

# Cloud Service Terms

Version: 3-May-2023

IMPORTANT NOTE: This is an agreement between Customer and Objective (*as such terms are defined in clause 26.1 below*). By executing an Order Form or clicking next to "I accept the terms and conditions" (or equivalent words) prior to accessing the Cloud Service, Customer is agreeing to these Cloud Service Terms ("**Agreement**").

Capitalised terms used in this Agreement have the meanings given to them in clause 26.1.

## THANK YOU FOR CHOOSING OBJECTIVE

Objective and Customer agree as follows:

### 1 SCOPE OF THIS AGREEMENT

This Agreement sets out the terms and conditions that govern Customer's subscription to the Cloud Service identified in the Order Form.

### 2 RIGHT OF ACCESS

- 2.1 In consideration of the timely payment of all Charges, Objective grants Customer a non-exclusive, non-transferrable and personal right to access and use the Cloud Service for Customer's own internal business operations for the duration of the Term, subject to the terms of this Agreement.
- 2.2 All rights not expressly granted to Customer in this Agreement and/or Order Form are reserved by Objective.

### 3 CLOUD SERVICE AND ONBOARDING

#### Cloud Service

- 3.1 The Cloud Service is the particular Objective solution specified in the Order Form and further detailed in the Cloud Service Documentation.
- 3.2 Objective will supply the Cloud Service identified in the Order Form, as follows:
- (a) **Switch On:** as soon as practicable, and in any case within three (3) Business Days of the Commencement Date, Objective will switch on the Cloud Service for Customer as follows:
    - (i) provision and establish the Hosted Environment for Customer's subscription to the Cloud Service;
    - (ii) arrange the Storage Allocation;
    - (iii) enable the Customer's connectivity to the Cloud Service (as described in the Order Form);
    - (iv) as applicable, allocate a URL for the Website, back-up URL and initiate the Website;
    - (v) establish a Customer-specific file in the Support Portal;
    - (vi) issue passwords to Customer for Support Contacts and authorise their access to the Support Portal; and
    - (vii) as applicable, issue a password and/or verification code and/or site key to Customer for administrator authorised access to the provisioned environments.
  - (b) **Software and Hosting:** Following switch on, and throughout the Term, Objective will:
    - (i) provide Customer with access to the Application in the Hosted Environment for Customer's subscription to the Cloud Service, and provide access to the Cloud Service Documentation;
    - (ii) ensure the continued location of the Hosted Environment in the country identified in the Order Form;
    - (iii) unless otherwise stated in the applicable Cloud Service Documentation, encrypt Customer Data in transit and at rest;
    - (iv) undertake development and roll out of New Releases at Objective's election; and
    - (v) perform technical activities included in any Cloud Service-specific terms.
  - (c) **Support:** Objective will provide Support Services for the Cloud Service in accordance with clause 6.
  - (d) **Exit:** At the end of the Term (or upon earlier termination in accordance with this Agreement), Objective will supply the Exit Service as follows (as applicable):

- (i) decommission the Website(s) or cease web access for Customer within five (5) Business Days following the termination date;
- (ii) maintain a copy of Customer Data in the Hosted Environment for the Customer Data Retention Period strictly for the purpose of it being accessible to Customer upon reasonable request in the event Customer's own extraction is unsuccessful; and
- (iii) delete the Customer Data from the Hosted Environment at the end of that Customer Data Retention Period.

## Onboarding Project and Subsequent Professional Services

- 3.3 Any Onboarding Project or other professional services to be performed by Objective will be set out in a statement of work that forms part of an Order Form or is otherwise executed by the Parties (each an **"SOW"**). Each SOW shall be governed by this Agreement or such other contract that governs the SOW as executed by Customer and Objective.

## 4 CLOUD SERVICE PERIOD / AUTOMATIC EXTENSIONS UNLESS TERMINATED

- 4.1 The Cloud Service starts on the Commencement Date and continues for the Term (i.e. the Initial Term plus any Extended Term(s)), subject to earlier termination in accordance with this Agreement.
- 4.2 The Initial Term will automatically extend for additional one (1) year periods (i.e. Extended Term(s)) unless either Customer or Objective cancels an automatic extension within the timeframes set out in clauses 4.3 and 4.4, respectively.
- 4.3 Customer can prevent an Extended Term from coming into effect by giving written notice to Objective of the election not to extend, which must be received by Objective at least ninety (90) days before the end of the then-current Cloud Service Period (i.e. Initial Term or Extended Term, as the case may be).
- 4.4 Objective can prevent an Extended Term from coming into effect by giving Customer at least six (6) months' prior written notice of the election not to extend.
- 4.5 If either Party does not elect to stop an Extended Term within the above specified timeframes, then the Extended Term automatically comes into effect pursuant to clause 4.2 and Customer must pay to Objective the annual-in-advance Charges for the Extended Term in accordance with this Agreement (including the annual uplift as described in clause 8.13) and the Order Form, and Objective must supply the Cloud Service for that period.
- 4.6 Stopping an Extended Term means Customer will continue to be able to access and use the Cloud Service for the remainder of the then-current Cloud Service Period, but thereafter all right to access and use will cease.

## 5 CLOUD SERVICE PARAMETERS

- 5.1 The Cloud Service is supplied on a subscription (i.e. time-limited) basis. The subscription is subject to the Cloud Service Parameters set out in the Order Form. If Customer does not use the Cloud Service up to such Cloud Service Parameters, that does not oblige Objective to reduce its Charges or provide any credits or refunds.
- 5.2 At any time during the Cloud Service Period, Customer may request Objective to increase any of the Cloud Service Parameters, and this change, if agreed by Objective, will be documented as a change to the Order Form.
- 5.3 Charges for increases to the Cloud Service Parameters (as contemplated in clause 5.2) will be at Objective's then-current pricing for the Cloud Service unless otherwise agreed in the Order Form.
- 5.4 At any time during the Cloud Service Period, Customer may request Objective to reduce Customer's Cloud Service Parameters effective from the start of the next Extended Term period by seeking a documented change or variation from Objective through Customer's allocated Objective Account Manager.
- 5.5 Objective reserves the right to conduct an audit of usage against Cloud Service Parameters at least once per annum during the Term and Customer will co-operate reasonably with such audit.
- 5.6 Customer acknowledges that any excess usage beyond the Cloud Service Parameters constitutes automatic acceptance of an obligation to pay Charges for the excess for the period starting when the excess began to the end of the then-current Cloud Service Period.

## 6 SUPPORT SERVICE

- 6.1 Objective will provide the Support Service detailed in the Order Form for the duration of the Cloud Service Period, in accordance with the Support Plan (which is incorporated into this Agreement by reference); including:
- (a) the provision of online, email and telephone help desk support in English language to Customer and/or Customer's Support Contacts (as applicable);
  - (b) using its reasonable endeavours to achieve the Availability Target;
  - (c) providing access to the Availability reports (as described in clause 13); and
  - (d) performing Scheduled Maintenance and Emergency Maintenance.

- 6.2 The Charges for the subscription to the Cloud Service covers the supply of the Support Service unless otherwise provided in the Order Form.

## 7 ACCEPTABLE USE

- 7.1 Customer may only use the Cloud Service for its business purposes and within the Cloud Service Parameters set out in the Order Form, and Customer is responsible for Users' compliance with this Agreement.
- 7.2 Customer will only use the Cloud Service in compliance with, and only as permitted by, applicable Law. If Customer's use of the Cloud Service requires it to comply with industry-specific regulations, Customer will be solely responsible for such compliance and agrees not to use the Cloud Service in a way that would subject Objective to any industry-specific regulations without obtaining Objective's prior written agreement.
- 7.3 Customer will:
- (a) ensure that its technical environment within which Support Contacts and other Users will be utilising the Application is compliant with the Cloud Service Documentation;
  - (b) ensure Customer Data is uploaded in the correct format in compliance with the Cloud Service Documentation;
  - (c) ensure the suitability, accuracy and legality of all Customer Data;
  - (d) ensure the disclosure of personal identification information as Customer Data or otherwise, and the collection, storage, use and processing of the same by Objective as part of the Cloud Service, is permitted under applicable privacy and data processing legislation;
  - (e) be responsible for all network and communications links from its premises to the authorised access point to the Hosted Environment;
  - (f) to the extent reasonably practicable, scan Customer Data for Viruses and do all acts and things reasonably necessary to avoid introducing a Virus to the Application or its Hosted Environment;
  - (g) do all acts and things reasonably necessary to avoid causing or permitting an Information Security Incident;
  - (h) protect, as far as reasonably practicable, logins and passwords for Users of the Application. If logins/ passwords are compromised this will remain the sole responsibility of Customer to the extent not caused or contributed to by Objective, but Customer must promptly inform Objective of the same;
  - (i) ensure it has in place appropriate licences and consents for Customer Data used as part of the Cloud Service;
  - (j) comply with the Support Plan and any release notes, policies and instructions supplied by Objective governing the use of the Cloud Service; and
  - (k) complete its Customer Data Download activity before the end of the Customer Data Retention Period.
- 7.4 Customer will not:
- (a) use the Cloud Service except in compliance with all relevant Law, including laws concerning copyright, defamation, discrimination, threats, indecency and obscenity, and any policies, directives and guidelines relating to information security, data transfer and privacy protection affecting Customer;
  - (b) attempt to circumvent any authentication or other security measures to access the Application;
  - (c) open, break, crack, scan, read or otherwise violate the Application or any protected file relevant to the Application;
  - (d) probe, scan or test the vulnerability of the Hosted Environment except with Objective's prior written consent which may be given or withheld at Objective's discretion;
  - (e) copy the Application in any form or download the Application, whether in source or object code form;
  - (f) manipulate or bypass or attempt to manipulate or bypass the Storage Allocation for Customer Data;
  - (g) create derivative works of the Application or Cloud Service Documentation;
  - (h) merge or otherwise subsume the Application or Cloud Service Documentation within or with other software or documents to form a combined work. This is a prohibition on merger and subsuming and it does not apply to simple integration to Customer's third-party applications;
  - (i) give, perform, deliver, display, distribute, licence, sub-licence, lease, rent, loan or resell the Application or Cloud Service Documentation, or any part thereof, to any third-party whether associated with Customer or not, or purport to do any of the foregoing, or otherwise encumber the Application or Cloud Service Documentation in any way;

- (j) reverse engineer, reverse compile, decompile, disassemble, or otherwise attempt to derive the source code of the Application;
- (k) intentionally, recklessly or negligently overload the processing capacity of the Hosted Environment in any way, including by introduction of a robot to flood the network or otherwise cause an effective denial-of-service or do any of the foregoing in respect of the Support Portal;
- (l) publish the results of any benchmark tests run on the Application;
- (m) use the Application in any way that causes civil or criminal liability for Objective;
- (n) use the Application in any way that infringes Objective's Privacy Policy or causes Objective to be in breach of its Privacy Policy; or
- (o) use the Application to harvest User information.

## 8 ORDER FORM AND CHARGES

- 8.1 The Order Form will set out the specific Cloud Service, Cloud Service Period, Cloud Service Parameters, Support Service and Charges for Customer's subscription to the Cloud Service as at the Commencement Date (as such may be amended by the Parties from time-to-time during the Cloud Service Period in accordance with this Agreement).
- 8.2 All Charges for the Cloud Service (and associated Support Service) are payable as set out in the Order Form, and all Charges for the professional services under an SOW are set out in the SOW and/or the Order Form.
- 8.3 All Charges are shown exclusive of Tax unless otherwise stipulated, and Customer must pay Objective the Tax-exclusive amount and the amount of Tax imposed at the same time.
- 8.4 Objective will provide a Tax Invoice(s) to Customer for payment of the Charges
- 8.5 Customer will pay each Tax Invoice rendered within thirty (30) days of the date of issue.
- 8.6 If for any reason a Tax calculation under an Order Form or this Agreement differs from a calculation determined by the relevant taxation office, Customer must pay the extra difference to Objective (or Objective must pay the under difference to Customer, as the case may be). Objective will provide Customer with an adjustment note addressing the Tax determination within thirty (30) days.
- 8.7 If Tax changes occur during the Cloud Service Period, Objective may adjust the Tax-inclusive price accordingly and Customer must pay the adjusted sums at the next invoicing date or earlier at Objective's discretion.
- 8.8 If Customer reasonably considers that a Tax Invoice has been incorrectly rendered by Objective, then Customer must pay the undisputed portion in accordance with clause 8.5 and as soon as practicable and in any event prior to the partial payment notify Objective in writing of its dispute as to the balance in sufficient detail to enable Objective to understand the basis of the dispute.
- 8.9 Customer acknowledges and accepts that disputes about Charges must be initiated in a timely manner. Customer may not initiate any dispute over any Charges (or part thereof) if the relevant invoice was issued more than three (3) months earlier.
- 8.10 If Customer has failed to pay undisputed Charges within the time specified in clause 8.5, Objective must notify Customer of the lateness and give Customer fourteen (14) days' notice to make its payment. If Customer has still not paid the undisputed Charges by the end of the late notice period, Objective may apply interest on the undisputed Charges at the rate of 3% per annum above the prevailing base lending rate quoted by the National Australia Bank (or, if lower, the highest rate permitted by Law) of the unpaid sum which will accrue daily from the end of the late notice period until payment is received. The interest will be calculated weekly and compounded monthly up to the date of actual payment. Objective may apply interest even during a suspension period under clause 19.1(d). Customer will pay interest on late payments on demand.
- 8.11 Objective reserves the right, upon thirty (30) days advance written notice, to pro-rate any annual period and corresponding Charges to align with an end date of 30 June during each year of the Term.
- 8.12 Charges for more components of the Cloud Service Parameters will be then-current pricing offered by Objective unless otherwise agreed in the Order Form.
- 8.13 The Charges for each Extended Term year period will be subject to an uplift of: (a) five per cent (5%); or (b) CPI; whichever is greater, unless Objective has agreed an alternative uplift formula in the Order Form.
- 8.14 Where an automatic Extended Term has not been stopped by either Party in accordance with clause 4.3 or 4.4, Objective will issue an invoice to Customer for the Charges for the Extended Term on or around thirty (30) days prior to the end of the then-current year period of the Term (whether the Initial Term or any Extended Term, as the case may be) and Customer must pay such invoice in accordance with this clause 8, and Objective must supply the Cloud Service for that Extended Term.
- 8.15 Charges are not subject to refund except in accordance with Law and expressly in accordance with this Agreement.

- 8.16 In addition to clause 8.13, Objective reserves the right to uplift its Charges by five per cent (5%) or more if Objective's data centre supplier uplifts their prices to Objective by five per cent (5%) or more at any time during the Term. Objective shall provide Customer with as much advance notice of the uplift as reasonably practicable and in any case not less than thirty (30) calendar days together with supporting evidence of the data centre supplier's own price hike. Conversely, Objective may but is not obliged to pass on any price reductions from Objective's data centre supplier.

## 9 CONSENT TO USE ANALYTICS DATA

- 9.1 Customer acknowledges that the Cloud Service may contain analytics functionality to enable Objective to collect, maintain, process and use technical, operational, usage, diagnostic and related information about how the Cloud Service functions ("**Analytics Data**").
- 9.2 Customer agrees Objective may use and process Analytics Data strictly for the purpose of improving Objective's software and services, provided that Objective de-identifies and anonymises all Analytics Data prior to use.

## 10 CUSTOMER DATA AND INTELLECTUAL PROPERTY RIGHTS

- 10.1 Customer owns all Customer Data inputted to and generated by the Cloud Service.
- 10.2 Customer grants Objective and its Affiliates and applicable contractors a licence (for the duration of the Cloud Service Period and the Customer Data Retention Period) to host, copy, transmit, process and display Customer Data as reasonably necessary for Objective to provide the Cloud Service in accordance with this Agreement and the applicable Order Form. Subject to the limited licences granted herein, Objective acquires no right, title or interest in Customer Data under this Agreement.
- 10.3 Objective owns or licences the Cloud Service.
- 10.4 Customer has the right to access and use the Cloud Service and Cloud Service Documentation subject to the terms of this Agreement, but otherwise Objective reserves all of its right, title and interest in and to the Cloud Service and Cloud Service Documentation, including all of its Intellectual Property rights and Customer does not acquire any right, title or interest in any of Objective's Intellectual Property.
- 10.5 Customer authorises Objective:
- (a) to store and use Customer Data in the Hosted Environment as part of the supply of the Cloud Service for the Cloud Service Period and the Customer Data Retention Period;
  - (b) to store and use Customer Data as part of Objective's standard backup processes; and
  - (c) to store and use the particular Customer Data (Support) in the Support Portal as part of the supply of the Support Service.
- 10.6 Customer permits Objective to retain the Customer Data (Support) in the Support Portal indefinitely following termination of this Agreement, howsoever that occurs, strictly for Objective's internal knowledge management purposes and subject at all times to the confidentiality and privacy obligations set out in this Agreement.
- 10.7 Objective will use reasonable efforts to avoid loss of and unauthorised access to Customer Data by following commercially reasonable industry standards for such protection.
- 10.8 If Customer provides Objective with feedback (including product / functionality suggestions) Objective may use that information and material without restriction and without any obligation to Customer.

## 11 PRIVACY, DATA PROCESSING AND CONFIDENTIALITY

- 11.1 Each Party will comply with all applicable data privacy and data processing legislation. If Customer seeks a Data Processing Addendum, clause 25.20 below will apply.
- 11.2 As each User registers or is registered to use the Cloud Service, Objective will collect personal identification information about individual Users ("**Customer Privacy Material**"), and Objective will comply with its Privacy Policy in respect of all such Customer Privacy Material.
- 11.3 Objective will only act as a data processor in respect of Customer Privacy Material and will not re-use it or disclose it outside the requirements of this Agreement.
- 11.4 Objective reserves the right to update its Privacy Policy from time-to-time to ensure its compliance with Law.
- 11.5 Each Party agrees that it will use the same degree of care (not being less than reasonable care) to protect the other Party's Confidential Information as it uses to protect its own Confidential Information, and will not disclose the other Party's Confidential Information, except:
- (a) to employees, agents, contractors or advisors who need to know the information for the purposes of this Agreement and who have agreed to keep such information confidential;
  - (b) with the other Party's consent;
  - (c) if required to do so by Law or a stock exchange; or

- (d) as strictly required in connection with dispute resolution or legal proceedings relating to this Agreement.

## 12 INFORMATION SECURITY

12.1 Objective uses reasonable security technologies in providing the Cloud Service.

12.2 If Objective becomes aware of an actual, alleged or suspected Information Security Incident or any other unlawful access to any Customer Data stored on the Cloud Service, Objective's equipment or in Objective's facilities, or those of their subcontractors, or unauthorised access to such equipment or facilities, resulting in loss, disclosure or alteration of Customer Data or Website defacement, Objective will:

- (a) promptly notify Customer and investigate the alleged or suspected breach;
- (b) notify Customer of the outcome of any such investigation; and
- (c) take reasonable commercial steps to implement rectification measures if an actual breach occurred.

12.3 Objective confirms:

- (a) its Customer Data information security safeguards are no less rigorous than those used by Objective for its own information security;
- (b) it is in, and will remain in, compliance with its information security program in all material respects; and
- (c) prior to permitting any subcontractor to access Customer Data, Objective shall conduct a reasonable, documented investigation of such subcontractor to verify that it is capable of maintaining the privacy, confidentiality and security of Customer Data in compliance with this Agreement.

12.4 Subject to clause 21.4(b), Objective confirms it has implemented and will maintain the following minimum controls with respect to Customer Data:

- (a) Organisational and technical measures designed to ensure that Customer Data is not processed by Objective for any purposes other than for the performance of the Cloud Service under this Agreement;
- (b) Customer Data is logically or physically segregated from Objective's other customers' data;
- (c) Objective only selects hosting providers with certified industry standard security compliance frameworks to ensure physical controls are in place to protect information assets from environmental hazards and unauthorised access, and to manage and monitor movement of persons into and out of the Hosted Environment where Customer Data is stored, processed, or transmitted;
- (d) Operational procedures and controls to ensure technology and information systems are configured and maintained according to prescribed internal standards;
- (e) Application security and software development controls designed to prevent the introduction of security vulnerabilities in any software developed by Objective;
- (f) Network security controls, including firewalls, logging, and other controls as applicable to the Cloud Service to help protect systems from intrusion and limit the scope or success of any attack or attempt at unauthorised access to Customer Data;
- (g) Vulnerability management and regular application, operating system and other infrastructure patching procedures and technologies to identify, assess, mitigate and protect against new and existing security vulnerabilities, threats and Viruses;
- (h) Encryption of Customer Data at rest and use of TLS for data transfer across public networks;
- (i) Business resiliency/continuity procedures to ensure Objective's ability to maintain service and recover from foreseeable emergency situations in a timely manner;
- (j) Change management procedures to ensure all modifications to Objective's technology and information assets are properly tested, approved, recorded, and monitored;
- (k) Incident management procedures to allow for the investigation, response, mitigation and notification of events related to the confidentiality, integrity, and availability of Objective's technology and information assets;
- (l) Organisational management to ensure the proper development and maintenance of information security and technology policies, procedures and standards; and
- (m) Background checks (including criminal background checks) of any personnel who may gain access to Customer Data that are repeated at adequate intervals, and administrative controls to ensure no one convicted of a crime of dishonesty, breach of trust, or money laundering is permitted to access Customer Data.

12.5 Objective shall notify Customer in advance of any changes in the controls or other safeguards that would result in a material weakness in, or have an adverse impact on, the security of Customer Data.

- 12.6 On any termination of this Agreement, Objective will cease processing Customer Data, enable Customer to extract its Customer Data, and at the end of the Customer Data Retention Period, securely delete or destroy all Customer Data, as applicable, in Objective's possession (except as prohibited by Law or other explicit data retention and/or return provisions in this Agreement). To the extent any Customer Data is retained by Objective, Objective's confidentiality and security obligations shall continue in accordance with this Agreement.

## 13 MEASURING AND REPORTING AVAILABILITY

- 13.1 Where the Cloud Service requires an Onboarding Project, a bedding down period following completion of the Onboarding Project will apply before Objective will commence calculating service levels or Support Service credits (if applicable). The duration of the bedding down period for each Cloud Service is specified in the Support Plan.
- 13.2 Objective will manage, measure and report on Availability in accordance with the applicable terms of the Support Plan.

## 14 UPDATING THE CLOUD SERVICE

- 14.1 Objective may, from time-to-time, develop New Releases of the Application and pursue changes to the Hosted Environment (subject always, in the case of the Hosted Environment, to the obligation to maintain the Hosted Environment location in Australia or other jurisdiction identified in the Order Form). Objective will roll out New Releases and changes to the Hosted Environment at Objective's discretion except where otherwise agreed in an Order Form.
- 14.2 Before rolling out New Releases or changes to the Hosted Environment, Objective will conduct tests to ensure Customer can continue to log into the Website and interface with the Application.
- 14.3 When a New Release of the Application is rolled out, Objective will make release notes available on the Support Portal which detail the changes.

## 15 DISASTER RECOVERY TESTS, PENETRATION TESTS AND BUSINESS CONTINUITY PLAN

- 15.1 For each Cloud Service, Objective will conduct a Disaster Recovery Test once per annum throughout the Term to test Disaster declaration and recovery of the Cloud Service, and also a Penetration Test once per annum.
- 15.2 Disaster Recovery Tests and Penetration Tests will be carried out as Scheduled Maintenance.
- 15.3 Objective has, and will maintain for the duration of the Term, a Business Continuity Plan ("BCP") that covers the Cloud Service and addresses the actions to be taken by Objective to recover or recommence the Cloud Service in the event of a Disaster. Objective will provide a copy of the contents page of the BCP to Customer upon request, but for security reasons will not make the whole BCP available to Customer.

## 16 MAINTENANCE

- 16.1 Scheduled Maintenance will be performed outside of Business Hours and on not less than three (3) Business Days' prior written notice communicated via the Support Portal and, as applicable, the Application login page.
- 16.2 Objective will use reasonable endeavours to perform Emergency Maintenance outside of Business Hours, however, Customer acknowledges and accepts that the performance of Emergency Maintenance during Business Hours may arise and that will not constitute a breach of this Agreement.
- 16.3 Objective will provide Customer with written notice of Emergency Maintenance as soon as reasonably practicable during, or after, it has been performed, whether advance written notice was provided or not. The written notice will be communicated via the Support Portal and, if applicable, the Application login page.

## 17 OBJECTIVE INSPECTION

- 17.1 Objective may review Customer Data to determine if it complies with the Law and this Agreement, and may prevent access to, delete or refuse to display Customer Data that Objective believes violates the Law or this Agreement, but Objective does not have any obligation to monitor or review Customer Data. Objective will notify Customer in advance of any review and give Customer a reasonable opportunity to respond to Objective's views about compliance with Law.
- 17.2 Provided Objective anonymises and aggregates the information, Objective may inspect and analyse Customer Data information derived from Customer's utilisation of the Cloud Service, strictly for Objective's business purposes of improving the solution, support, training, performance and/or security processes and identifying trends and potential developments.

## 18 REGULATOR ACCESS

- 18.1 If Customer is subject to requests by Regulators for access to documentation and information related to this Agreement such access will be governed by clause 18.2.
- 18.2 Objective will provide reasonable assistance to the Regulator in respect of any Regulator's requests for documentation, access or assistance under this clause 18, but not to the extent of incurring unreasonable costs or putting at risk the supply of the Cloud Service to other Objective customers of the Cloud Service.

- 18.3 Customer will do all acts and things reasonably necessary to ensure Objective does not incur extra cost or expense of complying with Regulator access requests related to Customer.

## 19 SUSPENDING SERVICE

- 19.1 Objective may suspend the Cloud Service or block Customer's access:
- (a) for Scheduled Maintenance and Emergency Maintenance;
  - (b) if Objective is directed to suspend the Cloud Service by a Regulator, government, regulatory or law enforcement agency;
  - (c) if Objective reasonably believes Customer to have undertaken any of the prohibited actions in this Agreement; or
  - (d) if Customer fails to pay an undisputed invoice or portion of invoice within the late payment notice period as set out in clause 8.10 or fails to pay for excess usage pursuant to clause 5.6.
- 19.2 Where reasonably possible, Objective will endeavour to give Customer reasonable advance notice of any suspension. Objective will use commercially reasonable efforts to narrow the scope or duration of the suspension as is needed to resolve the issue that prompted the action.

## 20 INTELLECTUAL PROPERTY AND CUSTOMER DATA INDEMNITIES

- 20.1 Subject to clause 20.2, Objective will defend Customer against any claim brought against Customer by a third-party alleging that the Cloud Service, when used as authorised under this Agreement and the Order Form, infringes the third-party's Intellectual Property rights (an **"IPR Claim"**). Objective will indemnify Customer and hold it harmless against any damages and costs finally awarded by a court of competent jurisdiction, or agreed to settlement by Objective, (including reasonable lawyers' fees) arising out of an IPR Claim, provided that Objective has received from Customer: (a) prompt written notice of the IPR Claim (but in any event notice in sufficient time for Objective to respond without prejudice); (b) reasonable assistance at Objective's request and expense in the investigation and defence of the IPR Claim, including providing Objective with a copy of the IPR Claim and all relevant evidence in Customer's possession, custody or control; and (c) the exclusive right to control and direct the investigation, defence, and settlement (if any) of the IPR Claim. Customer may elect to participate in the defence of any IPR Claim with counsel of its choosing at its own expense.
- 20.2 Objective will not defend Customer or indemnify Customer if the IPR Claim arises due to Customer combining the Cloud Service with another service or activity, or modifying the Cloud Service, where the IPR Claim would not have arisen but for the combination or modification.
- 20.3 In the event of an IPR Claim, Objective may, at its sole discretion:
- (a) obtain for Customer, at no additional cost to Customer, the right to continue to use the Cloud Service;
  - (b) replace or modify the Cloud Service in a manner so that the infringement or alleged infringement ceases without a material decrease in functionality; or
  - (c) if Objective reasonably concludes that neither (a) nor (b) is practicable, elect to terminate this Agreement and the Order Form, and refund to Customer any Charges pre-paid in respect of the balance of the Term from the time of receipt of the IPR Claim.
- 20.4 Customer will defend Objective against any claim brought against Objective by a third-party alleging that Customer has misused Customer Data or infringed third-party Intellectual Property rights in the course of accessing and using the Cloud Service (a **"CD Claim"**). Customer will indemnify Objective and hold it harmless against any damages and costs finally awarded by a court of competent jurisdiction, or agreed to settlement by Customer, (including reasonable lawyers' fees) arising out of a CD Claim, provided that Customer has received from Objective: (a) prompt written notice of the Claim (but in any event notice in sufficient time for Customer to respond without prejudice); (b) reasonable assistance at Customer's request and expense in the investigation and defence of the CD Claim, including providing Customer with a copy of the CD Claim and all relevant evidence in Objective's possession, custody or control; and (c) the exclusive right to control and direct the investigation, defence, and settlement (if any) of the CD Claim. Objective may elect to participate in the defence of any CD Claim with counsel of its choosing at its own expense.
- 20.5 This clause 20 sets out the sole, exclusive and entire liability of the Parties arising out of or in connection with third-party claims asserting Intellectual Property rights infringement and/or misuse of Customer Data and is the sole remedy of a complaining Party.

## 21 WARRANTIES, ACKNOWLEDGEMENTS AND OPEN SOURCE SOFTWARE

- 21.1 The following express warranties are made:
- (a) Objective warrants that:
    - (i) it has authority to grant the rights of access and use contemplated in this Agreement;

- (ii) it owns or licences the Cloud Service, and Customer's use of the Application in accordance with this Agreement and the applicable Order Form will not infringe the Intellectual Property rights of any person;
  - (iii) the Cloud Service will function substantially in accordance with the applicable Cloud Service Documentation;
  - (iv) it will use all due care and skill and comply with all applicable Law in the supply of the Cloud Service and in the supply of professional services under an SOW; and
  - (v) it will not materially decrease the security or the functionality of the Cloud Service during the Term.
- (b) Customer warrants that Customer Data at all times:
  - (i) complies with the Law;
  - (ii) does not infringe any person's Intellectual Property rights, including moral rights, or other rights; and
  - (iii) is not misleading or deceptive, defamatory or obscene.
- 21.2 To the maximum extent permitted by Law, the Parties expressly exclude all terms, conditions, warranties, guarantees, undertakings, inducements and representations that are not expressly included in this Agreement and/or an Order Form, whether implied by legislation, the common law, equity, trade, custom or usage or otherwise, relating to this Agreement or the supply of the Cloud Service.
- 21.3 Objective does not exclude any statutory or implied guarantee, condition or warranty which cannot legally be excluded (including under the Australian *Competition & Consumer Act 2010*). If any statutory or implied guarantee, condition or warranty applies and cannot legally be excluded, Objective's liability to Customer under or in respect of any breach of that guarantee, condition or warranty is, to the extent permitted by Law, limited, at Objective's election, to the re-supply of the Cloud Service or professional services (as applicable) or payment of a sum equal to the fees for the re-supply of the Cloud Service or professional services (as applicable), at Objective's then-applicable price list.
- 21.4 Objective does not warrant, represent or guarantee that:
  - (a) the Cloud Service will be error-free;
  - (b) the Application or Hosted Environment is invulnerable to intrusion or penetration;
  - (c) the Application will be compatible with Customer's own system(s);
  - (d) the Availability Target or Support Service target timeframes will be met or exceeded; or
  - (e) any future functionality or features will be delivered.
- 21.5 Customer acknowledges and accepts that:
  - (a) Customer bandwidth is critical for use of the Application and Customer is responsible for maintaining such bandwidth;
  - (b) high demand usage can degrade performance so Objective cannot reasonably, and does not, guarantee performance of the Application in all circumstances;
  - (c) Viruses and new forms of security breaches continue to be developed and affect computing and telecommunications networks, so Information Security Incidents may occur despite reasonable efforts by Objective to mitigate the risk of such occurrence, and Objective cannot reasonably, and does not, guarantee the security of the Application;
  - (d) Unless expressly agreed otherwise in an Order Form, Objective will perform upgrades to implement New Releases at Objective's discretion and timetable, and Objective will not defer or delay any upgrade nor will Objective maintain a superseded release of the Application for Customer; and
  - (e) no rights of set-off apply in favour of Customer under this Agreement or the Order Form, and the only rights of refund are those expressly addressed in clause 21.3.
- 21.6 The Cloud Service may contain OSS. OSS contained in the Cloud Service, and the corresponding end user licence agreements associated with such OSS ("**OSS Licences**"), are set forth in the applicable Cloud Service Documentation or in the Help or Notice text within the Cloud Service. Customer's use of OSS is governed exclusively by the applicable OSS Licences. Except for the OSS contained in the Cloud Service, the OSS Licences will not apply, in whole or in any part, to the Cloud Service. While an OSS Licence may permit Customer to receive OSS source code, in no event will Customer have any right to, access to or obtain the source code for the Cloud Service. OSS is provided by Objective "as is" and any warranties provided by Objective in this Agreement are expressly disclaimed in connection with OSS. Notwithstanding anything to the contrary elsewhere in this Agreement, in no event will Objective be liable for any direct, punitive, special, consequential, incidental or indirect

damages, or loss of profits or revenue related to OSS, even if Objective has been advised of the possibility of such loss or damage.

## 22 LIMITATION OF LIABILITY

- 22.1 Subject to clauses 22.2 and 22.3, Objective's liability to Customer for any and all claims arising out of or in connection with this Agreement and/or an Order Form (whether arising in contract, tort (including negligence and breach of warranty), statute, equity or otherwise) shall be limited in aggregate to a sum equal to the Charges paid during the period of one (1) year preceding the initial event giving rise to the liability ("**Liability Cap**"). If the event giving rise to the liability occurs within the first year of the Initial Term, the Liability Cap will be a sum equal to the Charges payable for the first year of the Initial Term as shown on the applicable Order Form.
- 22.2 In no event will Objective be liable (whether arising in contract, tort (including negligence and breach of warranty), statute, equity or otherwise) to Customer for any: (a) loss of or damage to revenue, profits, sales, business, data, goodwill, opportunity or anticipated savings; (b) consequential, indirect, exemplary, punitive, special, or incidental losses or damages; or (c) damage or injury to, or loss of, reputation; even if Objective has been advised of the possibility of such losses or damages.
- 22.3 The limitations and exclusions in clauses 22.1, 22.2 and 22.4 do not apply to:
- (a) Objective's liability to Customer for bodily injury (including sickness) or death caused to any person;
  - (b) Objective's liability to Customer under the Intellectual Property indemnity in clause 20.1; or
  - (c) Any liability that cannot be limited or excluded under applicable law.
- 22.4 The Parties agree to shorten the limitation period for claims, actions, suits or demands ("**claim(s)**") made by a Party against the other relating to this Agreement and/or an Order Form (whether arising in contract, tort (including negligence and breach of warranty), statute, equity or otherwise) to one (1) year from the date the claim arose, being the date the Party knew, or should have known after reasonable investigation, of the facts giving rise to the claim.
- 22.5 The Parties agree that the limitation of liability arrangements in this clause 22 are reasonable, and Customer acknowledges that the amount of the Charges is partly based on these limitation of liability arrangements.

## 23 TERMINATION

- 23.1 Either Party may terminate this Agreement or an Order Form for cause before the end of the Term if:
- (a) A Party commits a material breach of the terms of this Agreement or the applicable Order Form and fails to cure the breach within thirty (30) days of receipt of the non-breaching Party's written notice detailing the nature of the breach; or
  - (b) A Party commits an act of insolvency, comes under any form of insolvency administration, or assigns or purports to novate its rights otherwise than in accordance with this Agreement.
- 23.2 The Parties agree that a material breach within clause 23.1 includes a failure to pay any undisputed Charges within the late notice period in clause 8.10.

## 24 DISPUTE RESOLUTION

- 24.1 Subject to clause 27, this clause 24 sets out the resolution process agreed by the Parties if a dispute arises out of or relating to this Agreement and/or an Order Form, including concerning the breach, termination, validity or subject matter thereof, the performance or non-performance of this Agreement, or as to any related claim in restitution or at law, in equity or pursuant to any statute. Subject to clause 24.5, neither Party shall commence any court proceedings without complying with the remainder of this clause 24.
- 24.2 The Parties to this Agreement and the dispute expressly agree to first endeavour to settle the dispute by negotiation in good faith by senior authorised representatives over a period of ten (10) Business Days, or longer period if agreed in writing. If no resolution is reached by the end of that timeframe, then the dispute must, within ten (10) Business Days, be referred to a mediator in Sydney, Australia agreed by the Parties for mediation administered by the Australia Commercial Disputes Centre ("**ACDC**"). If the Parties have failed to agree on a mediator within five (5) Business Days, then the mediator will be the mediator selected by the Director of ACDC or his or her nominee. Either Party may refer the dispute for mediation and request selection of a mediator as contemplated in this clause 24.2, and the mediation shall be conducted in accordance with the then-current terms of the ACDC Guidelines for Commercial Mediation.
- 24.3 The Parties must pay the mediator's fees in equal shares. Each Party must pay its own costs of the mediation.
- 24.4 In the event that the dispute has not been settled within twenty-eight (28) days after appointment of the mediator, or such other period as agreed to in writing between the Parties, each Party shall be at liberty to commence proceedings.
- 24.5 Nothing in this clause 24 shall prevent a Party from instituting legal proceedings in order to obtain urgent injunctive relief from an appropriate court.

## 25 GENERAL

- 25.1 Precedence. If there is any conflict between the components to the contract between the Parties, they will be interpreted in the following order of priority: (1) the Order Form; (2) the SOW (*if any*); (3) this Agreement; (4) Objective's Privacy Policy; and (5) the Support Plan.
- 25.2 Variations, and purchase order terms. The Parties can only modify or add terms to this Agreement if such variation is specified in an Order Form signed by the Parties. To avoid doubt, if Customer issues a purchase order or any similar document which contains pre-printed or other purported terms and conditions, those pre-printed (or other) terms and conditions shall not have any legal or equitable effect.
- 25.3 Entire Agreement. The documents referenced in clause 25.1 contain the entire agreement between the Parties in relation to its subject matter and supersedes all prior agreements and undertakings (oral or written) and Customer agrees it has not relied upon earlier representations and has only relied upon the materials set out therein.
- 25.4 Assignment, Novation, Transfer and Sub-contracting. This Agreement and the Order Form, and the obligations formed thereunder, are personal to Objective and Customer. The Parties agree that neither Party may, directly or indirectly, assign, transfer, novate or sub-contract any of its rights and/or obligations under this Agreement and/or the Order Form, without the other Party's prior written consent (which shall not be unreasonably withheld); except Objective may use a third-party hosting provider to supply the Hosted Environment.
- 25.5 Non-solicitation. For the duration of the Term and for a further twelve (12) months after expiry or termination, neither Party will attempt to solicit, influence, induce or encourage (or engage others to do so) any of the other Party's personnel with whom the first Party has come into contact by virtue of this Agreement to leave their engagement with the other Party. Publicly published recruitment advertisements for open competitive hiring opportunities are excluded from the foregoing restraint.
- 25.6 Publicity. Subject to Customer's prior written consent, which shall not be unreasonably withheld, Objective may use Customer's name and logo in any public news release or statement, case study and on Objective's website to publicise the fact Customer is a client of Objective's Cloud Service. Objective may use Customer's name in Objective's annual report and ASX notifications without Customer's prior consent. Customer pre-agrees to include the Objective Cloud Service logo on any portal component of the Cloud Services. By way of example "Powered by [Cloud Service]".
- 25.7 Waiver. Any waiver under this Agreement must be in writing. Waiver of any part of this Agreement does not constitute a waiver of any other part of this Agreement.
- 25.8 Governing Law and Jurisdiction. Subject to clause 27, this Agreement and the Order Form (including any non-contractual obligations arising out of or in connection with the same) is governed by and must be construed in accordance with the laws of New South Wales, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales, Australia and the Commonwealth of Australia for any proceeding in connection with this Agreement and/or an Order Form, without regard to conflicts of law rules and waives any right it might have to claim that those courts are an inconvenient forum.
- 25.9 Export Laws. Customer will comply with all applicable export and import control laws, restrictions, national security controls and regulations of any country in its use of the Cloud Service and, in particular, Customer will not export or re-export the Cloud Service or the Cloud Service Documentation or any Objective Confidential Information if prohibited by applicable export laws.
- 25.10 Notices. All notices related to this Agreement must be in writing and will be effective upon: (1) personal delivery; (2) the third Business Day after mailing; or (3) except for notices of breach, termination or an indemnifiable claim (each a "**Legal Notice**"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Invoicing - related notices to Customer will be addressed to the relevant invoicing contact designated by Customer and all other notices will be addressed to the designated representative of the Party as set out in the Order Form (or such replacements advised by a Party via a notice). Any Legal Notices must be sent to the Party's General Counsel.
- 25.11 Relationship. Each Party will act as an independent contractor, and employees of each Party will not be considered employees of the other Party. Neither Party may make any commitments binding on the other Party, nor may either Party make any representation that they are acting for, or on behalf of, the other Party.
- 25.12 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement or an Order Form. Customer's Users are not third-party beneficiaries to Customer's rights under this Agreement.
- 25.13 Severability. If a provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.
- 25.14 Time. Time is not of the essence of this Agreement, an SOW or an Order Form except in relation to payments of Charges, giving notice to cancel an automatic Extended Term, giving notice of an IPR Claim or CD Claim, and the shortened liability period in clause 22.4.
- 25.15 Survival. Clauses relating to Confidential Information, privacy, Intellectual Property, prohibited activities of Customer, limitation of liability, shortened liability period, payments and dispute resolution, together with any other terms which by their nature are intended to survive termination, will survive termination of this Agreement.

- 25.16 Electronic/Digital Signatures. Electronic and digital signatures that comply with applicable law are deemed to be original signatures.
- 25.17 Exclusions. Neither the United Nations Convention on Contracts for the Sale of Goods nor the United States Uniform Computer Information Transactions Act apply to this Agreement or an Order Form, regardless of where Customer is located.
- 25.18 Force Majeure. Except for Customer's payment obligations, neither Party will be liable for, and each is excused from, any failure to perform hereunder or any delay in such performance, to the extent that such failure or delay is due to Force Majeure. The occurrence of a Force Majeure event will not operate to terminate this Agreement or an Order Form, but if the non-performance of either Party continues for more than thirty (30) days as a result, the Party not affected thereby may, at its option, terminate this Agreement and the affected Order Form upon the giving of thirty (30) days' notice in writing to the other Party.
- 25.19 Anti-Corruption and Anti-Bribery. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any Objective employee or agent in connection with this Agreement or an Order Form.
- 25.20 Data Processing Addendum. If Customer is located in a country whose governing data privacy law is the European Union's General Data Protection Regulation (GDPR) or equivalent legislation, Customer may determine that it is necessary to incorporate a Data Processing Addendum to this Agreement to comply with that law and enable Objective to process Customer Data or Customer Privacy Material in accordance with clause 11. If Customer makes that determination, the Parties will enter into Objective's Data Processing Addendum (as available on Objective's website).
- 25.21 Updating the Terms of this Agreement. Objective reserves the right to update the terms of this Agreement from time-to-time, provided that any changes shall only be effective from the commencement of the next Extended Term (if such is invoked in accordance with this Agreement). Objective will give the Customer at least forty-five (45) days' written notice of the change prior to the commencement of the next Extended Term and will post the new terms at [www.objective.com/legal](http://www.objective.com/legal).

## 26 DEFINITIONS AND INTERPRETATION

- 26.1 Capitalised terms in this Agreement will have the following meanings:

**Affiliate** means any entity controlled by, under common control with, or controlling a Party, where "controlled", "control" or "controlling" means the ownership, directly or indirectly, of more than fifty (50) percent of the shares, voting rights or other equity interest in the Party or an affiliated Party.

**Application** means the specific Objective cloud software solution(s) set out in the Order Form, including any New Releases rolled out during the Term.

**Availability** means the percentage of the Available Hours of Operation that the Cloud Service will be available for use by Customer in good standing, which is calculated monthly throughout the Term.

**Available Hours of Operation** means, in respect of the Cloud Service production environment only, the total number of hours in a month, exclusive of Permissible Downtime and Service Disruption.

**Availability Target** means the target ratio of Availability calculable each month of the Term during the Available Hours of Operation expressed as a percentage, being 99.5% or as otherwise stated in the Support Plan.

**Business Day** means any day that is not a Saturday, Sunday or a formal public holiday in Australia, the United Kingdom, New Zealand or Florida, USA at the location of Objective's office nearest to Customer's primary location.

**Business Hours** means the hours between 8am and 6pm on Business Days, except as otherwise provided within the Support Plan for the particular Cloud Service.

**CD Claim** has the meaning given to it in clause 20.4.

**Charges** means the fees to be paid by Customer for Objective's supply of the Cloud Service as set out in the Order Form, and the fees for the professional services as set out in the SOW or the Order Form; as such may increase pursuant to the terms of clause 8.

**Cloud Service** means the particular Objective software-as-a-service subscription solution(s) identified in the Order Form, including all updates, New Releases, plug-in adaptors, components, modules, programs, third-party software, interfaces and Objective supplied data which forms part of the same.

**Cloud Service Documentation** means Objective's publicly published material for Users of the Cloud Service, including release notes.

**Cloud Service Parameters** means the authorised metrics / scope of the Cloud Service as set out in an Order Form, which may include User Volume, number of Connections, Environment Volume, Disaster Recovery service, Hosted Environment, and Storage Allocation, as applicable.

**Cloud Service Period** means the period from the Commencement Date to the last day of the Term.

**Commencement Date** means the start date of this Agreement set out in the Order Form, or if no date is shown then the date on which the last Party signs the Order Form.

**Confidential Information** means all information concerning a Party's business or operations, including information marked or otherwise designated as confidential, that the discloser treats as confidential or which the recipient knows or ought reasonably to know is confidential, and includes any trade secret, pricing list or fee formula or any information relating to the financial position of a Party. Objective's Confidential Information includes the Application, New Releases, the Cloud Service Documentation, and the Charges. Customer's Confidential Information includes Customer Data. 'Confidential Information' does not include any information which is in the public domain other than as a consequence of the breach of an obligation of confidence under this Agreement or owed to any third party.

**Connection** means a measure of usage of 'Objective Connect', determined by multiplying the number of Documents uploaded to a Workspace by the number of Participants that have joined that Workspace (e.g. 25 Documents x 8 Participants = 200 Connections).

**CPI** means:

- (a) if Customer is located in Australia or Customer's Order Form shows the Currency for Charges is Australian Dollars, then "CPI" means the latest published annual percentage increase in the Consumer Prices Index (All Groups, weighted average of eight capital cities) as published by the Australian Bureau of Statistics (at: <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation>); or
- (b) if Customer is located in New Zealand or Customer's Order Form shows the Currency for Charges is New Zealand Dollars, then "CPI" means the latest published annual percentage increase in the Consumer Prices Index as published by Stats NZ (at: <https://www.stats.govt.nz/indicators/consumers-price-index-cpi/>); or
- (c) if Customer is located in the United Kingdom or Europe or Customer's Order Form shows the Currency for Charges is British Pounds, then "CPI" means the latest published annual percentage increase in the Consumer Prices Index (All Items) as published by the Office for National Statistics (at: <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7/mm23>); or
- (d) if the Customer is located in the USA or Customer's Order Form shows the Currency for Charges is United States Dollars, then "CPI" means the latest published annual percentage increase in the Consumer Prices Index as published by the U.S. Bureau of Labor Statistics (at: <https://www.bls.gov/cpi/>),

as such publishing bodies and/or websites may be changed by the applicable government from time to time.

**Currency** means Australian dollars unless a different currency is specified in the Order Form.

**Customer** means the Party identified as Customer under this Agreement as set out in the Order Form or in the online registration process for a particular Cloud Service.

**Customer Data** means the electronic material and information generated as content by Customer's Users in the course of accessing and using the Application, including text, logos, documents, diagrams, surveys, forms and all other like material.

**Customer Data Download** means the activity of Customer to extract, copy or save Customer Data from the Hosted Environment at the end of the Term to information technology systems owned or arranged by Customer, and may involve downloading .pdfs of Cloud Service outputs, exporting XML versions of Cloud Service outputs, and saving previously uploaded files (including logos, images, Word documents and video clips).

**Customer Data Retention Period** means the following period (as applicable):

- (a) thirty (30) days after the end of the Cloud Service Period, or longer period if required by law; or
- (b) such other period as may be agreed in an Order Form, or longer period if required by law.

**Customer Data (Support)** means Customer's incident notices and any follow-up and other material submitted to the Support Portal as set out in the Support Plan.

**Disaster** means a circumstance in which all or part of the primary data centre only of the Hosted Environment is substantially adversely affected in some way with the result that the Application is reasonably unlikely, in Objective's reasonable opinion, to be Available at that location for a period of time, while the secondary site of the Hosted Environment is unaffected.

**Disaster Recovery** or **DR** means the processes and actions to cut-over operation of the instance of the Application from the primary data centre of the Hosted Environment where it has experienced a Disaster, to the secondary data centre of the Hosted Environment.

**Disaster Recovery Test** means Objective's planned test to determine if its processes and activities of Disaster Recovery result in a successful cut-over from an affected primary data centre of the Hosted Environment to an unaffected secondary data centre.

**Document** means, in respect of 'Objective Connect', any single information asset that is uploaded to a Workspace, such as a document, diagram, spreadsheet, image, video, presentation and/or drawing.

**Emergency Maintenance** means urgent maintenance work undertaken by Objective as required during which Objective takes the Application offline, to preserve and rectify: (1) part(s) of the Hosted Environment; (2) part(s) of the Application; or (3) the operation of the Application in the Hosted Environment and the operation of the Hosted Environment itself.

**Environment Volume** means the maximum number of production and non-production instances of the Application allocated to Customer as set out in the Order Form at the Commencement Date, and any further such environment(s) as agreed throughout the Term in accordance with this Agreement.

**Exit Service** means the closing activities of the Cloud Service undertaken by Objective as detailed in clause 3.2.

**Extended Term** means an extension to the Initial Term pursuant to clause 4.2.

**Force Majeure** means a situation, circumstance or event beyond the reasonable control of Objective that directly or indirectly prevents it from complying with any of its obligations under this Agreement including: acts of God (such as, without limitation, fire, weather event, lightning strike, flood, tidal wave, earthquake, storm, cyclone or natural disaster); war hostilities (whether declared or not and including an act of foreign enemies, requisition or embargo); civil commotion (including rebellion, revolution or insurrection); contamination by radioactive, toxic, chemical or biological agents; explosion; acts or threats of terrorism, malicious damage or sabotage; pandemics and epidemics; action or inaction by a court or government agency or authority, including denial, refusal or failure to grant any permit or authorisation, licence, approval or acknowledgement despite timely best endeavours exercised by Objective to obtain the grant; strikes or any form of civil or labour disturbance which does not solely affect the workforce of Objective; accident; damage caused by an airplane or other flying vehicle; unavailability of materials, utilities or infrastructure, including Internet and phone access; and unforeseeable breakdown of any facilities, plant or equipment.

**Hosted Environment** means, as the context requires: (a) the primary location of the Application in a third-party data centre (as arranged by Objective), including the servers on to which the Application has been loaded, the system components for Storage and all internal connectivity, up to and including the firewall and routers at the perimeter of the data centre, comprised of a production environment for the Application and a non-production environment or environments, as the case may be, as set out in the Order Form; and (b) a secondary data centre location for Disaster Recovery, up to and including the firewall and routers at its perimeter.

**Information Security Incident** means an event or circumstance where the security of information used in the Cloud Service is compromised in any manner, including by suspicious emails with attachments or links; compromise or corruption of digital material; unauthorised access or intrusion into the Hosted Environment; intentional or accidental introduction of Viruses to the Hosted Environment; denial of service attacks; hacking of a computer, phone, tablet or other device; phishing; phone or other device tapping; suspicious network activity; lost or damaged computer, phone, tablet or other devices; data spills; and unauthorised copying of digital material.

**Initial Term** means the minimum period during which the Cloud Service is to be supplied under this Agreement, as set out in the Order Form.

**Intellectual Property** means any industrial or intellectual proprietary rights under statute or at common law or equity which now exist or may exist in the future in any country, including copyright, design, trademarks, patents, semi-conductor or circuit layout rights, trade secrets, business names, domain names, social media, blog and other internet titles, Confidential Information, and any application for any of the rights referred to herein.

**IPR Claim** has the meaning given to it in clause 20.1.

**Law** means all local, state, federal and international laws and regulations which may apply to this Agreement and/or the Order Form or any right or obligation pursuant to it.

**New Release** means a new version of the Application or a modification to the Application.

**Objective** means the Objective entity identified in the Order Form, but if no such entity is shown then Objective Corporation Limited (ABN 16 050 539 350) of Level 30, 177 Pacific Highway, North Sydney, 2060, New South Wales, Australia.

**Onboarding Project** means the initial professional services project by which Objective configures the Application for Customer, provides training, and, if applicable, data migration and integration services.

**Order Form** means:

- (a) if Customer subscribes to a Cloud Service by completing an online transaction, the Tax Invoice generated by Objective's online purchase process and any updates to the details of it made through the online account from time-to-time during the Cloud Service Period;
- (b) if Customer subscribes to a Cloud Service by Customer and Objective signing an Order Form, that Order Form and any variations to it made by written consent of the Parties from time-to-time during the Cloud Service Period; or

- (c) if Customer subscribes to a Cloud Service by Customer and Objective signing a contract document or documents to which this Agreement is appended or incorporated, that contract document(s).

**OSS** means open source software, being freeware, shareware or open source computer software programs whose source code is available for inspection and use by anyone and is made available under a licence that permits recipients to copy, modify and distribute the program's source code without payment of a royalty.

**Participant** means a user who is invited to join a Workspace, and each Workspace owner.

**Party** means a party to this Agreement, being Customer or Objective, as the context requires; and **Parties** means both of them.

**Penetration Test** means an authorised simulated cyberattack on the Cloud Service, which is performed to evaluate the security of the Cloud Service;

**Permissible Downtime** means any or all of the following:

- (a) Any period for Scheduled Maintenance;
- (b) Any period of Emergency Maintenance to address security;
- (c) Any period approved by Customer in writing or mutually agreed with Objective;
- (d) Any period arising from an event of Force Majeure.

**Privacy Policy** means Objective's then-current privacy policy (which is located at: [www.objective.com/privacy](http://www.objective.com/privacy)), as such may be amended by Objective from time-to-time.

**Regulator** means any government agency having regulatory or supervisory functions regarding Customer's business or operations or in relation to Customer's access to and use of the Cloud Service.

**Scheduled Maintenance** means maintenance work undertaken by Objective according to a known timetable during which Objective takes the Application offline, to preserve and rectify: (1) part(s) of the Hosted Environment; (2) part(s) of the Application; or (3) the operation of the Application in the Hosted Environment and the operation of the Hosted Environment itself.

**Service Disruption** means the time during which the Cloud Service is unavailable during Business Hours arising from causes beyond the reasonable direct control of Objective, such as the interruption or failure of telecommunications or digital transmission links, hostile network attacks, results from any actions or inactions of Customer, or a Force Majeure event.

**SOW** has the meaning given to it in clause 3.3.

**Storage** means the disc space in the Hosted Environment allocated to the Application and multiple files and Customer Data.

**Storage Allocation** means the quantity of disc space in the Hosted Environment allocated to Customer's subscription to the Cloud Service, as set out in the Order Form or Cloud Service Documentation.

**Support Contact** means, if applicable, a subset of Users) (being employees, contractors, agents or a third-party entity) which have been appointed and authorised by Customer to access and use the Support Service.

**Support Hours** means the hours of Objective consultant support for the Support Service as described in the Support Plan (e.g. standard Support Hours are Business Hours - i.e. 8am to 6pm on Business Days).

**Support Plan** means Objective's 'Customer Support Plan', which details the Support Service for the Cloud Service that is in effect as at the Commencement Date, which is available at [www.objective.com/support-plan](http://www.objective.com/support-plan).

**Support Portal** means Objective's common online application and environment, accessible via the Internet, into which Objective, Customer and Support Contacts may submit incident notices, and otherwise participate in incident management. The Support Portal is located separately from the Hosted Environment and does not form part of the Hosted Environment.

**Support Service** means the activities to support the Cloud Service as set out in the Support Plan.

**Tax** means any GST, VAT, sales, use, withholding, property, excise, service or other tax.

**Tax Invoice** has the meaning given under the Australian *A New Tax System (Goods and Services Tax) Act (1999)* or equivalent legislation in the jurisdiction in which Customer is primarily located (if not Australia).

**Term** means, as the context requires, the Initial Term and any Extended Term(s) arising after the Initial Term pursuant to clause 4 or shorter period in the event of earlier termination pursuant to clause 23.

**User** means, as the case may be:

- (a) an individual who is an employee, officer, agent or delegate of Customer who Customer has permitted to use the Application as contemplated in this Agreement. Participants and external financial, tax and legal

advisors invited by Customer to use the Cloud Service will be “Users” of Customer for the purposes of this Agreement; or

- (b) the individual person subscribing to use the Cloud Service on their own account as part of the online registration process.

**User Volume** means the maximum number of Users permitted to use the Cloud Service, as set out in the Order Form at the Commencement Date and as otherwise agreed during the Term in accordance with this Agreement.

**Virus** means any malicious code affecting a computer, tablet or mobile telephone or other device operable over the Internet and includes adware, spyware, Trojan horses, bots, worms and other malicious code, whether or not it replicates itself, which has the effect of interrupting, diminishing, altering or stopping the operation of the Application in the Hosted Environment.

**Website** means the digital resources at the URL accessible by Customer using an Internet browser and through which Customer can access and use the Cloud Service.

**Workspace** means an environment in ‘Objective Connect’ into which Documents may be uploaded by a Participant (whether directly or by using ‘Objective Connect Link’) for sharing with other Participant(s).

26.2 In this Agreement, the following rules of interpretation apply, unless the context otherwise requires:

- (a) The singular includes the plural and vice versa;
- (b) Headings are used for convenience only and do not affect the interpretation of this Agreement;
- (c) A reference to a clause is a reference to a clause of this Agreement;
- (d) The word “person” means a natural person or any other legal entity whether incorporated or not;
- (e) The words ‘includes’ and ‘including’ are not used as, nor are intended to be interpreted as, words of limitation;
- (f) “day” means a calendar day;
- (g) “month” means a calendar month; and
- (h) “year” means a twelve (12) month period.

## 27 GOVERNING LAW FOR CUSTOMERS LOCATED OUTSIDE AUSTRALIA

27.1 The Parties agree that:

- (a) If Customer is located in New Zealand or Customer’s Order Form shows the Currency for Charges is New Zealand dollars, then:
  - (i) the governing law of this Agreement under clause 25.8 will be New Zealand and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts exercising jurisdiction in New Zealand; and
  - (ii) the dispute resolution location under clause 24 will be Wellington, New Zealand, and the dispute resolution body will be the Resolution Institute (and their guidelines for commercial mediation will apply).
- (b) If Customer is located in the United Kingdom or Europe or Customer’s Order Form shows the Currency for Charges is British Pounds, then:
  - (i) the governing law of this Agreement under clause 25.8 will be England and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts exercising jurisdiction in England; and
  - (ii) the dispute resolution location under clause 24 will be London, England, and the dispute resolution body will be the Centre for Effective Dispute Resolution (CEDR) (and their guidelines for commercial mediation will apply).
- (c) If the Customer is located in the USA or Customer’s Order Form shows the Currency for Charges is United States Dollars, then:
  - (i) the governing law of this Agreement under clause 25.8 will be the State of New York, USA and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the state and federal courts exercising jurisdiction in the State of New York, USA (and each Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement, an SOW, the Order Form and/or the Cloud Service); and
  - (ii) the dispute resolution location under clause 24 will be New York city and the dispute resolution body will be mutually agreed by the parties (and their guidelines for commercial mediation will apply).

