

END USER LICENSE AGREEMENT CATS SOFTWARE

This End User License Agreement (the “**Agreement**”) is a legal agreement between you (the “**Licensee**”) and Dye & Durham Information Pty Ltd (“**Dye & Durham**”) and governs your use of CATS and the services and products offered in CATS.

BY CLICKING THE “I AGREE WITH THESE TERMS AND CONDITIONS” BUTTON, YOU ARE ACCEPTING ALL OF THE TERMS OF THIS AGREEMENT AND AGREE TO BE BOUND TO THE CONDITIONS SET FORTH HEREIN. THIS AGREEMENT CONSTITUTES A BINDING CONTRACT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE “NO” BUTTON AND DO NOT USE THE PRODUCTS AND SERVICES GOVERNED HEREUNDER. IF YOU DO USE THE PRODUCTS AND SERVICES GOVERNED HEREUNDER, YOU ARE DEEMED TO HAVE ACCEPTED THIS EULA.

This Agreement shall be interpreted in accordance with the terms of Appendix A hereto.

Dye & Durham and the Licensee agree as follows:

1. LICENCE TO USE CATS

- 1.1 **Grant of Licence.** Dye & Durham grants to the Licensee, for the duration of the Term and on the terms and conditions contained in this Agreement, a revocable, non-exclusive, non-transferable, non-sublicensable licence to access CATS for the Licensee’s own personal or internal business purposes subject to the terms of this Licence and to use the Technology strictly in accordance with the provisions of this Licence and any documentation provided by Dye & Durham for that purpose.
- 1.2 **No Unauthorized Use.** The Licensee must not sub-license, lease, rent, lend or transfer CATS to any other person, and the Licensee must take all reasonable steps to prevent unauthorised access to CATS, including, without limitation, safeguarding usernames, passwords and other means of access.

2. PAYMENT

- 2.1 **Payment of Fees.** The Licensee must duly pay Dye & Durham the Fees set out in the Order Form, or, in the absence of an Order Form for such Fees, the Fees at the prevailing market rates offered by Dye & Durham from time to time.
- 2.2 **Invoicing.** Dye & Durham will invoice the Licensee for Fees on a monthly, quarterly or annual basis, as the case may be. The Licensee must pay the invoice within 30 days of when the invoice is delivered.
- 2.3 **Support Services.** Licensee may request Support Services, and Dye & Durham may decide to perform, in its sole and absolute discretion, such Support Services, which will be billed in accordance with Dye & Durham’s standard rates in effect from time to time (including all travelling and accommodation expenses).

3. TERM, TERMINATION & SUSPENSION

- 3.1 **Term.** This Agreement commences on the earlier of: (a) your acceptance of this EULA; and (b) your use of the products and/or services governed under this EULA (in which case you are

deemed to have accepted this EULA), and continues thereafter unless terminated in accordance with the terms of this Agreement.

3.2 **Termination.**

- (a) Either party may terminate this Agreement by giving the other party 30 days' written notice.
- (b) Dye & Durham may terminate this Agreement immediately by notice to the Licensee if:
 - (i) the Licensee undergoes an Insolvency Event;
 - (ii) the Licensee acts or fails to act in any manner that would cause reputational damage to Dye & Durham; or
 - (iii) the Licensee breaches any term of this Agreement.

3.3 **Effect of Termination.** Termination will not affect any accrued rights or remedies either party has and upon termination of this Agreement:

- (a) each party must deliver to the other party or destroy (as the other party instructs) all material forms of any of the other party's Confidential Information and any other property of the other party in its possession, custody or control within five business days following expiration or termination of the Agreement and, upon request of the other party, promptly certify in writing to the other party (by a certificate signed by a director or other officer of the first party) that this subsection has been complied with; and
- (b) the Licensee agrees to cease use of CATS and agrees that no portion of the Fees will be refunded.

3.4 **Right to Suspend.** In the event this Agreement is terminated or if Licensee breaches any term of this Agreement, Dye & Durham may, in addition to any other remedy available to it in law or at equity, disable the Technology or any part of it, thereby rendering the Technology non-functional, or otherwise suspend Licensee's access to the Technology or any part of it. Dye & Durham may, at its discretion, charge a re-activation fee if the Licensee has cured its breaches and wishes for Dye & Durham to re-enable the Technology or otherwise cancel the Licensee's suspension.

4. **CHANGE OF TERMS**

- 4.1 **Right to Amend.** Dye & Durham may by notice to the Licensee amend this agreement from time to time and if the Licensee continues using CATS or any of its Technology after Dye & Durham has varied this agreement, the Licensee will be taken to have agreed to the variation.

5. **LICENCES AND OWNERSHIP OF INTELLECTUAL PROPERTY**

- 5.1 **Grant of Licence.** The Licensee agrees and acknowledges that if through the use of the Technology and/or any data entered through the Technology or any third party appointed, the following provisions shall apply:

- (a) Licence to be granted to access and browse the Technology: Dye & Durham hereby grants to the Licensee a non-exclusive, non-assignable, non-sub licensable, revocable licence to access and browse the Technology in accordance with this Agreement.
- (b) Services. The Licensee agree and acknowledge that by entering into this Agreement the Licensee and acknowledge that in doing so:

- (i) the Licensee is subscribing to the Services; and
- (ii) the Licence granted to the Licensee pursuant to this Agreement shall also include a non-exclusive, non-assignable, non-sub licensable, revocable right granted to the Licensee to access the Services.

5.2 **Costs.** The Licensee must pay all costs associated with accessing the Technology and the Services, including internet access costs, web browser and computer and smartphone equipment costs, telecommunications costs, data costs, roaming charges and Fees.

5.3 **Right to Terminate/Suspend Upon Payment Failure.** Without limiting Dye & Durham's rights and any other provision of this Agreement, if the Licensee fails to pay the Fees in accordance with the requirements of this Agreement, Dye & Durham may suspend and/or terminate the Licensee's access to the Services and the Licensee Data hosted in the Services without notice.

5.4 **Responsibility for and ownership of Licensee Data.** As between Dye & Durham and the Licensee, the Licensee owns all data that the Licensee upload into the Services ("**Licensee Data**"). The Licensee agree and acknowledge that (i) the Services and/or Licensee Data may be hosted by Dye & Durham or Dye & Durham's suppliers on hardware or infrastructure located in or outside South Australia; and (ii) Dye & Durham may not own or operate the infrastructure upon which the Services and/or the Licensee Data is hosted.

5.5 **Warranties of the Licensee.** Each time the Licensee uses the Services, the Licensee warrants, agrees and represents that:

- (a) the Licensee will only upload, input and transfer Licensee Data into and/or via the Services and/or disclose Licensee Data to Dye & Durham, which the Licensee is fully entitled and authorised to so upload, input, transfer and disclose; and
- (b) the Licensee Data and/or Dye & Durham's collection, use, storage and/or disclosure thereof in the course of performing the Services, does not and will not breach any applicable law or right of any person.
- (c) The Licensee is solely responsible for the accuracy, legality, quality and for obtaining any permissions, licenses, rights and authorisations necessary for Dye & Durham to use, host, transmit, store and disclose the Licensee Data for the purposes of providing the Services.
- (d) Except in respect of any Non-Excludable Condition, the Licensee agree that Dye & Durham is not responsible for any loss, corruption or hacking of any Licensee Data.
- (e) The Licensee indemnifies Dye & Durham and its suppliers in respect of any loss and damage Dye & Durham and/or any of Dye & Durham's suppliers incurs in respect of any claim that any of the Licensee Data is lost, unavailable or corrupted or the transmission, storage, disclosure, hacking or access of any Licensee Data infringes the Intellectual Property Rights or other rights of any person or breaches any law, regulation, code or standard.

5.6 **Availability of Services & Licensee Data**

- (a) Dye & Durham agree to use its best endeavours to procure hosting of the Services and the Licensee Data and to ensure that the Software is available 99.8% of the time.
- (b) The availability of the Services to the Licensee will be subject, in addition to any other provisions set out in this Agreement, to any bandwidth limitations, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions set out in the Documentation.

- (c) The Licensee agree and acknowledge that the accessibility of the Services and the Licensee Data hosted by the Services is highly dependent on the proper function of the Internet and any other computer and telecommunications networks and infrastructure upon which the Technology and/or Services and/or Licensee Data operate, interface with or connect to.
- (d) Except in respect of any Non-Excludable Condition, Dye & Durham does not guarantee that the Technology or Licensee Data hosted in the Services or access thereto will be uninterrupted or error-free and the Licensee releases and indemnifies Dye & Durham in respect of any loss and damage Dye & Durham may incur and/or claims and/or complaints the Licensee or the Licensee's customers or Third Party Data Users may have against Dye & Durham in respect of any interruption, error or unavailability of the Services or any Licensee Data hosted by the Services.

5.7 Acceptable Use Policy. The Licensee agrees that:

- (a) using the Technology to violate all or any legal rights of any person or company or other entity in any jurisdiction is strictly prohibited;
- (b) using the Technology in relation to crimes such as theft and fraud is strictly prohibited;
- (c) using the Technology in breach of laws relating to the protection of copyright, trade secrets, patents or other intellectual property and laws relating to spam or privacy and whether such violation is by way of the installation or distribution of "pirated" software or otherwise, is strictly prohibited;
- (d) unauthorised copying of copyrighted material is strictly prohibited;
- (e) introduction of malicious programs into Dye & Durham's network or servers (e.g., viruses, worms, Trojan horses, e-mail bombs) is strictly prohibited;
- (f) revealing the Licensee's account password to others or allowing use of the Licensee's account on the Technology by others is strictly prohibited;
- (g) using another person's name, username or password or otherwise attempting to gain access to the Technology of any other person is strictly prohibited;
- (h) using the Technology to make fraudulent offers of goods or services is strictly prohibited;
- (i) using the Technology to carry out security breaches or disruptions of network communication is strictly prohibited. Security breaches include, but are not limited to, accessing data of which the Licensee are not an intended recipient or logging into a server or account that the Licensee are not expressly authorized to access or corrupting any data. For the purposes of this paragraph, "security breaches" includes, but is not limited to, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes;
- (j) using the Technology to execute any form of network monitoring which will intercept data not intended for the Licensee is strictly prohibited;
- (k) using the Technology to circumvent user authentication or security of any of Dye & Durham's hosts, networks or accounts or those of Dye & Durham's customers or suppliers is strictly prohibited;
- (l) using the Technology to interfere with or denying service to anyone is strictly prohibited;
- (m) using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any persons' use of the Technology is strictly prohibited;
- (n) sending unsolicited email messages through or to users of the Technology in breach of the Spam Act 2003 is strictly prohibited;
- (o) using the Technology to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages is strictly prohibited; and
- (p) use of the Technology in breach of any person's privacy (such as by way of identity theft or "phishing") is strictly prohibited.

5.8 **Intellectual Property Rights.** The Licensee agrees and acknowledges that:

- (a) this Agreement does not transfer or assign any Intellectual Property Rights to the Licensee and that the Licensee, nor any person acting on the behalf of the Licensee, will not acquire any title or Intellectual Property Rights in the Technology;
- (b) except in respect of the Licensee Data, Dye & Durham owns all Intellectual Property Rights in the Software.
- (c) the Licensee has no rights in the Technology or in any part of it or in any modification or enhancement thereof, other than the rights temporarily granted to the Licensee pursuant to the Licence.
- (d) other than in respect of the Licensee Data, the Licensee agree that any Intellectual Property Rights in any content which the Licensee uploads or posts to the Technology (such as any comments, ideas and/or suggestions for enhancements and/or new features for the Software) ("User Content") becomes Dye & Durham's sole and exclusive property immediately upon the Licensee uploading or posting that content, and the Licensee hereby agrees to assign all Intellectual Property Rights in all and any such content to Dye & Durham effective immediately as the Licensee uploads or posts the content to the Software, pursuant to section 197 of the *Copyright Act 1968* (Cth) and in equity.

5.9 **The Licensee waives all Moral Rights.** Rights that the Licensee may have to any User Content and consents to Dye & Durham and any third-party Dye & Durham authorises to infringing all and any such Moral Rights in Dye & Durham's absolute discretion. The Licensee must not take any step to invalidate or prejudice Dye & Durham's Intellectual Property Rights in the Software or otherwise. Without limiting the foregoing provisions, the Licensee must not register any security interest or purchase money security interest on the Personal Property Securities Register, or otherwise encumber or charge the Licensee's rights in respect of the Licensee Data or under the Licence.

5.10 **Responsibility for other users**

- (a) The Licensee agrees and acknowledges that the Software is hosted on computer servers shared with other clients of Dye & Durham.
- (b) Dye & Durham does not accept responsibility for the conduct of any users of Dye & Durham's Technology.
- (c) If the Licensee believe that another user of Dye & Durham's Technology has breached their obligations the Licensee shall report the breach to Dye & Durham.
- (d) Any dispute the Licensee has with another user of Dye & Durham's Technology is between the Licensee and the other user. The Licensee releases Dye & Durham from any claims that the Licensee may otherwise have against Dye & Durham in relation to any conduct of any user of Dye & Durham's Technology.

5.11 **Responsibility for third party claims.** The Licensee agrees and acknowledges that the Licensee is solely responsible for and the Licensee indemnifies Dye & Durham in respect of any loss and damage Dye & Durham may incur in connection with any claims and/or complaints made by any of the Licensee's customers where the claim is caused directly or indirectly by the Licensee's use of the Services; and/or the Licensee's goods and/or services and/or advertising and/or sales and/or marketing practices.

5.12 **Hyperlinks.** Dye & Durham does not represent, recommend or endorse any websites to which Dye & Durham has linked from the Technology via hyperlink or otherwise. The Licensee must not link to the Technology or any part of it without Dye & Durham's prior written consent.

6. UNDERTAKINGS

6.1 **Undertakings.** The Licensee must not, except to the extent of any non-excludable rights contained in any Law or as permitted under this Agreement:

- (a) copy or otherwise reproduce the Technology, except, in the case of documentation to the extent reasonably required for internal training purposes;
- (b) translate, adapt, vary or modify the Technology;
- (c) disassemble, decompile or reverse engineer the Technology;
- (d) provide or otherwise make available the Technology in whole or in part (including but not limited to program listings, object and source program listings and object code), in any form to any person other than employees of the Licensee, contractors and outsource providers who have a specific need to have access to it in order to perform their duties to the Licensee; or
- (e) assign, lend, borrow, sub-licence or otherwise transfer any right or interest, or part thereof, in the Technology, this Agreement or the Licence.

7. REPRESENTATIONS AND WARRANTIES

7.1 **Representations & Warranties of Dye & Durham.** Dye & Durham represents and warrants to the Licensee that Dye & Durham has the right to grant to the Licensee the Licences granted hereunder to the knowledge of Dye & Durham use of the Technology in accordance with this Agreement will not infringe the Intellectual Property Rights of any person.

7.2 **Mutual representations and warranties.** Each party represents and warrants to the other that it is entitled to enter into this Agreement and perform its obligations under this Agreement; that neither it nor its officers, employees, agents, contractors or related bodies corporate will engage in any malicious act or fraud in connection with this Agreement; and that to its knowledge there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of this Agreement.

8. INTELLECTUAL PROPERTY RIGHT INFRINGEMENTS

8.1 **The Licensee indemnity.** The Licensee must indemnify, keep indemnified and hold harmless Dye & Durham against loss, damage, cost or expense, whether direct or indirect (including legal costs on a full indemnity basis) that arise (a) as a result of a breach by the Licensee of Dye & Durham' Intellectual Property Rights; or (b) out of a claim by a third party to whom the Licensee has passed on any of Dye & Durham' Intellectual Property Rights that those Intellectual Property Rights belong to the third party.

8.2 Defence of Third-Party Infringement Claims

- (a) The Licensee must:
 - (i) promptly notify Dye & Durham in writing of the details of a Third Party Infringement Claim; and
 - (ii) provide Dye & Durham with reasonable assistance in defending the claim.
- (b) the Licensee must permit Dye & Durham to have sole control of the defence of a Third Party Infringement Claim and all related settlement negotiations. Dye & Durham must conduct the defence at its own expense.
- (c) Neither party will unnecessarily or unreasonably take any action or fail to take any action in the defence of a Third Party Infringement Claim that would damage the other party or increase the liability of the other party under this clause 14.
- (d) The party conducting the defence of a Third Party Infringement Claim:

- (i) must inform the other party of all material developments; and
 - (ii) subject to clause 14.2, must not settle the claim without the written consent of the other party, which must not be unreasonably withheld.
- (e) Dye & Durham indemnifies the Licensee for any claims, and costs associated with any claims, by a third party that the Technology breaches any third party intellectual property rights provided that the Licensee or its employees do not cause the breach.

9. PRIVACY

9.1 **Third Party Privacy.** Licensee must comply with the Australian Privacy Principles when dealing with any personal information collected or stored through the use of Technology by the Licensee.

9.2 **Disclosure.** The Licensee must not disclose or failure to secure any personal information that is collected or stored through the use of Technology unless authorised by law.

9.3 **The Licensee indemnity.** The Licensee must indemnify Dye & Durham against loss, damage, cost or expense, whether direct or indirect (including legal costs on a full indemnity basis) that arises out of a breach by the Licensee of this Article 9.

9.4 **Collection of Personal Information.** The Licensee acknowledges Dye & Durham may, as part of its maintenance of CATS, collect personal information about clients of the Licensee including property details. Licensee must obtain all necessary consents of the clients of the Licensee to the storage of their personal information by Dye & Durham.

10. CONFIDENTIALITY

10.1 **Scope.** The obligation of confidence in this clause extends to Confidential Information provided to or obtained by a party before entering into this Agreement.

10.2. **Preventing disclosures.** Except as provided otherwise in this Agreement, each party undertakes that it will:

- (a) use all Confidential Information disclosed to that party by or on behalf of the other party in confidence exclusively for the performance of its obligations under this Agreement; and
- (b) keep all Confidential Information fully confidential.

10.3. **Remedies for breach.**

- (a) Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause is breached.
- (b) Each party acknowledges that, without compromising the Discloser's right to seek damages or any other form of relief for a breach of this clause, the Discloser may seek and obtain ex-parte interlocutory or final injunction to prohibit or restrain the Recipient or its advisers from any breach or threatened breach of this clause.

10.4 **GST**

- (a) Fees or other consideration referred to in this Agreement include GST unless expressly stated otherwise.

- (b) If the consideration is expressed to exclude GST, to the extent that the provision of the Technology or other services under or in connection with this Agreement is a taxable supply, the consideration for that supply is increased by an amount determined by Dye & Durham, not exceeding the amount of that consideration multiplied by the prevailing rate at which GST is imposed in respect of the supply. If an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement:
 - (i) Dye & Durham must determine the amount of the GST component of the consideration payable; and
 - (ii) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the Licensee, as the case may be.
- (c) Dye & Durham must issue a Tax Invoice to the Licensee in relation to an amount before the Licensee is required to pay that amount under this Agreement.

11. DISPUTE RESOLUTION

11.1. Negotiate in good faith. In the event that a dispute arises between the parties, the parties shall endeavour to negotiate the dispute in good faith.

11.2. Arbitration

- (a) If the dispute or difference is not settled within 10 Business Days of the dispute arising (unless that period is extended by Agreement of the parties), it will be submitted to arbitration in accordance with, and subject to The Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations.
- (b) The arbitration will be held in Adelaide, South Australia or any other place as agreed by the parties.
- (c) The parties will appoint a person agreed between themselves to be the arbitrator of the dispute.
- (d) If the parties fail to agree on a person to be the arbitrator under subclause 11.2(c) then the parties must request the President of the Law Society of South Australia to appoint an arbitrator.
- (e) The costs associated with the appointment and retention of the arbitrator will be borne equally between the parties, except that each party is responsible for paying its own costs, including legal costs, of the arbitration.

11.3. Dispute resolution procedures binding

- (a) Compliance with this clause is a condition precedent to a party's entitlement to commence legal proceedings in relation to a dispute.
- (b) This clause does not apply to a dispute in which a party seeks urgent interlocutory relief.

19. NOTICES

19.1. Any notice or other communication required to be given to or by a party to this Agreement:

- (a) must be in legible writing and in English addressed to the address shown above or as specified to the sender by any party by notice; and
- (b) is regarded as being given by the sender and received by the addressee:

- (i) if delivered in person, when delivered to the addressee;
- (ii) if by post, on the second Business Day following the date of postage; or
- (iii) if by facsimile transmission when transmitted to the addressee, but if the delivery or receipt is on a day that is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.
- (iv) if sent by email, 30 minutes after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered, whichever happens first.

12. INDEMNITY

12.1 **Indemnity.** The Licensee must indemnify, keep indemnified and hold harmless Dye & Durham against loss, damage, cost or expense, whether direct or indirect (including legal costs on a full indemnity basis) that arise from a breach of this Agreement.

13. EXCLUSIONS AND LIMITATIONS OF LIABILITY

13.1. Dye & Durham makes no express warranties under this Agreement except under clause 10.

13.2. Dye & Durham does not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010 (Cth) (CCA)*) where to do so would contravene that statute or cause any part of this clause to be void.

13.3. Dye & Durham excludes:

- (a) from this Agreement all conditions, warranties and terms implied by statute, general law, international conventions or custom, except by any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non-excludable Condition").
- (b) all liability for consequential or indirect damages arising out of the non-compliance of the Licensee, its employees, agents and contractors with the Technology and any user alerts provided to the Licensee from time to time by Dye & Durham.
- (c) all liability for consequential or indirect damages arising out of the failure of the Licensee, its employees, agents and contractors to use the Technology in accordance with the Technical Guidelines and to correctly install Technology updates provided by Dye & Durham from time to time.
- (d) all liability for any failure for the non-delivery of Dye & Durham Technology updates for any reason whatsoever including, but not limited to, changes to the Licensee's email address and postal address.
- (e) all liability for consequential or indirect damages arising out of any corruption of data, inability to access data, breach of privacy, downtime as a result of or arising from the use of the Internet link between the Technology and any service providers including, but not limited to, the Landgate. The Licensee acknowledges that its use of the services accessed through the Technology constitutes an acceptance that these services are provided by external providers and not by Dye & Durham.
- (f) all liability for consequential or indirect damages arising out of any corruption of third party programs such as Microsoft Word that occurs due to the installed Technology, or use of the Technology. The Licensee agrees that time spent by Dye & Durham on repairs, reinstalment, and maintenance of third party software and hardware used by

the Licensee in conjunction with the Technology will be charged to the Licensee as per the Dye & Durham additional service charges set out in the Order Form.

- (g) all liability for consequential or indirect damages out of any computer network problems that occur due to the installed Technology, or use of the Technology. The Licensee agrees that time spent by Dye & Durham on repairs, reinstalment, and maintenance of the Technology as a result of problems with the Licensee's computer network will be charged to the Licensee as per the Dye & Durham additional service charges set out in the Order Form.
- (h) all liability to the Licensee in contract for consequential or indirect damages arising out of or in connection with this Agreement even if:
 - (i) Dye & Durham knew they were possible; or
 - (ii) they were otherwise foreseeable, including without limitation, lost profits and damage suffered as a result of claims by any third person, such as a customer of the Licensee; and
- (i) all liability to the Licensee in negligence or other non-contractual cause of action in respect of which liability can be excluded for acts or omissions of Dye & Durham, its employees, agents and contractors arising out of or in connection with this Agreement.

21.4. Dye & Durham excludes liability for accuracy of transfer of data. Without limiting clause 21.3:

- (a) Dye & Durham excludes all liability to the Licensee for any errors or omissions in the transfer of data into CATS.
- (b) The Licensee accepts full responsibility for the accuracy of the data provided to Dye & Durham for transfer into CATS.
- (c) The Licensee accepts full responsibility for the accuracy of the data transferred by Dye & Durham into CATS. Dye & Durham expressly excludes all liability for any inaccuracies and errors in the data transfer into CATS.

21.5. Dye & Durham' liability to the Licensee for breach of:

- (a) the warranty given under clause 12 is limited to its obligations under clause 12; and
- (b) any express provision of this Agreement or any Non-Excludable Condition (except a Non-Excludable Condition referred to in clause 21.5 or one implied by the Order Form and section 64A of the *Competition and Consumer Act 2010* (Cth)) is limited at Dye & Durham' option, to any one of supplying, replacing or repairing the goods or supplying again the services, in respect of which the breach occurred.

21.6. If the Licensee is a consumer as defined under the *Competition and Consumer Act 2010* (Cth) Dye & Durham does not exclude or limit its liability to the Licensee for breach of any Non-Excludable Condition in respect of goods and services of a kind ordinarily acquired for personal, domestic or household use or consumption.

14. GENERAL

14.1. **Further Assurances.** Each party must promptly sign all documents, and do all things, that any other party from time to time reasonably requires of it, to effect, perfect or complete the provisions of this Agreement and any transactions contemplated by it.

14.2. **Rewards.** Each party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this Agreement, including half each of any stamp duty payable in respect of this Agreement.

14.3. **Severance.** If any term or part of this Agreement is or becomes for any reason invalid or unenforceable at law, then, that term or part of this Agreement will be and is hereby deemed to be severed from this Agreement without affecting the remainder of this Agreement, and the remainder of this Agreement will continue to be valid and enforceable in all things.

14.4. **No Assignment.** The Licensee must not transfer or assign its rights or obligations under this Agreement. Dye & Durham may transfer or assign its rights under this Agreement in its discretion by providing notice to you under this Agreement, and you agree to release Dye & Durham from any obligations under this Agreement on receipt of that notice.

14.5. **Waiver.** Waiver of any power or right arising under this Agreement must be in writing and signed by the party granting the waiver. Any failure or delay by a party to exercise a power or right does not operate as a waiver of that power or right.

14.6. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

14.7. **Entire Agreement.** This Agreement forms the entire Agreement between the parties. This Agreement supersedes all prior agreements and understandings between the parties, whether written or oral, related to the Technology and is intended by the parties as the complete and exclusive statement of the terms of their Agreement.

14.8. **Governing law and jurisdiction.** This Agreement is governed by the laws of the State in which the ultimate parent company of Dye & Durham is resident (the "State"). Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State.

14.9. **Survival.** The representations, warranties, covenants and indemnities under this Agreement shall survive termination or expiry of this Agreement for a period of two (2) years.

14.10. **Third party acts or omissions.** Notwithstanding any other provision in this Agreement, neither party will be liable for the acts or omissions of third parties.

14.11. **Good Faith.** In all of their dealings with each other, the Licensee and Dye & Durham will exercise the utmost good faith to each other.

14.12. **Force Majeure.** Dye & Durham will be free of liability to the Licensee if Dye & Durham is prevented from performing its obligations under this Agreement in whole or in part due to Force Majeure.

APPENDIX A
INTERPRETATION

1.1 **Definitions.** In this Agreement unless the context indicates a contrary intention:

“Agreement” means this Agreement and the schedules attached to it;

“Australian Consumer Law” means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*;

“Australia Privacy Principles” means the Australian Privacy Principles enacted under the Privacy Act 1988 (Cwth)

“Bank Account Verification” means the method as implemented to verify the bank account of the conveyancers client.

“Business Day” means a day on which banks are open for business in South Australia excluding a Saturday, Sunday or public holiday recognised in South Australia;

“Commencement Date” the date of acceptance of this Agreement by the Licensee;

“Confidential Information” of a party (**“Discloser”**) means:

- (a) any information regarding the business or affairs of that party or its related bodies corporate;
- (b) any information regarding the customers of or other persons doing business with that party or its related bodies corporate;
- (c) any information regarding the terms and conditions of this Agreement (including those terms and conditions themselves), or the commercial arrangements between the parties;
- (d) any information which is, by its nature, confidential or which is designated as confidential by that party;
- (e) the Database and its schema; and
- (f) any information which the other party knows, or ought to know, is confidential, but excludes any information that is:
- (g) required to be disclosed by applicable Law, provided that the recipient discloses the minimum amount of such information required to satisfy the Law and, before disclosing any information, the recipient provides a reasonable amount of notice to the discloser and exhausts all reasonable steps (whether required by the discloser or not) to maintain such information in confidence;
- (h) in the public domain, otherwise than as a result of a breach of this Agreement or another obligation of confidence;
- (i) independently developed by the recipient; or
- (j) already known by the recipient independently of its interaction with the other party and free of any obligation of confidence;

“Court” means a court of competent jurisdiction;

“Computer Virus” means a computer program or part of a computer program designed to delete or destroy data, alter or delete files, or otherwise interfere with the normal operation of a computer system;

“Database” means the systematic collection, electronic storage and manipulation of data by the Technology and includes the primary and foreign keys, and the encoding constraints, records and fields utilised in the Technology;

“Developments” means all modifications and developments of the Technology made from time to time”;

“Dye & Durham” means Dye & Durham Information Pty Ltd (ABN 99 073 436 414);

“Fees” means:

- (a) the Licence Fee;
- (b) fees for any Support Services;
- (c) fees for any optional, value added or third party use; and
- (d) any other fees or levies charged in respect of products or services offered through CATS;

“Financial Year” means the year beginning 1 July and ending 30 June;

“GST” means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply;

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

“GST law” has the same meaning as in the GST Act;

“Force Majeure” means an act, omission or circumstance over which Dye & Durham could not reasonably have exercised control and includes epidemic, pandemic, earthquake, typhoon, flood, fire, and war;

“Intellectual Property Rights” means any and all industrial and intellectual property rights without limitation:

- (a) throughout the world and includes rights in respect of copyright, patents, trademarks, designs, trade secrets, know how, Confidential Information and circuit layouts;
- (b) any application or right to apply for registration of any those rights.

“Insolvency Event” in relation to a party (insolvent party) means:

- (a) the insolvent party ceases, or takes steps to cease, to conduct its business in the normal manner;
- (b) the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) the insolvent party is unable to pay its debts when they are due or is deemed under the *Corporations Act (Cth)* to be insolvent;
- (d) a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or
- (e) an order is made or a resolution is passed for the winding up of the insolvent party;

“Knowhow” means all knowhow relating to the Technology in the possession or control of Dye & Durham at the date of this Agreement;

“Law” means any:

- (a) legislation, including regulations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) governmental agency requirement or authorisation (including conditions in respect of any authorisation); or
- (d) mandatory code of conduct, order, injunction, or judgment;

“Licensee” means the party that enters into this agreement with Dye & Durham to use the Technology on the terms of this Agreement;

“Licence” means the licence to use the CATS system granted pursuant to this Agreement;

“Licence Fee” means the fees payable by the Licensee for the use of CATS;

“New Release” means enhancements and new versions of and functional changes to the CATS system released by Dye & Durham after the commencement of this Agreement;

“Order Form” means the Order Form provided to the Licensee by Dye & Durham from time to time setting out the costs, charges, fees services, product descriptions and other conditions specifically applicable to the Licensee;

“Party” or **“Parties”** means Dye & Durham and the Licensee or each of them as the context requires;

“Personnel” of a party means employees, agents, business parent, joint venture partner or any direct or indirect contractors of that party;

“Personal information” has the same meaning as given in the Privacy Act 1988 (Cwth);

“ELNO” An online property exchange network to facilitate electronic conveyancing. i.e., PEXA, SYMPLI;

“Project” means all work required under this Agreement to develop and supply the System;

“Recipient” means a party in receipt of Confidential Information of the other party;

“Representative” means the Parties authorised to co-ordinate the performance of their respective obligations under the Agreement as set out in Clause 10;

“CATS” means the software containing the specifications listed in the Order Form;

“Specifications” means the specifications for CATS set out in the Order Form;

“Support Services” means the work, services and obligations of Dye & Durham in respect of the CATS to be provided in accordance with the Order Form;

“Technical Information” means all know how and technical information about the Technology in Dye & Durham’ possession or control at the date of this Agreement;

“Technology” means:

- (a) CATS;
- (b) the Database;
- (c) Technical Information; and
- (d) Developments.

“**Term**” means the period of time set out in clause 2.

“**Third Party Software**” means the third-party software that Dye & Durham has nominated to the Licensee on or prior to the Commencement Dates being required to be purchased by the Licensee to enable the Technology to function properly as set out in the Order Form, together with:

- (a) any upgrade or new releases of such software that Dye & Durham agrees to implement from time to time in order to operate the Technology; and
- (b) any changes to the software that Dye & Durham implements.

“**Training Guidelines**” means all technical know-how provided to the Licensee by Dye & Durham.

“**VOI**” means Verification of Identity, a process for verifying the identity of a person, carried out face to face and requires person being identified to provide original documents which the conveyancer is required to make a copy, retain and store.

1.2 **Interpretation.** In this Agreement unless the context indicates a contrary intention:

- (a) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (b) a reference herein to this Agreement or to any other deed, Agreement or document includes, respectively, this Agreement or other such deed, Agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (c) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (d) headings are for convenience only and do not affect interpretation;
- (e) a reference to a clause is a reference to a clause of this Agreement;
- (f) a reference to a statute, regulation or provision of a statute or regulation includes any change to that statute, regulation or provision or if it is repealed the statute, regulation or provision replacing it;
- (g) references herein to currency unless otherwise specifically provided are references to Australian currency;
- (h) the word “including” does not imply any limitations; and
- (i) a reference to a month is to a calendar month and a year is to a calendar year.

APPENDIX B
DOCUMENT VERIFICATION SERVICE ("DVS")

1. **DVS Terms of Use.** The Australian Government's Document Verification Service ("**DVS**") verifies Government issued documents. As Dye & Durham are an approved ID Service Provider ("**IDSP**"), You ("**ID Service Client**") can include the DVS as part of the Dye & Durham assessment. The Customer must comply with the provisions of this clause of these Terms and Conditions in the event the Services include any Content derived from Land Services SA.

2. **Definitions.** The following definitions apply in respect of (and only in respect of) this clause 25 of these Terms and Conditions: Land Services SA Data ("**Data**") means the data incorporated in any Data Product or Search whether owned by, or licensed to, the D&D (including data licensed by the State under an agreement with the D&D).

(a) **"Land Services SA Data Products" ("Data Products")** means the:

- (i) valuation details;
- (ii) dealing image;
- (iii) title for owner name; plan image;
- (iv) title details;
- (v) title and valuation details;
- (vi) dealing details;
- (vii) property interest report and form 1; and
- (viii) priority notice details and any other products agreed between D&D and Land Services SA from time to time,

and the underlying Data incorporated into those products.

(b) **"Land Services SA"** means Land Services SA Operating Pty Ltd as trustee for the Land Services SA Operating Trust

(c) **"Land Services SA Products"** means the Data Products and the Searches.

(d) **"Land Services SA Searches"** means:

- (ix) register search;
- (x) check search;
- (xi) historical search; and
- (xii) any other searches agreed between the parties from time to time including, where necessary, with the consent of the State,

and the underlying Data incorporated into the results of those searches.

(e) **"State"** means the Crown in right of the State of South Australia.

3. **Access Criteria.** In using the ID service offerings provided by Dye & Durham You agree that, at all times, you meet the following requirements ("**DVS Access Criteria**"):

- (a) The information You are providing is Personal Information as defined in the Australian Privacy Act 1988 and you have the authority to disclose it to us;
- (b) The information You are obtaining is for use on your own behalf, and not as an agent of any other person.;
- (c) You are a legal entity and have full power and authority to adhere to these terms and conditions.;
- (d) You are carrying on business in Australia and are subject to Australian;
- (e) You are subject to the Australian Privacy Act 1988 as applicable in the relevant circumstances;
- (f) You have not been issued any information security or privacy breach notifications from the Office of the Australian Information Commissioner;
- (g) Any other relevant regulators have not commenced any suspensions, sanctions or actions of any other kind against You;

4. **Requirements.** The Customer must not:

- (a) cause any Data in the Products to be cached or stored, or attempt to cache or store such Data, for the purpose of setting up, creating, or adding to another database (whether permanent or temporary), with the intent to create a copy of the Product for resale purposes. Caching of the Data in the Product is allowed for the sole and limited purpose of making the Data available to Customer only, and any caching of Data may only be made available for a period of thirty (30) days (the Specified Storage Period) from the original search;
- (b) modify or create any derivative works based upon the Products;
- (c) license, sublicense, distribute, resell, disclose, incorporate into any database, commercially exploit or otherwise transfer any Product to any third party, or use the Products on behalf of or for the benefit of any third party;
- (d) remove, obscure or alter any copyright, trademark, logo or other proprietary notice, or falsify or delete any author attributions, legal notices or other labels appearing on or in the Products relating to or in connection with the origin or source of the Products;
- (e) incorporate any portion of the Products into any other materials, products or services;
- (f) use the information delivery system in a manner intended to avoid incurring charges or minimise the applicable charges payable;
- (g) damage, interfere or harm the Products or any network or system underlying or connected to the Products or the information delivery system; or
- (h) use, or offer to use, the Products for or in connection with any direct marketing activities, including any telemarketing campaign or telephone survey.

5. **Enurement.** You agree that all disclaimers, exclusions, limitations of liability and indemnities that form part of this EULA and this Appendix B enure to the benefit of DVS and can be directly enforced by DVS.