customer agrees that all supplies under this Agreement are or will be supplied for the purposes of a business.

9.2. The terms and conditions of this Agreement that exclude or limit Seller's liability will apply to the full extent permitted by law. Provisions of statutes from time to time in force in the Jurisdiction may imply warranties or conditions or impose obligations upon Seller which cannot be excluded or modified. This Agreement must be read and interpreted subject to any such statutory provisions. If any such statutory provisions apply, then to the extent permitted by law, Seller's liability for breach of those statutory provisions will be limited at its option to:

a) if the breach relates to Software:
   i) replacement of the Software for the supply of equivalent goods;
   ii) repair of the Software;
   iii) payment of the cost of replacing the Software or of acquiring equivalent goods; or
   iv) payment of the cost of having the Software repaired; and

b) if the breach relates to Services:
   i) supplying of the Services again; or
   ii) payment of the cost of having the Services supplied again.

9.3. **Limitation of Liability**:

a) To the maximum extent permitted at law Seller is not liable for any loss or damage related to:
   i) the use of the Software in connection with high risk activities;
   ii) computer failure or malfunction;
   iii) computer security breaches;
   iv) virus infection or the loss of information or data contained in, stored or integrated with the Software; or
   v) any web browsers requirements or any third-party device or appliance used to operate the Software.

b) Notwithstanding any other provision in this Agreement to the contrary, each party's aggregate liability to the other for all claims arising under or in connection with this Agreement whether in contract, tort (including negligence) common law, equity, statute, under an indemnity, or otherwise, will to the full extent permitted by law, not exceed the value of all Charges paid or payable under this Agreement in the preceding twelve (12) month period.

9.4. **Unlimited liability**: clause 9.3.a) will not apply to, and will not limit the liability of either party for any claims arising under or in connection with this Agreement whether in contract, tort (including negligence) common law, equity, statute, under an indemnity, or otherwise, as a result of any:

a) personal injury, including sickness and death;
b) damage to or loss of any tangible property;

c) breach of obligations of confidentiality; and

d) For Seller, clause 10.4 of this Agreement.

9.5. **Mitigation**: Each party will take all commercially reasonable steps to mitigate any claim or loss sustained or incurred as a result of any breach or default of the other party and neither party shall be liable to the extent caused or contributed to by the other party.

9.6. **Proportionate Liability**: The liability of a party for any losses suffered or incurred by the other party arising out of any breach, act, omission, fault or negligence of the first party relating to this Agreement will be reduced to the extent that the other party caused or contributed to such losses through the other party's breach of this Agreement, act, omission, fault or negligence.

9.7. **Indirect loss or damage**: Neither party will, under any circumstance, be liable under or in relation to this Agreement for:

a) special, indirect and consequential damages; or

b) damages, however caused, comprising or resulting from loss of data, network, opportunity, business, revenue, profit, reputation, goodwill or failure to make anticipated savings.

9.8. **Survival**: The limitations on liability stated in this clause 9 apply to any claim (whether contractual, tortious, statutory or otherwise) which arises under or in connection with this Agreement and will survive termination, discharge or rescission of any Deliverable under this Agreement.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. **Intellectual Property**: Ownership of all Intellectual Property Rights in Software shall remain with Seller or its licensors.

10.2. The Customer acknowledges that it will not obtain any Intellectual Property Rights (including in any Pre-existing IP or Intellectual Property Rights which are owned by a third party) to or as a result of Deliverables unless otherwise expressly provided in an Agreement. At the intended owner's cost, the other party will do all things and sign all instruments reasonably required to give effect to this clause 10.1.

10.3. The Customer will not take any action inconsistent with the Intellectual Property Rights of Seller or the relevant licensor of any Deliverable. The Customer will not change, remove or obscure any labels, legends, plates, insignia, lettering or other markings which are on any Software.

10.4. Subject to clause 10.6, Seller will, at its expense, defend any action brought against the Customer in the Jurisdiction which claims that the use of any Deliverable infringes in the Jurisdiction the Intellectual Property Rights of a third party and will pay all costs, damages and legal fees finally awarded against the Customer in any such action and which are attributable to such claim provided that the Customer:

a) promptly notifies Seller of the action or of any allegation of infringement;

b) gives Seller the sole control of the defence of the action and all negotiations for its settlement or compromise;

c) has not admitted and does not admit liability for the alleged infringement;

d) provides Seller with such assistance in the defence and negotiations for settlement or compromise of the claim as Seller may reasonably require; and

e) does not incur any cost or expense concerning the action on behalf of or in the name of Seller without Seller's prior consent.

10.5. If any action referred to above is brought or threatened, Seller may at its option:

a) procure for the Customer, at Seller's expense, the right to continue using the allegedly infringing Deliverable; or

b) modify or replace the allegedly infringing Deliverable so as to avoid the infringement.

If, in the case of Software, neither of the foregoing alternatives is reasonably available the Customer agrees that upon thirty (30) days' notice from Seller it will return the alleged infringing Software, and Seller will credit the Customer for the depreciated value of the relevant Software calculated on a five (5) year, straight line basis.

10.6. For any Deliverable that is provided by a third party, clauses 10.4 and 10.5 will not apply. Where the owner or the licensor of the Deliverable has warranted to Seller that such Deliverable does not infringe any Intellectual Property Rights in the Jurisdiction and/or has agreed to indemnify Seller against any such infringement, Seller will use reasonable efforts to pass on the benefit of that warranty and/or indemnity to the Customer, provided that the Customer notifies Seller as soon as it becomes aware of any alleged infringement and complies with any conditions applicable to such warranty and/or indemnity.

10.7. Except as provided in this clause 10 Seller will have no liability to the Customer for:

a) any action brought against the Customer, or any allegation of infringement of any Intellectual Property Rights of any third party arising from the Customer's use of any Deliverable; and/or

b) an alleged infringement which is based on the use of any Deliverable, other than as licensed by Seller, or in combination with equipment, software or services not supplied or approved by Seller.

11. CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

11.1. All information identified as confidential (whether verbally or in writing) or which by its nature ought reasonably to be regarded as confidential which is disclosed by a party under this Agreement is supplied in confidence and will be treated by the receiving party as confidential information at all times.

11.2. Subject to clause 11.4, each party to this Agreement (Recipient) will treat as confidential and not disclose to any third party, nor use for its own benefit (other than for the purposes of this Agreement), any Confidential Information that is the Confidential Information of the other party.

11.3. Each party may disclose the Confidential Information of the disclosing party to its subcontractors, personnel and professional advisers who need to know the same for the sole purpose of enabling each party to perform its obligations and exercise its rights under this Agreement.

11.4. Each party will ensure that any person to whom it discloses confidential information observes the requirements of this clause 11.

11.5. Neither party will be obliged to keep confidential any information which:

a) is or becomes public knowledge other than by breach of this clause 11;

b) is already lawfully in its possession before receiving it from the other party;

c) it independently receives from a third party with full rights to disclose; or

d) it is required by law to disclose.

11.6. The Customer warrants that prior to providing any Personal Information to Seller, the Customer will do all things necessary, including but not limited to obtaining all appropriate consents from individuals, to ensure that Seller may lawfully use that Personal Information in connection with the provision of Services and for any other purposes contemplated by this Agreement. The Customer further warrants (and the Customer itself consents) that such consents permit the disclosure of Personal Information by Seller to Seller's contractors or agents or those of its related bodies corporate, whether located in Australia or overseas, in connection with the provision of Services and for any other purposes contemplated by this Agreement.

11.7. Each party will implement and maintain commercially reasonable administrative, technical and physical safeguards to protect Personal Information that it receives from the other party against unauthorised access, disclosure or use of such Personal Information, and to protect it against accidental or unlawful destruction or accidental loss or alteration of such Personal Information.

12. TERMINATION

12.1. This Agreement shall be effective from the Commencement Date and will last for the period specified in the Statement of Work unless otherwise terminated in accordance with this clause 12.

12.2. A party may, without prejudice to any of its other rights or remedies under this Agreement, at law or in equity terminate its obligations under a Statement of Work:

a) immediately, by giving notice, if the other party becomes subject to an Insolvency Event; or

b) if the other party is in material breach of this Agreement and a Statement of Work (including without limitation any breach of a payment obligation) and fails to remedy the breach within thirty (30) days of being given a notice requiring it to do so.

12.3. On and from the effective date of termination of a Statement of Work, pursuant to clause 12.1:

a) the Customer will:

   i) cease to use any Software that is the subject of that Statement of Work;

   ii) deliver to Seller any Seller property that is the subject of that Statement of Work; and

   iii) pay any charges already due or which become due to Seller under that Statement of Work (including, without limitation, any termination costs);

b) each party will perform and continue to perform all its continuing obligations in accordance with clause 12.6; and

c) Seller will no longer have any obligation to deliver unpaid Software, or to provide further Services.

12.4. Effect of termination: Termination of this Agreement will not in and of itself terminate or cause the termination of any Statement of Work still in place and the provisions of this Agreement shall continue in force in respect of such Statement of Work until those Statement of Works are terminated or expire in accordance with their terms.

12.5. Termination of this Agreement or any Statement of Work will be without prejudice to any rights which have accrued to either party prior to such termination.

12.6. The provisions of clauses 8.10, 9, 10.1, 10.3, 10.7, 11, 12 and 13 and any provision which expressly or by implication applies upon or following termination, will survive termination of this Agreement for any reason. clauses 10.4 to 10.6 will survive termination of this Agreement unless such termination is effected by Seller for the Customer's breach. Any Software licence which remains effective after the termination this Agreement shall remain subject to the terms of this Agreement and the relevant Statement of Work.

13. GENERAL

13.1. **Assignment:** Neither party may assign and/or novate this Agreement in whole or in part without the prior consent of the other party (which may not be unreasonably withheld) with the exception of Seller to any of its Related Body Corporate and the Customer hereby consents to such an assignment and/or novation.

13.2. **Entire Agreement**: Each Agreement constitutes the entire agreement and understanding between the parties concerning Deliverables supplied pursuant to it and supersedes all prior or contemporaneous agreements, proposals, discussions and communications between or involving the parties and related to the Deliverables whether oral or written.

13.3. **Waiver**:

a) No right under this Agreement will be waived except by notice signed by the waiving party.

b) Subject to a) above, any failure by a party to enforce any of the provisions of this Agreement, or any delay or indulgence granted by one party to the other, will not be interpreted as a waiver of that party's rights under this Agreement, and will not prejudice that party's rights concerning any subsequent breach of this Agreement by the other party.

13.4. **Delay**: Where a delay in the performance of Seller's Services under a Statement of Work is a direct result of a failure of the Customer to complete any dependencies, responsibilities, or perform any other obligation on which Seller is reliant on as set out in any Statement of Work, and the delay could not reasonably have been overcome by Seller taking reasonable steps, Seller shall be given reasonable additional time to perform that service, and may recover its reasonable demonstrable costs as a result of any such delay.

13.5. **Force Majeure**: Neither party will be liable for any delay or for failure to perform its obligations under this Agreement (except obligations relating to payment), resulting from any cause beyond its reasonable control, including, but not limited to: acts of God; inclement weather; fire, explosion or flood; epidemics or pandemics; strikes; work stoppages, slowdowns or other industrial disputes; riots or civil disturbances; acts of government; inability to obtain any

necessary licence or consent; and delays caused by suppliers or material shortages. Seller and the Customer will, if practicable, give to each other immediate notice of the occurrence of any such event and will as soon as the event ceases to affect the performance of obligations under the relevant Agreement resume compliance with their obligations.

13.6. **Dispute Resolution:** If any dispute between the parties under this Agreement ("**Dispute**") cannot be settled amicably, in a timely fashion and by negotiation in good faith, including in respect of breach, termination, validity or subject matter hereof, then either party may notify the other party in writing of its intention to raise such matter to the level of Dispute. Should the matter not be resolved within fourteen (14) days of such notice then a Dispute will exist between the parties.

13.7. If a Dispute exists the parties may by joint election agree to settle it through mediation administered by the ADC and in the event that the Dispute has not been settled within twenty-eight (28) days (or such other period as agreed in writing by the parties) after the appointment of a mediator, the Dispute shall be submitted to expert determination administered by ADC. In the event the parties do not jointly elect to settle via mediation, neither party is bounded to resolve the matter through mediation or expert determination.

13.8. The expert shall be a person mutually agreed by the parties. ADC may assist the parties by providing a list of suggested experts. Failing agreement, ADC shall appoint the expert. In no event shall the expert and mediator be one and the same person.

13.9. The parties agree to accept the determination of the expert as final and binding. The cost of any mediator and any expert shall be borne equally by the parties. All mediation and/or expert determination shall take place in the capital city of the Jurisdiction.

13.10. The United Nations Convention on Contracts for the International Sales of Goods is expressly excluded.

13.11. **Jurisdiction**: This Agreement will be exclusively governed by and interpreted under the laws of Australia unless another Jurisdiction is identified in a Statement of Work and the parties submit to the non-exclusive jurisdiction of the courts in the Australian Capital Territory unless otherwise specified.

13.12. **Severability**: Any part, term or provision of this Agreement which is determined to be void, illegal or unenforceable will be severed from the Agreement and the remaining parts, terms and provisions will remain in full force and effect.

13.13. **Variations**: This Agreement may be altered or varied by Seller.

13.14. **Anti-Bribery and Corruption**: Each party shall at all times comply with the applicable laws relating to anti-bribery including but not limited to the OECD Convention policies against corruption, the Foreign Corrupt Practices Act of the USA, the UK Bribery Act 2010 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the "Applicable Anti-Bribery Laws"). The parties shall not engage in any activity, practice or conduct which would constitute an offence under the Applicable Anti-Bribery Laws and shall have and maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Applicable Anti-Bribery Laws and shall enforce them where appropriate.

14. NOTICES

14.1. Giving of notice: A notice, authorisation or consent under this Agreement will be in writing and given to a party by delivery, prepaid post or email to the address in the Statement of Work or any other address notified to the other party as the address for service and will be deemed to have been duly given:

a) if delivered, on the date of delivery;

b) if sent by prepaid post, four (4) days after posting; and

c) if sent by email, at the time the email leaves the communications system of the sender, provided that the sender:

   i) does not receive an error message relating to the sending of the email at the time of sending; and

   ii) has obtained confirmation from the recipient that the email has been delivered,

on the Business Day on which it is sent or, if sent after 5:00pm (in the place of receipt) on the next Business Day after the date the email was sent.

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ATTACHMENT A – MACROSINE®

Background

Macrosine is a Windows-based service deployed into the client environment, on-premises or in Azure, which enables Users to upload Microsoft Office macro and PowerShell files to be security assessed to check that they're safe to use. The assessment examines the files in a sandbox. Based on the examination, a risk rating is applied. The Customer can then configure what action to take based on this rating – either to quarantine the file or to apply a digital signature.

Software Components - Macrosine	Macrosine
Language(s)	
HTML	Yes
DotNet v6	Yes
Javascript	Yes
React	Yes
Third-Party Software	
Fortinet Sandbox (I Product License Agreement / EULA and Warranty Terms chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.fortinet.com/content/dam/fortinet/assets/legal/EULA.pdf)	Yes
IIS	Yes
Virtualisation (Hyper-V etc)	Yes
Office SIPs	Yes
SQL (Full or Express)	Yes
Azure VM's	Yes
.Net Reactor	Yes