

Xcellerate IT Pty Ltd

ABN: 75 052 208 689

("Xcellerate IT")

MODERN SERVICE AGREEMENT

This Modern Service Agreement sets out the terms and conditions under which Xcellerate IT has agreed to procure Tungsten Products and supply Services to the Client and is incorporated by reference into the Proposal or otherwise attached to it.

1 Definitions and Interpretation

1.1 In these terms and conditions, the following terms have the following meanings:

Affiliate means each 'related body corporate' (as that term is defined in the Corporations Act) of the Client.

Agreement means, in relation to the procurement of Tungsten Products and provision of Services, the agreement between Xcellerate IT and the Client comprising:

- (a) the Proposal;
- (b) this Modern Service Agreement including the applicable Schedule(s)
- (c) each Service Work Order; and
- (d) the Customer Solution Description or Statement of Work (depending on the proposed solution),

as amended from time to time in accordance with this Modern Service Agreement.

Application Support Services means, where acquired by the Client, the application support services provided by Xcellerate IT in relation to the Customised Solution more fully described in Schedule 1.

Business Day means a day on which banks are open for business in Sydney, New South Wales other than a Saturday, Sunday or public holiday in that State.

Claim means any claim, demand, action, proceeding or investigation, whether actual or threatened.

Client means the party identified in the Proposal as the person who is to receive Services from Xcellerate IT.

Client Data means any data, information or content provided or made available by or on behalf of the Client to Xcellerate IT or Tungsten, or uploaded to, stored in or processed through the Services, in connection with this Agreement.

Client Materials means all Materials provided or made available by or on behalf of the Client to Xcellerate IT in connection with the Services, including Client Data but excluding any Materials owned by a third party.

Client Systems means the software, networks, equipment and services used by the Client or its Affiliates from time to time.

Confidential Information means, in relation to a party, any information, irrespective of its form or medium and whether disclosed before, on or after commencement of this Agreement, concerning that party or its business, including:

- (a) details of the Services;
- (b) technical, commercial, financial or other information concerning that party or its products, services or business; and
- (c) information concerning that party's business processes,

which is not public knowledge other than as a result of a breach of an obligation of confidentiality.

Consequential Loss means any Loss that does not arise naturally in the ordinary course of things from the relevant event and, whether or not such Loss would otherwise constitute direct or indirect loss, includes loss of profit, loss of revenue, loss of savings, business interruption, loss or diminution of goodwill, loss of business opportunity, loss of use, loss or degradation of data, and the cost of procuring substitute products or services.

Consumer Guarantee means a guarantee under Part 3-2, Division 1 of the Australian Consumer Law.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Solution Description or **CSD** means, in relation to TotalAgility products, the scoping document prepared by Xcellerate IT (after the Service Work Order) describing the configuration, functionality, integrations and other technical characteristics of the Customised Solution.

Customised Solution means the solution designed, configured or implemented by Xcellerate IT for the Client as described in the applicable Order Document, comprising, as applicable, the configuration and customisation of Tungsten Products, integrations with Client Systems and any Xcellerate IT-developed components, workflows, scripts, documentation or other materials expressly identified in the applicable Order Document.

Excusable Event means an event beyond a party's reasonable control, including industrial disputes, cyber-attacks, failures of utilities, telecommunications networks, internet services, data centres or third-party hosting or cloud providers, acts of government, sanctions, war, terrorism, civil unrest, fire, flood, storm, earthquake, epidemic, pandemic, natural disaster or other similar event.

Fees means the fees, charges and other amounts payable by the Client to Xcellerate IT under this Agreement, including as specified in an Order Document and any amounts payable on termination.

Insolvency Event in relation to a person (**insolvent party**) means:

- (a) the insolvent party ceases or takes steps to cease to conduct its business;
- (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 to be insolvent;
- (d) a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or
- (e) an application or order is made or a resolution is passed for the winding up of the insolvent party.

Intellectual Property Rights means all intellectual property and analogous rights, whether registered or unregistered, including copyright, patents, trade marks, designs, trade secrets, know-how, inventions and discoveries, and any application or right to apply for registration of any such rights.

Government Agency means any government or governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity.

GST means the tax imposed by the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

Law means any:

- (a) Commonwealth, State, Territory or local government legislation in force in Australia or any law of a foreign jurisdiction applicable to the Services, including regulations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law applying in Australia; and
- (c) government agency requirement or authorisation (including conditions in respect of any authorisation).

Licensed Software means software made available by Tungsten and supplied or procured by Xcellerate IT for installation or deployment in the Client's environment as described in the applicable Order Document.

Loss includes any loss, liability, damage, cost, charge or expense, including reasonable legal costs and expenses.

Material means any documentation, documented methodology or process, data or other material in whatever form, including reports, specifications, diagrams, designs, flowcharts, logic diagrams and listings, business rules and requirements, user manuals, user guides, operations manuals, training materials and instructions.

Modern Service Agreement means these terms and conditions including its schedules.

On-Premise Environment means the Client Systems and other infrastructure owned, operated or controlled by or on behalf of the Client and, if applicable, at the location specified in the applicable Order Document.

Order Documents means the documents which set out what the Client has agreed to purchase from or through Xcellerate IT including the Proposal, a Service Work Order, approved Change Requests, a Customer Solution Description and Statement of Work (as applicable).

Project Manager means a person appointed by a party to manage the delivery of the Services on its behalf.

Proposal means the proposal prepared by Xcellerate IT in respect of the Tungsten Products and Services to be acquired by the Client, accepted by the Client and which incorporate or attach this Modern Service Agreement.

Representative means a person appointed by a party under clause 11 to manage the parties' relationship and the delivery of the Services on its behalf

Services means the services supplied by Xcellerate IT for the Client under this Agreement, as described in an Order Document.

Service Work Order means a document entered into by the parties under this Agreement that describes the Services to be provided by Xcellerate IT, including, as applicable, the scope, deliverables, Fees, timetable, milestones, assumptions, dependencies and any other terms specific to those Services.

Statement of Work means, in relation to Tungsten Products other than TotalAgility, the scoping document prepared by Xcellerate IT (after the Service Work Order) describing the configuration, functionality, integrations and other technical characteristics of the Customised Solution.

Subscription Services means the subscription services specified in the applicable Order Document, providing access to and use of the applicable Tungsten Products and the Subscription Services Platform, as further described in Schedule 2.

Subscription Services Platform means the infrastructure, systems and software used by Tungsten to provide the Subscription Services.

Time and Materials means Fees calculated by reference to time worked at Xcellerate IT's applicable rates, together with any applicable expenses or third-party costs, unless otherwise agreed in writing.

Third Party Materials means any Materials owned by or licensed to a third party and made available in connection with the Services.

Tungsten means Tungsten Automation Corporation (formerly Kofax, Inc.) and, where the context requires, any of its Affiliates, that supplies, licenses, hosts, supports or otherwise provides a Tungsten Product or related services.

Tungsten Product means any Subscription Services, Licensed Software or other related product or documentation made available by Tungsten and supplied or procured by Xcellerate IT for the Client under this Agreement.

Work-Around means a reasonable temporary or alternative solution that materially mitigates the effect of a breach or failure in the provision of the Services or Customised Solution.

Xcellerate IT Materials means all Materials owned or developed by or on behalf of Xcellerate IT, excluding Third Party Materials.

XIT Supplier means any third party service provider, telecommunications provider, equipment supplier, software licensor or other supplier engaged or used by Xcellerate IT in connection with the provision of the Services, including Tungsten.

1.2 In these terms and conditions, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a party includes its successors and permitted assigns;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar inclusive expressions;
- (h) a reference to a document, including a Proposal, Schedule, Order Document, Service Work Order, Customer Solution Description or Statement of Work includes that document as amended in accordance with this Agreement; and
- (i) if an obligation is to be performed on a day that is not a Business Day, it must be performed on the next Business Day.

2 Formation of Agreement

2.1 Xcellerate IT will supply the Services in accordance with this Agreement and the applicable Order Document.

2.2 The Client acknowledges and agrees that:

- (a) the Agreement is formed when the Customer accepts the Proposal, which incorporates this Modern Service Agreement;
- (b) following acceptance of the Proposal, Xcellerate IT will issue a Service Work Order setting out the Services to be provided and other applicable details relating to those Services; and

- (c) the final details and specifications for the Services will be documented in:
 - (i) for TotalAgility, a Customer Solution Description; or
 - (ii) for other Tungsten products, a Statement of Work,and, once agreed, the relevant Service Work Order and Customer Solution Description or Statement of Work will form part of this Agreement.
 - 2.3 Unless expressly stated otherwise, the completion, expiry or termination of one Service Work Order does not affect any other Service Work Order or the continued operation of this Agreement.
 - 2.4 To the extent of any inconsistency between the documents comprising the Agreement, the Agreement will be read in the following descending order of precedence:
 - (a) this Modern Service Agreement including the applicable Schedules;
 - (b) Customer Solution Description or Statement of Work (as applicable);
 - (c) a Service Work Order but only in respect of the Services to which that Service Work Order relates provided that a Service Work Order will prevail over this Modern Service Agreement only to the extent that it expressly identifies and overrides a specified provision of this Modern Service Agreement;
 - (d) the Proposal.
 - 2.5 Any terms contained in, attached to or referred to in any purchase order or other similar document issued by the Client have no effect unless Xcellerate IT expressly agrees to them in writing.
 - 2.6 The terms applicable to particular Services and Tungsten Products and are set out in the following Schedules:
 - (a) Schedule 1 – Application Support Services;
 - (b) Schedule 2 – Subscription Services Terms; and
 - (c) Schedule 3 – Software Licensing Terms.
 - 2.7 The Client may request that Services be provided to its Affiliates. Any Services provided to an Affiliate are deemed to be provided to the Client, and the Client is liable for all obligations in connection with those Services as if the Services were provided to the Client itself. The Client must ensure that its Affiliates comply with this Agreement as if they were the Client.
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3 Term

- 3.1 This Agreement commences on the earlier of:
 - (a) the date on which the Client accepts the first Proposal which incorporates by reference or attaches this Modern Service Agreement; and
 - (b) the date on which Xcellerate IT commences providing Services at the Client's request,and continues until terminated in accordance with clause 21 (Termination).
- 3.2 Each Service Work Order continues until its expiry date specified in that Service Work Order or, if no expiry date is specified, until the Services under it have been completed, unless terminated earlier in accordance with clause 21 (Termination). Expiry or termination of a Service Work Order does not affect the Client's obligation to pay any Fees payable under it.
- 3.3 Unless otherwise expressly stated in a Proposal, any Subscription Services purchased by Client:
 - (a) have a minimum term of 36 months; and

- (b) commence on the date that Tungsten accepts the Client's order for Subscription Services and provides access to the Subscription Services.

4 Scope of Services

- 4.1 Services are limited to those expressly described in the applicable Service Work Order.
- 4.2 Changes to the Services must be agreed in writing under clause 5 (**Change Request**).
- 4.3 At the Client's request, Xcellerate IT may perform urgent work outside the scope of a Service Work Order on a Time and Materials basis pending agreement of a Change Request.
- 4.4 Where Fees are based on seats, users, licences, transactions, volume, capacity or other usage, any increase in the applicable usage or entitlement may result in an adjustment to the Fees at Xcellerate IT's then-current rates without the need for a Change Request.
- 4.5 The Services are non-exclusive, and Xcellerate IT may provide the same or similar services to other clients, subject to applicable confidentiality obligations.

5 Change Request

- 5.1 Either party may propose a written change to a Service Work Order or order for Tungsten Products. The Change Request must describe the proposed change and its effect on the Services, Tungsten Products, Fees, timetable and the parties' responsibilities.
- 5.2 The parties must promptly consider and discuss each Change Request. Each party bears its own costs of doing so unless otherwise agreed.
- 5.3 A Change Request takes effect only when signed by authorised representatives of both parties. Once signed, it forms part of and prevails over the applicable Order Document to the extent of any inconsistency.
- 5.4 Until a Change Request takes effect, the parties must continue to perform the existing Service Work Order, and Xcellerate IT is not required to implement the proposed change.

6 Provision of Services

- 6.1 Xcellerate IT will:
 - (a) provide the Services substantially in accordance with the Service Work Order and approved Change Requests;
 - (b) with due care and skill; and
 - (c) use competent and suitably qualified personnel.
- 6.2 Xcellerate IT may determine the manner in which the Services are performed, subject to the requirements of the applicable Service Work Order.
- 6.3 Xcellerate IT may subcontract the performance of any part of the Services. Xcellerate IT remains responsible for the performance of its subcontractors as if the Services were performed by Xcellerate IT, except to the extent that an XIT Supplier provides a product or service directly to the Client or otherwise performs obligations that this Agreement expressly identifies as being provided or performed by that XIT Supplier.
- 6.4 Xcellerate IT will use reasonable endeavours to meet the dates specified in the applicable Service Work Order. Unless expressly stated otherwise in a Service Work Order, any stated date is an estimate only.
- 6.5 Xcellerate IT is not responsible for any delay or failure to perform the Services to the extent caused or contributed to by:

- (a) an act or omission of the Client, its Affiliates, their personnel or their suppliers (other than Xcellerate IT);
- (b) the Client's failure to meet its responsibilities, dependencies or assumptions;
- (c) an XIT Supplier for whose performance Xcellerate IT is not responsible under this Agreement; or
- (d) an Excusable Event.

6.6 If an event described in clause 6.5 occurs:

- (a) the affected dates will be extended by a reasonable period; and
- (b) where the event is described in clause 6.5(a) or 6.5(b), Xcellerate IT may charge the Client for reasonable additional costs incurred as a result.

7 Client obligations

7.1 The Client must, at its own cost and in a timely manner:

- (a) provide Xcellerate IT with safe and reasonable access to the Client's Systems, facilities, sites and utilities as required to provide the Services;
- (b) provide all information, assistance, approvals and consents reasonably required by Xcellerate IT to provide the Services;
- (c) obtain and maintain all licences, approvals, consents and permits required from the Client or its suppliers for Xcellerate IT to provide the Services;
- (d) provide, maintain and secure the Client Systems as required to receive and use the Services;
- (e) comply with applicable operational requirements, procedures and technical specifications notified to the Client by Xcellerate IT or an XIT Supplier;
- (f) promptly report any errors or malfunctions in the Services; and
- (g) promptly perform all Client dependencies specified in an Order Document or reasonably requested by Xcellerate IT in connection with the Services; and
- (h) comply with all provisions of this Agreement applicable to the Client's access to or use of the Tungsten Products.

8 On-Premise Solutions

8.1 If an Order Document provides for the installation, configuration, implementation or operation of the Customised Solution in an On-Premise Environment:

- (a) Xcellerate IT may install, configure, integrate and implement the applicable Tungsten Product as part of the Services in accordance with the applicable Order Document;
- (b) unless otherwise expressly stated in the relevant Order Document, the Client is responsible for providing, maintaining and securing the On-Premise Environment, including all hardware, operating systems, databases, network connectivity and other infrastructure required for the operation of the Tungsten Product and Customised Solution;
- (c) the Client must maintain all licences, permissions and other rights required for the lawful use of the applicable Tungsten Products and comply with the provisions of this Agreement applicable to those Tungsten Products;
- (d) the Client must provide Xcellerate IT with such access to the On-Premise Environment as is reasonably required to perform the Services;

- (e) unless otherwise expressly stated in the relevant Order Document, the Client is responsible for backing up and restoring the On-Premise Environment and all data stored in it; and
 - (f) Xcellerate IT is not responsible for any failure or degradation of the Tungsten Product or Customised Solution to the extent caused by the On-Premise Environment or any hardware, software or services not provided or controlled by Xcellerate IT.
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9 Subscription Services

9.1 If an Order Document provides for Subscription Services:

- (a) Xcellerate IT will provide the services relating to the Subscription Services specified in the applicable Order Document;
 - (b) the Subscription Services are provided by Tungsten and the Subscription Services Platform is hosted and operated by Tungsten or its third-party service providers; and
 - (c) the Client must comply with Schedule 2 in connection with its access to and use of the Subscription Services.
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10 Fees

- 10.1 In consideration of the supply of the Services and Tungsten Products, the Client must pay to Xcellerate IT the Fees in the manner provided in this Agreement.
- 10.2 The Fees will be specified in the applicable Order Document and invoiced by Xcellerate IT to the Client.
- 10.3 Unless otherwise agreed in writing:
- (a) Fees that are not stated to be fixed will be calculated in accordance with the applicable rates and pricing set out in the Order Document; and
 - (b) all Fees are exclusive of GST.
- 10.4 All amounts payable by the Client to Xcellerate IT must be paid:
- (a) without set-off, deduction or withholding, including where a dispute exists in relation to the Services, except as required by Law; and
 - (b) to the bank account nominated by Xcellerate IT from time to time.
- 10.5 Unless otherwise specified in the applicable Order Document, the Client must pay each invoice within 30 days after the invoice date.
- 10.6 Fees for Subscription Services are invoiced and payable annually in advance.
- 10.7 To reduce the risk of fraud (including but not limited to business email compromise or cyber-related scams), if the Client receives any communication purporting to change Xcellerate IT's notified bank account details or an invoice that contains different bank details, the Client must confirm the change verbally via a direct telephone call to a known and trusted contact person at Xcellerate IT. The Client is solely responsible for verifying the authenticity of such communication.
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11 Contract Governance

11.1 Each party must appoint a Representative to:

- (a) coordinate the provision of the Services;
- (b) monitor the parties' performance of their obligations; and
- (c) manage and seek to resolve issues relating to the Services.

- 11.2 A Representative does not have authority to amend this Modern Service Agreement, an Order Document, or approve a Change Request, unless expressly authorised by the party they represent.
- 11.3 Either party may replace its Representative by notifying the other party in writing of the replacement's name and the date their appointment takes effect.
- 11.4 The Representatives must meet as reasonably required to:
- (a) review progress against the Order Documents;
 - (b) identify and address performance or compliance issues;
 - (c) discuss proposed changes; and
 - (d) seek to resolve disputes or other issues relating to the Services.
- 11.5 Each party is responsible for the costs and expenses of its own Representative.
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12 Intellectual Property Rights

- 12.1 As between the parties, the Client retains all right, title and interest, including all Intellectual Property Rights, in the Client Materials.
- 12.2 The Client is responsible for the accuracy, quality, legality and integrity of the Client Data.
- 12.3 The Client warrants that Xcellerate IT's use of the Client Materials in accordance with this Agreement will not infringe any third party Intellectual Property Rights.
- 12.4 The Client grants Xcellerate IT a royalty-free, non-exclusive licence to use, reproduce and modify the Client Materials, and to permit its XIT Suppliers to do so, to the extent necessary to provide the Services and perform Xcellerate IT's obligations under this Agreement.
- 12.5 All right, title and interest, including all Intellectual Property Rights, in the Xcellerate IT Materials remain vested in Xcellerate IT. Subject to clause 12.7, Xcellerate IT grants the Client a royalty-free, non-exclusive and non-transferable licence to use the Xcellerate IT Materials incorporated into the Services for the term of the applicable Order Documents solely to receive the benefit of the Services.
- 12.6 As between the parties, all right, title and interest, including all Intellectual Property Rights, in the Customised Solution vest in Xcellerate IT, excluding any Client Materials and Third Party Materials incorporated into the Customised Solution.
- 12.7 Xcellerate IT grants the Client a royalty-free, non-exclusive and non-transferable licence to use the Customised Solution for its internal business purposes and to receive the benefit of the Services, subject to any applicable restrictions on the use of Tungsten Products or Third Party Materials incorporated into or used in connection with the Customised Solution.
- 12.8 All right, title and interest, including all Intellectual Property Rights, in any Third Party Materials and Tungsten Products remain vested in the relevant third party, Tungsten or their respective licensors. Nothing in this Agreement transfers to the Client any ownership interest in any Third Party Materials or Tungsten Products.
- 12.9 The Client must not do, or permit any person to do, anything that infringes or interferes with the Intellectual Property Rights of Xcellerate IT, Tungsten or any third party in the Customised Solution, Tungsten Products, Third Party Materials or deliverables.
- 12.10 To the extent that any provision of this Agreement confers a benefit on, or protects the rights or interests of, Tungsten, Xcellerate IT holds the benefit of that provision on trust for Tungsten and may enforce that provision for the benefit of Tungsten.
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13 IP Infringement

- 13.1 If a third party claims that the Client's use of any Xcellerate IT Materials in accordance with this Agreement infringes that third party's Intellectual Property Rights, Xcellerate IT may, at its option:
- (a) procure for the Client the right to continue using the affected Xcellerate IT Materials;
 - (b) modify or replace the affected Xcellerate IT Materials so that they are no longer infringing; or
 - (c) if neither paragraph (a) nor (b) is reasonably practicable, terminate the Client's right to use the affected Xcellerate IT Materials and refund any Fees paid by the Client specifically for those Xcellerate IT Materials, less a reasonable amount for the Client's use of them before termination.
- 13.2 Clause 13.1 does not apply to the extent that the claim arises from:
- (a) Client Materials, Third Party Materials or a Tungsten Product;
 - (b) any modification of the Xcellerate IT Materials not made or authorised by Xcellerate IT;
 - (c) use of the Xcellerate IT Materials otherwise than in accordance with this Agreement or Xcellerate IT's reasonable instructions; or
 - (d) use of the Xcellerate IT Materials in combination with any materials, software, systems or services not supplied or approved by Xcellerate IT, where the infringement would not otherwise have occurred.
- 13.3 If a third party claims that the Client's use of a Tungsten Product in accordance with this Agreement infringes that third party's Intellectual Property Rights, Xcellerate IT will use reasonable endeavours to assist the Client to obtain the benefit of any applicable rights or remedies made available by Tungsten in respect of that claim.
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14 Privacy

- 14.1 In this clause 14, Personal Information means personal information (as defined by the Privacy Act 1988 (Cth)) held by the Client which is provided to, obtained or accessed by, Xcellerate IT in the performance of its obligations under this Agreement.
- 14.2 Each party must comply with the Privacy Act 1988 (Cth) and any other applicable privacy and data protection laws (**Privacy Laws**) relevant to this Agreement.
- 14.3 The Client warrants that it has all necessary rights, consents and authorisations to provide Personal Information to Xcellerate IT and to permit Xcellerate IT and its personnel and third-party service providers to collect, use, disclose, store and otherwise handle that Personal Information for the purposes of providing the Services.
- 14.4 Xcellerate IT must:
- (a) only collect, use, disclose and otherwise handle Personal Information to the extent reasonably necessary to provide the Services, comply with this Agreement or applicable Law, or as otherwise authorised by the Client;
 - (b) take reasonable steps to protect Personal Information in its possession or control from misuse, interference, loss and unauthorised access or disclosure;
 - (c) take reasonable steps to ensure that XIT Suppliers engaged by Xcellerate IT to handle Personal Information are subject to appropriate privacy and security obligations;
 - (d) when Personal Information in Xcellerate IT's possession or control is no longer required for the purposes of this Agreement, take reasonable steps to return, destroy or de-identify that Personal Information as reasonably requested by the Client or, in the absence of such a request, in accordance with Xcellerate IT's standard data retention and disposal procedures.

- 14.5 The Client acknowledges that Xcellerate IT may use third-party software, cloud infrastructure and other service providers in providing the Services and that Personal Information may be stored, processed or accessed outside Australia. Xcellerate IT must comply with applicable Privacy Laws in relation to any overseas disclosure of Personal Information for which it is responsible.
- 14.6 Xcellerate IT must notify the Client without undue delay after becoming aware of any unauthorised access to, disclosure of or loss of Personal Information in Xcellerate IT's possession or control (**Privacy Incident**), and must provide reasonable assistance to investigate, contain and respond to the Privacy Incident and enable the Client to comply with its obligations under Privacy Laws.
- 14.7 The Client is responsible for determining whether a Privacy Incident requires notification to any individual or regulator and for making any such notification, except to the extent Xcellerate IT is required by Law to make the notification.
- 14.8 Each party must provide the other with reasonable assistance necessary to enable the other party to comply with its obligations under Privacy Laws in connection with the Services. Any additional costs reasonably incurred by Xcellerate IT in providing assistance requested by the Client may be charged to the Client, except to the extent the assistance is required as a direct result of Xcellerate IT's breach of this clause or applicable Privacy Laws.
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15 Security

- 15.1 Xcellerate IT will implement and maintain safeguards, policies and technical controls to protect the integrity and security of its own systems, consistent with good industry practice.
- 15.2 Xcellerate IT must take reasonable steps to protect Client Data in its possession or control from unauthorised access, use, disclosure, loss or damage.
- 15.3 The Client is responsible for the security and proper use of the Client's Systems, devices, user accounts, passwords and access credentials, except to the extent Xcellerate IT has expressly agreed otherwise in an Order Document.
- 15.4 Each party must promptly notify the other party if it becomes aware of any actual or suspected security incident relevant to the Services and must provide reasonable assistance to investigate and respond to that incident. Xcellerate IT may charge for that assistance at its then-current rates, unless the incident was caused by Xcellerate IT's breach of this Agreement.
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16 Confidentiality

- 16.1 Each party (**a Recipient**) must keep confidential, and must not use or disclose, any Confidential Information of the other party except:
- (a) for the purposes of performing its obligations or exercising its rights under this Agreement; or
 - (b) as otherwise permitted by this clause 16.
- 16.2 The obligations in clause 16.1 do not apply to Confidential Information that the Recipient can demonstrate:
- (a) is or becomes publicly available other than as a result of a breach of an obligation of confidentiality;
 - (b) was independently developed by the Recipient without use of or reference to the other party's Confidential Information;
 - (c) was lawfully known to the Recipient, free of any obligation of confidentiality, before it was disclosed by or on behalf of the other party; or

- (d) is lawfully received from a third party without restriction as to its use or disclosure.
- 16.3 A Recipient may disclose Confidential Information of the other party:
- (a) to the extent required by Law, a Government Agency or a court or tribunal of competent jurisdiction, provided that, to the extent legally permitted and reasonably practicable, the Recipient:
 - (i) gives the other party reasonable prior notice of the required disclosure; and
 - (ii) discloses only the minimum amount of Confidential Information reasonably required;
 - (b) to its officers, employees, contractors and XIT Suppliers (including Tungsten), in each case to the extent they need to know the Confidential Information for the purposes of performing obligations or exercising rights under this Agreement, provided they are subject to obligations of confidentiality in respect of that information; and
 - (c) to its insurers and professional advisers who are subject to obligations of confidentiality in respect of that information.
- 16.4 Each party must take reasonable steps to protect the Confidential Information of the other party from unauthorised access, use or disclosure.
- 16.5 On termination or expiry of this Agreement, or on reasonable request by the other Party, a Recipient must return or destroy the other party's Confidential Information in its possession or control, except to the extent that:
- (a) the Recipient is required by Law, applicable professional standards or its bona fide document retention policies to retain that Confidential Information;
 - (b) the Confidential Information is contained in routine computer backups, archives or disaster recovery systems and cannot reasonably be deleted without disproportionate effort; or
 - (c) the Recipient reasonably requires the Confidential Information for the purpose of exercising or protecting its rights under this Agreement.
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17 Liability

- 17.1 To the maximum extent permitted by Law, all guarantees, warranties, representations, conditions or other terms not expressly set out in this Agreement are excluded.
- 17.2 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited.
- 17.3 Subject to clause 17.4 and 17.5, each party's aggregate liability in respect of all claims arising out of or in connection with this Agreement (other than the obligation to pay Fees), whether in contract, tort (including negligence), under statute, in equity or otherwise will in no circumstances exceed an amount equal to:
- (a) for claims arising out of or in connection with Application Support Services under Schedule 1, the Annual Application Support Fee payable for the applicable Application Support Term; and
 - (b) for claims arising out of or in connection with all other Services, 100% of the Fees paid or payable by the Client to Xcellerate IT under this Agreement in the 12 months immediately preceding the event giving rise to the first claim or, if that event occurs within the first 12 months of the term, the Fees paid or payable during the first 12 months of the Agreement. The liability caps in paragraphs (a) and (b) are not cumulative in respect of the same Loss.

- 17.4 To the extent lawfully permitted, neither party is liable to the other party for Consequential Loss under or in connection with this Agreement.
- 17.5 The limitations of liability in clause 17.3 to 17.4 (inclusive) do not apply to:
- (a) death or personal injury caused by a party's negligence;
 - (b) the Client's obligation to pay the Fees;
 - (c) the Client's obligations relating to its access to and use of the Tungsten Products under this Agreement;
 - (d) liability that cannot be excluded or limited under any applicable Law;
 - (e) clause 17.8; or
 - (f) the right of a party to seek injunctive or equitable relief (including for breach of confidentiality).
- 17.6 In respect of goods and services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Xcellerate IT limits its liability for breach of an applicable Consumer Guarantee, at its option, to:
- (a) if the breach relates to goods, replacing, repairing or supplying goods equivalent to, those goods or paying the cost of replacing or repairing them or acquiring equivalent goods; or
 - (b) if the breach relates to services, re-supplying, or paying the cost of re-supplying, those services.
- 17.7 Xcellerate IT is not liable for any failure of the Services to meet the requirements of this Agreement, the applicable Order Document or any approved Change Request, to the extent that the failure is caused by:
- (a) use of the Services for a purpose other than that for which they were supplied;
 - (b) use of the Services contrary to Xcellerate IT's instructions, documentation or reasonable recommendations;
 - (c) any modification, enhancement or alteration to the Services made by or on behalf of the Client without Xcellerate IT's approval;
 - (d) any defect, error or failure in any system (including Client Systems), software, hardware, service or equipment not supplied or controlled by Xcellerate IT;
 - (e) an Excusable Event;
 - (f) the Client's failure to comply with any provision of this Agreement applicable to its access to or use of a Tungsten Product or any applicable third-party terms; or
 - (g) any act or omission of an XIT Supplier, or any failure, interruption, unavailability, error or defect in any product, platform or service provided by an XIT Supplier, except to the extent that the relevant failure of the Services results from Xcellerate IT's failure to perform its own obligations under this Agreement in connection with that product, platform or service.
- 17.8 The Client indemnifies Xcellerate IT against any Loss suffered or incurred by Xcellerate IT arising out of or in connection with:
- (a) any third party Claim that Client Data, Client Materials or other materials provided by or on behalf of the Client infringe or misappropriate the Intellectual Property Rights of that third party;
 - (b) any third party Claim arising out of or in connection with the Client's, an Affiliate's or any of their personnel's access to or use of any Tungsten Product or Third Party Materials, except to the extent that such access or use is in accordance with this Agreement or third party terms; and

- (c) any breach by the Client, an Affiliate or any of their personnel of the provisions of this Agreement relating to access to or use of the Tungsten Products, including any liability, fees, charges, costs or expenses incurred by Xcellerate IT to Tungsten as a result of that breach.

The Client's liability under this clause 17.8 is reduced to the extent that the relevant Loss was caused or contributed to by a breach of this Agreement, negligence or wilful misconduct of Xcellerate IT.

18 Insurance

18.1 Xcellerate IT will obtain and maintain:

- (a) professional indemnity insurance of not less than \$10 million in respect of each claim and in the aggregate;
- (b) public liability insurance of not less than \$20 million in respect of each occurrence; and
- (c) workers compensation insurance as required by applicable Law.

18.2 On request, Xcellerate IT must provide the Client with evidence of currency of the insurance required under clause 18.1.

19 Dispute Resolution

19.1 A party asserting that a dispute has arisen in connection with this Agreement (**Dispute**) may give written notice of the Dispute to the other party (**Dispute Notice**).

19.2 Except as provided in clause 19.7, a party must comply with this clause 19 before commencing court proceedings in relation to a Dispute.

19.3 The parties must first refer the Dispute to their respective Representatives, who must meet and use reasonable commercial efforts to resolve the Dispute within 5 Business Days after the Dispute Notice is given.

19.4 If the Dispute is not resolved under clause 19.3, the Dispute must be referred to the Chief Executive Officers of each party, who must use reasonable commercial efforts to resolve the Dispute within 20 Business Days after the Dispute Notice is given, or such longer period as they agree.

19.5 If the Dispute is not resolved under clause 19.4, either party may refer the Dispute to mediation.

19.6 If the Dispute is not resolved by mediation, either party may commence court proceedings in relation to the Dispute.

19.7 Nothing in this clause 19 prevents a party from commencing court proceedings at any time to seek urgent interlocutory or equitable relief.

20 Suspension

20.1 Xcellerate IT may suspend all or part of the Services or Tungsten Products under one or more Order Documents by written notice to the Client if:

- (a) the Client fails to pay any undisputed amount due under this Agreement within 14 days after receiving written notice requiring payment;
- (b) the Client commits a material breach of this Agreement and suspension is reasonably necessary to prevent or mitigate the consequences of that breach;
- (c) Xcellerate IT reasonably considers that suspension is necessary to prevent or address a security incident, cybersecurity threat, unauthorised access, misuse of the Services or risk to Client Data, the Services or Xcellerate IT's systems;

- (d) the Client fails to provide access, information, personnel, approvals, facilities or assistance reasonably required for Xcellerate IT to provide the Services;
 - (e) an XIT Supplier suspends, withdraws or restricts any product, service, licence, consent or approval required for Xcellerate IT to provide the Services; or
 - (f) Xcellerate IT is required to do so by Law.
- 20.2 Where reasonably practicable, Xcellerate IT will give the Client prior notice of the suspension and the reasons for it.
- 20.3 Xcellerate IT will use reasonable endeavours to restore the affected Services as soon as reasonably practicable after the circumstances giving rise to the suspension have been remedied.
- 20.4 Suspension of the Services does not relieve the Client of its obligation to pay any Fees that accrued before, or continue to accrue during, the period of suspension.
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21 Termination

- 21.1 Termination of the Agreement also terminates all Order Documents.
- 21.2 Termination of an Order Document does not by itself terminate this Agreement.
- 21.3 The Client may terminate this Agreement or an affected Order Document immediately by written notice if:
- (a) Xcellerate IT commits a material breach that cannot be remedied and no Work-Around can be implemented in a reasonable time;
 - (b) Xcellerate IT commits a material breach capable of remedy but fails to remedy it or provide a Work-Around within 30 days after receiving written notice from the Client requiring it to do so; or
 - (c) Xcellerate IT suffers an Insolvency Event.
- 21.4 Xcellerate IT may terminate this Agreement or any affected Order Document immediately by written notice if:
- (a) the Client commits a material breach that cannot be remedied;
 - (b) the Client commits a material breach capable of remedy but fails to remedy the breach within 30 days after receiving written notice from Xcellerate IT requiring it to do so;
 - (c) the Client fails to pay any undisputed amount due under this Agreement within 60 days after its due date;
 - (d) the Client suffers an Insolvency Event;
 - (e) an XIT Supplier withdraws, suspends, terminates, or materially changes a product, service, licence, consent or approval required for Xcellerate IT to provide the relevant Services.
- 21.5 Termination by a party is in addition to any claim for damages or other relief.
- 21.6 On termination (regardless of the reason for termination) or expiry of this Agreement or an Order Document:
- (a) Xcellerate IT will cease providing the affected Services;
 - (b) the Client must pay, within 14 days after receiving an invoice from Xcellerate IT:
 - (i) all Fees for Services provided up to the termination date; and
 - (ii) Xcellerate IT's reasonable, unavoidable third-party and demobilisation costs arising from termination including any fees or charges payable to an XIT Supplier that cannot be cancelled; and
 - (iii) where Xcellerate IT terminates this Agreement or an Order Document:

- (A) under clause 21.4(a), 21.4(b), 21.4(c) or 21.4(d); or
- (B) clause 21.4(e) where the withdrawal, suspension, termination or material change by the XIT Supplier was caused by an act or omission of the Client, an Affiliate or any of their personnel,

the balance of the Fees that would have been payable for the remainder of the term of each affected Order Document, less any third-party costs or other incremental costs actually avoided by Xcellerate IT as a result of the termination;

- (c) each party must cease using and, if requested, return or destroy the other party's Materials and Confidential Information, except as otherwise permitted by this Agreement; and
- (d) any additional provisions of an applicable Schedule relating to the expiry or termination of the relevant Services apply in accordance with their terms.

21.7 Termination or expiry of this Agreement or an Order Document:

- (a) does not operate as a waiver of any breach of this Agreement;
- (b) is without prejudice to any rights, liabilities or obligations of a party that have accrued before the effective date of termination or expiry, including any right of indemnity; and
- (c) does not affect any provision of this Agreement which expressly or by its nature survives termination or expiry.

22 Notices

- 22.1 A notice given under any document must be in writing and delivered to a party by email to the email address that is used by such party at the time of giving the notice.
- 22.2 A notice is taken to be duly given and received if delivered by email on the Business Day after it is despatched provided that the sender does not receive a message to the effect that the sender is 'out of office' or that delivery has failed.

23 General

- 23.1 These terms and conditions may only be varied or replaced by an agreement executed by the parties.
- 23.2 To the extent permitted by Law, this Agreement, including each Order Document, entered into under it, constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior contracts, arrangements, understandings and negotiations relating to that subject matter.
- 23.3 A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of a document or any part of it.
- 23.4 Any rights and remedies that a party may have under this Agreement are in addition to and do not replace or limit any other rights or remedies that Party may have.
- 23.5 All warranties, releases, exclusions of liability, indemnities, terms with respect to intellectual property and confidential information on the part of a party will remain valid and binding upon that Party following expiry or termination of this Agreement.
- 23.6 The failure, delay, or omission by a party to exercise, or to partially exercise, a right, power or remedy under these terms and conditions does not operate as a waiver of that right, power or remedy.
- 23.7 Delivery of a signed copy of any document by electronic means will have the same effect as delivery of the physical copy bearing the original signature, provided that such copy, on receipt, can be reproduced in an eye-readable form.

- 23.8 Signing of any of any document by means of a digital, electronic signature is deemed, for all purposes, to have the same legal effect as signing of a physical copy.
- 23.9 Each party must take all steps, execute all documents, and do everything necessary or desirable to give full effect to any of the transactions contemplated by this Agreement.
- 23.10 This Agreement is governed by the laws of the State of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning these terms and conditions.

Schedule 1 – Xcellerate IT Application Support Services

1 Application

- 1.1 This Schedule applies where the Client has acquired Application Support Services under an Order Document.
 - 1.2 Xcellerate IT will provide the Application Support Services in accordance with this Schedule, the applicable Order Document and the General Terms.
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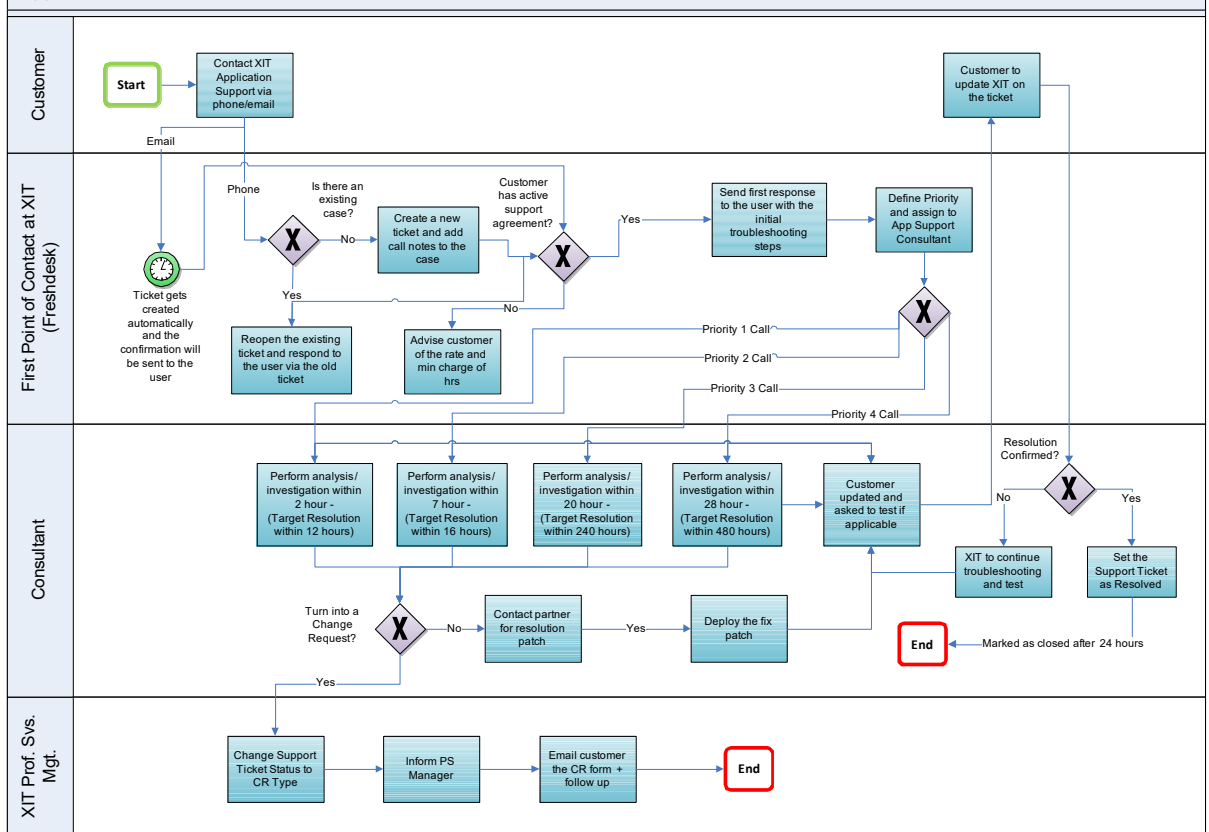
2 Definitions

- 2.1 In this Schedule:
 - (a) **Agreed Specifications** means, in relation to a Customised Solution, the functionality, configuration and other specifications of that Customised Solution described in the applicable Order Document and implemented in respect of that Customised Solution.
 - (b) **Application Support Request** means a request submitted by the Client to Xcellerate IT for Application Support Services in accordance with this Schedule.
 - (c) **Application Support Term** means the term for which the Application Support Services are provided, as specified in the applicable Order Document.
 - (d) **Named Callers** means up to two individuals nominated by the Client, from time to time, who are authorised to submit Application Support Requests.
 - (e) **Support Hours** means 9:00 am to 5:30 pm (Sydney time) on Business Days, unless otherwise specified in the applicable Order Document.
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3 Scope of Application Support Services

- 3.1 Xcellerate IT operates an application support helpdesk system, Freshdesk. Requests for Application Support can be made by email, phone or via the Freshdesk Support Portal (enquire for access).
- 3.2 The flowchart below depicts the Application Support process:

Support Call Flowchart



3.3 An Application Support Request may be one of the following:

- a report of unexpected behaviour of the Customised Solution with a deviation from the Agreed Specifications; or
- questions or requests with respect to the functionality and technical information of the applicable Tungsten Product or Customised Solution.

3.4 The handling of an Application Support Request is summarised as follows:

Issue Submission	Collation of the issue information to log a ticket with Xcellerate IT
Initial Response	The acknowledgement from Xcellerate IT Application Support that an Application Support Request has been created, Ticket ID number created, Priority Level assessed and the initial problem description documented.
Diagnosis	To determine the cause of the issue and the methodology required to resolve the ticket and bring the system/feature to an operational status.
Resolution	Ability to identify the root cause of the support ticket and to provide feedback and a fix to the Client.
Closure	Application Support calls are deemed closed as follows: • By the Client • By Xcellerate IT when a resolution has been provided • The issue cannot be reproduced after reasonable attempts by either the Client or Xcellerate IT • When a call has had no activity/response from the Client for 5 business days Note: A call may be reopened if the same issue reappears

3.5 Issue Submission

- (a) Once the Client identifies an issue, it is their responsibility to log this with Xcellerate IT by calling (02) 8228 6600, sending an email to support@xcellerateit.com or by the Freshdesk Support Portal.
- (b) All raised issues are assigned a unique ticket number
- (c) Upon logging an issue, the Client must provide (as applicable):
 - (i) error logs;
 - (ii) screen shot;
 - (iii) any changes to the browser, back-end finance system, infrastructure, networks, database, IT security or the servers/VMs;
 - (iv) detailed information to reproduce the issue; and
 - (v) any anecdotal information from the users.
- (d) Xcellerate IT will provide a ticket status report, on request, describing each case with the following information:
 - (i) ticket number;
 - (ii) company that reported the issue;
 - (iii) priority (defined by clause 3.9 in this Schedule);
 - (iv) current status;
 - (v) description of the ticket; and
 - (vi) creation date.

3.6 Diagnosis

- (a) Tickets are reviewed by the Application Support Lead and assigned to the appropriate Xcellerate IT Application Support resource.

- (b) Once a ticket number is assigned, the Xcellerate IT Application Support resource will perform analysis of the ticket and review the information provided by the Client and the following determination/status may occur:
- (i) falls outside the scope of Application Support;
 - (ii) the ticket has already been resolved;
 - (iii) the ticket is already assigned and is a work in progress;
 - (iv) the ticket does not qualify as an issue i.e. the product or solution is operating in accordance with the specifications; or
 - (v) the ticket contains inadequate information.

Note: Open tickets are reviewed and triaged daily by the Application Support Lead, with a review twice weekly with Xcellerate IT management.

Depending on the status of the ticket and the agreed SLA in clause 3.9, Xcellerate IT will decide to escalate to Level 2 (Xcellerate IT Technical Consultant/Lead Engineer/Technical Lead) or Level 3 (Tungsten Support).

3.7 Application Support Requests are categorised as follows:

Priority	Definition
Critical (URGENT)	The system is inoperable (show-stopper)
Serious (HIGH)	Some features of the system are impacted but the overall system is operational. A temporary Workaround could be considered.
Minor (MEDIUM)	Minor impact on the functionality e.g. incorrect error message, intermittent fault.
No Impact (LOW)	Has no impact on the operation of the solution e.g. enquiry, new user setup/training or a request for an enhancement.

3.8 The Client may advise the priority level of the Application Support Request when a ticket is created. If Xcellerate IT does not agree on the chosen Priority Level, it will seek mutual agreement, however if agreement cannot be reached, Xcellerate IT's decision on the priority level will be final.

3.9 Xcellerate IT undertakes to comply with following target responses and resolution times for any Application Support Request subject to the conditions in clause 3.10:

Priority	Initial response	Analysis / Investigation	Target Resolution
Critical (URGENT)	1 hour	2 hours	12 hours
Serious (HIGH)	3 hours	7 hours	16 hours
Minor (MEDIUM)	12 hours	20 hours	240 hours
No Impact (LOW)	16 hours	28 hours	480 hours

3.10 The response times in clause 3.9 are subject to the following conditions and qualifications:

- (a) Application Support is provided during Support Hours;
- (b) the Client provides required information and data without delay in accordance with Clause 3.5 (issue submission);
- (c) the Application Support Request is submitted by a Named Caller;
- (d) the Client provides sufficient information (acknowledging that delays or insufficient details may affect response times);

- (e) the applicable response and resolution times will be extended to the extent an issue is random, cannot reasonably be reproduced or the Client has provided insufficient information;
 - (f) Xcellerate IT will use reasonable endeavours to test and provide a fix where the issue is within the scope of the Application Support Services and capable of resolution by Xcellerate IT;
 - (g) Xcellerate IT will provide test scenarios and evidence where it deems necessary.
- 3.11 The Client is responsible for backing up the Client Systems before Xcellerate IT commences any work.
-

4 Application Support Exclusions

- 4.1 For Tungsten TotalAgility (TTA) Cloud, InvoiceAgility and AP Essentials, Application Support Services do not include:
- (a) changes made by the Client to its backend that affect the functionality or performance of the Customised Solution;
 - (b) professional services/consulting effort for:
 - (i) Change Requests; or
 - (ii) major and minor version upgrades;
 - (c) installation and configuration of workstations or scanners;
 - (d) maintenance, configuration and upgrade of non-production environments (DEV and TEST);
 - (e) work performed outside of Support Hours;
 - (f) malfunctions caused by the Client's use of the Customised Solution with third-party applications or hardware not specified in Xcellerate IT's documentation;
 - (g) additional solution training outside the agreed deliverables; or
 - (h) malfunctions caused by a fault in products not developed by Xcellerate IT that affect the operation of the Customised Solution.
- 4.2 For Tungsten TotalAgility (TTA), Tungsten Capture (TC) and Tungsten Transformation Module (TTM), Application Support Services do not include:
- (a) changes made by the Client to its backend that affect the functionality or performance of the Customised Solution;
 - (b) professional services/consulting effort for:
 - (i) Change Requests; or
 - (ii) major and minor version upgrades;
 - (c) installation cost of Tungsten updates and fix packs;
 - (d) installation and configuration of workstations or scanners;
 - (e) maintenance, configuration and upgrade of non-production environments (DEV and TEST);
 - (f) synchronisation of Tungsten environments (DEV, TEST and PROD);
 - (g) work performed outside of Support Hours;
 - (h) malfunctions caused by the Client's use of the Customised Solution with third-party applications or hardware not specified in Xcellerate IT's documentation;
 - (i) additional solution training outside the agreed deliverables;

- (j) malfunction resulting from the Client's use of the Customised Solution in operating systems not specified in Xcellerate IT's specifications; or
 - (k) malfunctions caused by a fault in products not developed by Xcellerate IT that affect the operation of the Customised Solution.
-

5 Application Support Inclusions

- 5.1 Application Support Services apply to the Customised Solution specified in the applicable Order Document.
 - 5.2 Subject to the exclusions in this Schedule, the scope of Application Support Services includes:
 - (a) diagnosis and investigation of errors, defects and performance issues affecting the Customised Solution, including determining whether an issue arises from an applicable Tungsten Product;
 - (b) correction of errors or defects in the Customised Solution that cause it to materially fail to operate in accordance with the Agreed Specifications;
 - (c) where an issue arises from an applicable Tungsten Product, escalation of the issue to Tungsten where appropriate and management of communications with Tungsten in relation to the issue; and
 - (d) provision of Application Support Services during Support Hours.
-

6 Client Undertakings

- 6.1 For Application Support Services related to Tungsten TotalAgility (TTA) Cloud, InvoiceAgility and AP Essentials the Client undertakes to:
 - (a) allow only Named Callers to communicate with Xcellerate IT regarding Application Support Requests;
 - (b) ensure that each Named Caller has appropriate competency in the Customised Solution and its environment;
 - (c) make best efforts to resolve issues using manuals, documentation (including tailored documentation created by Xcellerate IT as part of the deployed solution), and its own experience and knowledge before submitting an Application Support Request to Xcellerate IT;
 - (d) during the handling of an Application Support Request, provide Xcellerate IT with:
 - (i) system messages;
 - (ii) screen dumps;
 - (iii) sample documents;
 - (iv) copies of error messages; and
 - (v) information and data concerning any actions or changes made by the Client, together with any relevant supporting documentation.
- 6.2 For Application Support Services related to Tungsten TotalAgility (TTA), Tungsten Capture (TC) and Tungsten Transformation Module (TTM), the Client undertakes to:
 - (a) allow only Named Callers to communicate with Xcellerate IT regarding Application Support Requests;
 - (b) ensure that each Named Caller has appropriate competency in the Customised Solution and its environment;
 - (c) ensure that the recommended network, hardware, and software configuration is compatible with production volumes and desired performance;

- (d) not install software on the environment where the Customised Solution is installed that may interfere with its operation or maintenance;
- (e) before installing an update or a new version, test it in a test environment identical to the environment in which the current installation of the applicable Tungsten Product and customised solution operates, and ensure that a full backup of the solution/environment is made;
- (f) ensure that the environment necessary for remote access is kept in working order and reserved exclusively for that purpose;
- (g) make best efforts to resolve issues using manuals, documentation (including tailored documentation created by Xcellerate IT as part of the deployed solution), and its own experience and knowledge before submitting an Application Support Request to Xcellerate IT;
- (h) during the handling of an Application Support Request, provide Xcellerate IT with:
 - (i) system messages;
 - (ii) screen dumps;
 - (iii) sample documents;
 - (iv) copies of error messages; and
 - (v) information and data concerning any actions or changes made by the Client, together with any relevant supporting documentation.

6.3 The Client is responsible for:

- (a) backing up its environment and for managing those backup copies; and
- (b) carrying out comprehensive testing in its development/test environment prior to promoting any changes to Production.

6.4 To the extent permitted by law, Xcellerate IT will not be liable for any delay, defect, or failure in the performance of the Application Support Services to the extent that such delay, defect, or failure is caused or contributed to by the Client's failure to comply with its obligations under this clause 6.

7 Term of Application Support Services

7.1 Application Support Services are provided in 12 month periods.

7.2 The Application Support Services under the applicable Order Document will renew automatically for successive 12-month terms (each an **Application Support Term**) unless:

- (a) either Party gives the other at least three months' written notice before the end of the then-current Application Support Term that it does not wish to renew; or
- (b) the applicable Order Document is otherwise terminated in accordance with this Agreement.

8 Fees for Application Support Services

8.1 The Fees for Application Support Services, including the Annual Application Support Fee and any included support allocation, will be specified in the applicable Order Document.

8.2 Unless otherwise specified in the applicable Order Document:

- (a) the Annual Application Support Fee is invoiced in advance and must be paid within 30 days of the invoice date;

- (b) Application Support Services provided outside the scope of the applicable Order Document, or in excess of any included support allocation, will be charged on a Time and Materials basis;
- (c) the Annual Application Support Fee will increase by 7.5% on commencement of each subsequent Application Support Term;
- (d) further changes to, or development of, the Customised Solution may incur an increase to the Annual Application Support Fee;
- (e) Application Support Services provided outside of Support Hours may incur additional charges at Xcellerate IT's discretion as follows:
 - (i) for work undertaken outside Support Hours on a Business Day, at a rate of 1.5 times the agreed services rate for Business Days.
 - (ii) for work undertaken on a non-Business Day, a rate of two times the agreed services rate.
- (f) Change Requests relating to changes to the Customised Solution may increase the overall cost of the Application Support Services proportionately.

Schedule 2 – Subscription Services Terms

1 Application

- 1.1 This Schedule applies to any Order Document that includes Subscription Services.
 - 1.2 Tungsten provides and hosts the Subscription Services Platform. Xcellerate IT manages the Subscription Services for the Client in accordance with the applicable Order Document and this Agreement.
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2 Subscription Services

- 2.1 Subject to the terms of this Agreement and payment of the applicable Fees, the Client may access and use the Subscription Services during the applicable subscription term solely for its internal business purposes and direct benefit.
 - 2.2 The Client's right to access and use the Subscription Services is limited to the Subscription Services specified in the applicable Order Document and is subject to any applicable:
 - (a) volume, transaction, user or storage limits;
 - (b) functional or usage restrictions; and
 - (c) other limitations specified in the Order Document or applicable product documentation provided to the Client.
 - 2.3 The Client must not access or use the Subscription Services in excess of the rights or limits specified in clause 2.2.
 - 2.4 If the Subscription Services include any Tungsten software component installed in the On-Premise Environment (Client Component Software), Xcellerate IT will procure for the Client a non-exclusive, non-transferable licence to use the Client Component Software during the applicable subscription term solely for the purpose of accessing and using the Subscription Services.
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3 Client Component Software

- 3.1 The Client's right to use the Client Component Software terminates automatically on expiry or termination of the applicable Subscription Services.
 - 3.2 The Client must use the Client Component Software in accordance with the use restrictions in this Schedule.
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4 Client Responsibilities

- 4.1 Unless otherwise specified in the applicable Order Document, the Client is responsible, at its cost, for:
 - (a) providing and maintaining the systems, software, equipment and application environment required to access and use the Subscription Services;
 - (b) the maintenance, administration and security of the Client environment;
 - (c) providing and maintaining network and internet connectivity between the Client environment and the Subscription Services Platform, including payment of any associated third-party charges; and
 - (d) providing appropriately qualified personnel to participate in the implementation and ongoing provision of the Subscription Services as reasonably required.
- 4.2 The Client is responsible for the acts and omissions of its personnel, contractors and other third parties engaged by it in connection with the implementation, access to or use of the Subscription Services (other than Xcellerate IT).

5 Client Data

- 5.1 The Client is responsible for the accuracy and completeness of all Client Data and must ensure that it has all rights, licences, consents and permissions necessary to provide the Client Data for use in connection with the Subscription Services.
- 5.2 The Client authorises Xcellerate IT to provide Client Data to Tungsten and authorises Tungsten to access, use, process, store and otherwise handle Client Data to the extent necessary to provide, support and administer the Subscription Services.
- 5.3 The Client must regularly make, validate and securely maintain copies of Client Data sufficient to enable the Client to restore that data in the event of loss or corruption.
- 5.4 The Client is responsible for independently verifying the accuracy, completeness, validity and suitability of any processes, content or other outputs created or generated by the Client using the Subscription Services.

6 Use Restrictions

- 6.1 The Client must not, and must not permit any person to:
 - (a) use the Subscription Services other than for the Client's internal business purposes and direct benefit or otherwise outside the scope of the rights specified in the applicable Order Document;
 - (b) disrupt or interfere with the operation or normal use of the Subscription Services or Subscription Services Platform;
 - (c) compromise or adversely affect the privacy, integrity or security of the Subscription Services, Subscription Services Platform, Tungsten or any other user;
 - (d) obtain or permit unauthorised access to or use of the Subscription Services or Subscription Services Platform;
 - (e) use the Subscription Services in any manner that is unlawful, legally actionable by a third party or otherwise violates applicable Law; or
 - (f) modify, enhance or create derivative works of the Subscription Services or any associated Tungsten materials.
- 6.2 The Client is responsible for all Client Data and other content uploaded to or processed through the Subscription Services by the Client or its authorised users.

7 Authorised User and Affiliates

- 7.1 The Client may permit its personnel, contractors and Affiliates to access and use the Subscription Services within the scope of the Subscription Services purchased by the Client and solely for the Client's or relevant Affiliate's internal business purposes.
- 7.2 The Client warrants that it has all necessary authority and consents from each Affiliate to permit Xcellerate IT and Tungsten to access, use, process and store that Affiliate's Client Data and to give instructions, authorisations and consents in relation to that Affiliate and its Client Data for the purposes of providing the Subscription Services.
- 7.3 An Affiliate's right to access and use the Subscription Services automatically ceases when it ceases to be an Affiliate or the Client's right to use the relevant Subscription Services expires or terminates.

8 Security and Access

- 8.1 The Client must:
 - (a) keep all user identifications, passwords, account details and other access credentials for the Subscription Services secure and confidential;

- (b) ensure that access to the Subscription Services is limited to authorised users using valid access credentials;
 - (c) take reasonable measures to prevent unauthorised access to or use of the Subscription Services from or through the On-Premise Environment; and
 - (d) promptly notify Xcellerate IT of any actual or suspected unauthorised access to or use of the Subscription Services or Subscription Services Platform, or any compromise of access credentials, and provide all reasonable assistance requested by Xcellerate IT or Tungsten in connection with that matter.
- 8.2 The Client is responsible for all access to and use of the Subscription Services using access credentials issued to the Client or its authorised users.
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9 Usage verification

- 9.1 The Client acknowledges that the Subscription Services may collect usage data relating to the Client's use of the Subscription Services for the purpose of verifying compliance with applicable usage limits.
- 9.2 On reasonable notice, the Client must provide Xcellerate IT with records and information reasonably required to verify the Client's compliance with the applicable user, volume, transaction and other usage limits, including where required by Tungsten.
- 9.3 If the Client exceeds any applicable usage limit or otherwise uses the Subscription Services beyond the scope purchased by the Client, clause 4.4 of the General Terms applies, and the Client must also pay any fees, charges, costs or expenses imposed on Xcellerate IT by Tungsten as a result of that excess or unauthorised use.
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10 Privacy and Data Protection

- 10.1 The Client acknowledges that, in providing the Subscription Services, Tungsten may collect, access, use, process, store and disclose Personal Information contained in Client Data or otherwise provided by or on behalf of the Client.
- 10.2 The Client must ensure that it has provided all notices and obtained all consents, authorisations and other rights required under applicable Privacy Laws to permit:
- (a) Xcellerate IT to disclose Personal Information to Tungsten; and
 - (b) Tungsten to collect, access, use, process, store and disclose that Personal Information for the purposes of providing, supporting and administering the Subscription Services.
- 10.3 Tungsten maintains its own privacy and data protection policies, procedures and safeguards in connection with the Subscription Services and is responsible for its compliance with applicable privacy and data protection laws in relation to its processing of Personal Information.
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11 Intellectual Property

- 11.1 Nothing in this Agreement transfers to the Client any right, title or interest in the Tungsten Products or Subscription Services, except for the rights to access and use them expressly provided under this Agreement.
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12 Availability

- 12.1 The Subscription Services Platform is hosted and operated by Tungsten or its third-party hosting providers.
- 12.2 As at the date of this Agreement, Tungsten provides an availability commitment of 99.5% for the Subscription Services Platform, subject to applicable exclusions and qualifications.

- 12.3 The availability commitment excludes unavailability resulting from:
- (a) scheduled or urgent maintenance of the Subscription Services Platform;
 - (b) any act, omission, negligence, error or misuse by the Client or its users;
 - (c) the Client's applications, systems, equipment, facilities, telecommunications services or internet connectivity;
 - (d) any unauthorised, unlawful or non-compliant use of the Subscription Services;
 - (e) outages 15 minutes or shorter in duration;
 - (f) an Excusable Event; or
 - (g) any other circumstance outside Tungsten's reasonable control.
- 12.4 Tungsten may carry out scheduled maintenance on prior notice and urgent maintenance at any time where reasonably required to address a material outage or data security risk.
- 12.5 The availability commitment in this clause 12 is provided by Tungsten and is not an independent availability warranty or guarantee given by Xcellerate IT or by Tungsten.
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13 Subscription Service Support

- 13.1 Xcellerate IT will provide Tier 1 Support for the Subscription Services during the applicable subscription term.
- 13.2 Tier 1 Support includes:
- (a) receiving and recording support requests from the Client;
 - (b) undertaking an initial assessment and diagnosis of reported issues;
 - (c) providing reasonable troubleshooting and assistance to resolve issues where possible; and
 - (d) escalating unresolved issues relating to the Subscription Services to Tungsten where appropriate.
- 13.3 Tungsten provides technical support for issues escalated by Xcellerate IT that cannot be resolved through Tier 1 Support (Tungsten Support). Xcellerate IT will manage communications with Tungsten in relation to any such escalated issue.
- 13.4 The Client must provide Xcellerate IT with all information, access, assistance and cooperation reasonably required to investigate, reproduce, diagnose and resolve a support issue or escalate it to Tungsten.
- 13.5 Tungsten Support is subject to the applicable support policies, procedures and service levels made available by Tungsten from time to time. Xcellerate IT does not provide any independent warranty or guarantee as to Tungsten's response or resolution times.
- 13.6 Any Application Support Services provided by Xcellerate IT in relation to the Subscription Services or a Customised Solution are separate from the support described in this clause 13 and are governed by Schedule 1 and the applicable Order Document.
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14 Data Backup and Recovery

- 14.1 As at the date of this Agreement, as part of the Subscription Services, Tungsten:
- (a) backs up Client Data stored on the Subscription Services Platform daily;
 - (b) replicates those backups to geographically redundant locations;
 - (c) retains those backups for at least 14 calendar days; and
 - (d) periodically tests backups for data integrity.

- 14.2 The backup and recovery services in clause 14.1 are provided by Tungsten and do not constitute a separate backup, disaster recovery or business continuity service provided by Xcellerate IT.
- 14.3 Without limiting clause 5.3 of this Schedule, the Client is responsible for maintaining any additional copies or backups of Client Data required for its own legal, regulatory, archival, disaster recovery or business continuity requirements.
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15 Upgrades and changes

- 15.1 The Client acknowledges that Tungsten may apply upgrades, enhancements, new releases and other updates to the Subscription Services Platform from time to time.
- 15.2 The Client must:
- (a) permit the implementation of upgrades, enhancements, new releases and other updates to the Subscription Services Platform; and
 - (b) except to the extent Xcellerate IT is responsible for doing so under the applicable Order Document, promptly implement any upgrade, enhancement, new release, software patch or other update required by Tungsten in respect of software or components installed within the Client Systems.
- 15.3 Xcellerate IT is not responsible for any failure or degradation of the Subscription Services resulting from the Client's failure to comply with clause 15.2(b).
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16 Tungsten Support Exclusions

- 16.1 The support provided by Tungsten in respect of the Subscription Services does not extend to any issue, failure or degradation to the extent caused by:
- (a) the Client's failure to comply with its obligations under this Schedule or any applicable technical specifications or requirements notified to the Client;
 - (b) any unauthorised or improper use of the Subscription Services by the Client or its users;
 - (c) any software, hardware, equipment, network or other system not provided by Tungsten as part of the Subscription Services;
 - (d) any installation, modification or configuration by or on behalf of the Client that adversely affects the Subscription Services; or
 - (e) the Client's failure to implement any upgrade, enhancement, new release or software patch for which the Client is responsible under clause 15.
- 16.2 Any support services provided by Xcellerate IT are governed by Schedule 1 (Application Support Services) and the applicable Order Document.
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17 Expiry or Termination of the Subscription Services

- 17.1 On expiry or termination of the applicable Subscription Services:
- (a) the Client's right to access and use those Subscription Services, including any Client Component Software, ceases; and
 - (b) the Client must cease all use of the Subscription Services and Client Component Software.
- 17.2 The Client may request the return or retrieval of Client Data held in the Subscription Services within 10 days after expiry or termination. Xcellerate IT will provide reasonable assistance with the retrieval or migration of Client Data, subject to Tungsten making that Client Data available to Xcellerate IT or the Client. Any such assistance will be subject to additional Fees, including any fees, charges, costs or expenses imposed on Xcellerate IT by Tungsten in connection with the retrieval or migration of the Client Data.

- 17.3 After the period in clause 17.2, the Client acknowledges that Tungsten may permanently delete Client Data remaining in the Subscription Services, subject to any retention required by Law.

Schedule 3 – Software Licensing Terms

1 Application

- 1.1 This Schedule applies where Xcellerate IT supplies or procures Licensed Software.
 - 1.2 In this Schedule **Tungsten Maintenance and Support** means the software maintenance and technical support services provided by Tungsten in respect of Licensed Software, including any upgrades, enhancements and new releases made available by Tungsten as part of those services.
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2 Software Licence

- 2.1 Subject to payment of the applicable Fees, Xcellerate IT will procure for the Client a non-exclusive, non-transferable right to use the Licensed Software in accordance with this Schedule and the applicable Order Document.
 - 2.2 The Licensed Software, licence type, licence term and any applicable user, volume, transaction, capacity or other usage limits will be specified in the applicable Order Document.
 - 2.3 The Client may use the Licensed Software only:
 - (a) for its internal business purposes and direct benefit;
 - (b) for the purposes for which the applicable licence has been acquired, including production, testing, evaluation or disaster recovery, as applicable;
 - (c) within the licence scope and any user, volume, transaction, capacity or other usage limits specified in the applicable Order Document; and
 - (d) in accordance with any applicable technical or usage requirements notified by Xcellerate IT to the Client.
 - 2.4 The Client must not, and must not permit any person to:
 - (a) reverse engineer, decompile, disassemble, decrypt or otherwise attempt to derive the source code of the Licensed Software, except to the extent expressly permitted by Law;
 - (b) modify, enhance, adapt or create derivative works of the Licensed Software except as expressly authorised by Tungsten or otherwise permitted under the applicable licence;
 - (c) sell, assign, sublicense, distribute, lease or otherwise transfer the Licensed Software or any right to use it to any third party; or
 - (d) remove or alter any proprietary notice contained in the Licensed Software.
 - 2.5 The Licensed Software is licensed, not sold. Nothing in this Agreement transfers to the Client any right, title or interest, including any Intellectual Property Rights, in the Licensed Software except for the right to use it expressly provided under this Schedule.
 - 2.6 All right, title and interest, including all Intellectual Property Rights, in the Licensed Software remain vested in Tungsten and its licensors.
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3 Authorised Users and Affiliates

- 3.1 The Client may permit its personnel, contractors and Affiliates to access and use the Licensed Software within the scope of the licences purchased by the Client and solely for the Client's or relevant Affiliate's internal business purposes.
- 3.2 The Client must ensure that each person permitted to access or use the Licensed Software complies with this Schedule and is responsible for their acts and omissions in connection with the Licensed Software.

- 3.3 An Affiliate's right to access and use the Licensed Software ceases when it ceases to be an Affiliate or the Client's right to use the relevant Licensed Software expires or terminates.
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4 Licence Usage and Verification

- 4.1 The Client must not access or use, or permit any person to access or use, the Licensed Software in excess of any user, volume, transaction, capacity or other licence limits applicable to the Licensed Software.
- 4.2 The Client acknowledges that the Licensed Software may collect usage data relating to the Client's use of the Licensed Software for the purpose of verifying compliance with applicable licence limits.
- 4.3 On reasonable notice, the Client must provide Xcellerate IT with records and information reasonably required to verify the Client's compliance with the applicable licence limits, including where required by Tungsten.
- 4.4 If the Client exceeds any applicable licence limit or otherwise uses the Licensed Software beyond the scope of the licences purchased by the Client, Xcellerate IT may charge the Client any applicable additional Fees, including any licence, maintenance and support fees, charges, costs or expenses imposed on Xcellerate IT by Tungsten as a result of that excess or unauthorised use.
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5 Software Maintenance and Support

- 5.1 Where specified in the applicable Order Document, Xcellerate IT will procure Tungsten Maintenance and Support in respect of the Licensed Software.
- 5.2 Tungsten Maintenance and Support is provided by Tungsten and is subject to Tungsten's applicable support policies, procedures, product lifecycle policies and supported version requirements.
- 5.3 Where Tungsten Maintenance and Support is current, the Client may receive upgrades, enhancements, new releases, corrections and other maintenance benefits made generally available by Tungsten for the applicable Licensed Software, subject to the scope of the Tungsten Maintenance and Support purchased by the Client.
- 5.4 Xcellerate IT does not provide any independent warranty or guarantee in relation to the availability, content or performance of Tungsten Maintenance and Support.
- 5.5 Any Application Support Services provided by Xcellerate IT in relation to the Licensed Software or the Customised Solution are separate from Tungsten Maintenance and Support and are governed by Schedule 1 and the applicable Order Document.
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6 Upgrades and New Releases

- 6.1 The Client acknowledges that Tungsten may make upgrades, enhancements, new releases, corrections and other updates to the Licensed Software available from time to time.
- 6.2 Unless otherwise specified in the applicable Order Document, any services required to assess, install, configure, test or implement an upgrade, enhancement, new release, correction or other update are not included in the licence Fees or Tungsten Maintenance and Support and may be provided by Xcellerate IT under an Order Document or Change Request for additional Fees.
- 6.3 The Client must maintain the Licensed Software at a version supported by Tungsten where reasonably required for the continued provision of Tungsten Maintenance and Support or Application Support Services.

- 6.4 Xcellerate IT is not responsible for any failure, degradation or inability to provide Application Support Services or procure Tungsten Maintenance and Support to the extent caused by the Client's failure to implement an upgrade, enhancement, new release, correction or other update reasonably required under clause 6.3 of this Schedule.
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7 Client Responsibilities

- 7.1 The Client must:
- (a) use the Licensed Software only in accordance with the licence scope and any applicable licence limits;
 - (b) take reasonable steps to prevent unauthorised access to or use of the Licensed Software;
 - (c) promptly notify Xcellerate IT if it becomes aware of any unauthorised access to or use of the Licensed Software;
 - (d) maintain any records reasonably necessary to demonstrate compliance with the applicable licence scope and licence limits;
 - (e) comply with all applicable Laws in connection with its access to and use of the Licensed Software; and
 - (f) comply with all applicable export control, sanctions and trade restriction laws and requirements in connection with the Licensed Software and not export, re-export, transfer or use the Licensed Software in breach of any such laws or requirements.
- 7.2 Except to the extent Xcellerate IT is responsible for such matters under the applicable Order Document, the Client is responsible for ensuring that its systems and operating environment meet the technical requirements specified by Tungsten for the Licensed Software.
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8 Suspension, expiry and termination

- 8.1 The Client's right to use Licensed Software provided under a term licence ceases on expiry or termination of that licence.
- 8.2 The Client acknowledges that its right to use the Licensed Software may be suspended or terminated if required by Tungsten as a result of the Client's breach of the applicable licence restrictions.
- 8.3 On expiry or termination of the Client's right to use the Licensed Software, the Client must:
- (a) immediately cease using the affected Licensed Software;
 - (b) if required by Xcellerate IT or Tungsten, delete or destroy all copies of the affected Licensed Software and related documentation in the Client's possession or control; and
 - (c) if reasonably requested by Xcellerate IT, provide reasonable evidence that the Client has complied with paragraphs (a) and (b).
- 8.4 Expiry or termination of the Client's right to use Licensed Software does not affect any obligation to pay Fees accrued or payable in respect of that Licensed Software before the effective date of expiry or termination.
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9 Third Party Software

- 9.1 The Licensed Software may include or incorporate software, components or other materials provided by third parties.

- 9.2 The Client's use of any third-party software, components or materials incorporated in or provided with the Licensed Software is subject to any applicable third-party licence terms notified or made available to the Client.
- 9.3 Nothing in this Agreement grants the Client any rights in respect of third-party software, components or materials beyond the rights applicable to their use as part of the Licensed Software.

10 Warranties

- 10.1 The Client acknowledges that the Licensed Software is developed and supplied by Tungsten and not by Xcellerate IT.
- 10.2 To the extent that Tungsten provides any warranty, remedy or other benefit in respect of the Licensed Software that is available to Xcellerate IT for the benefit of the Client, Xcellerate IT will use reasonable endeavours to assist the Client to obtain the benefit of that warranty, remedy or other benefit.
- 10.3 Except to the extent expressly provided in this Agreement or required by Law, Xcellerate IT does not provide any independent warranty in relation to the Licensed Software, including as to its functionality, performance, availability or fitness for a particular purpose.

11 Licence Changes and Reconfiguration

- 11.1 Any request by the Client to change the type, scope, capacity or configuration of a licence for Licensed Software is subject to availability from Tungsten and any applicable additional fees or charges.
- 11.2 Any services required from Xcellerate IT to implement or support a change or reconfiguration under clause 11.1 are outside the scope of the licence and may be provided under an Order Document or Change Request for additional Fees.