

Terms and Conditions

BETWEEN

ActivePort	Global Edge Network Pty Ltd
ABN	60 152 238 714
Address	Level 19, 323 Castlereagh Street, Sydney NSW 2000
Contact Email Address	sales@globaledge.network
State of Incorporation	Western Australia

AND the Customer.

Each of ActivePort and the Customer a **"Party"**, collectively the **"Parties"**.

RECITALS

- A. ActivePort is a software company.
- B. The Parties wish to develop a business relationship together.
- C. The Parties agree that this Agreement represents the terms and conditions on which the relationship described in Recital B will be governed.

It is agreed as follows:

1. Definitions & Interpretations.

1.1. Definitions.

"ActivePort" means Global Edge Network Pty Ltd (ABN 60 152 238 714).

"Affiliate" means any entity that directly, or indirectly through one or more intermediaries, is Controlled by, is under common Control with, or Controls, a Party.

"Agreement" or **"MCA"** means this master customer agreement between the Parties.

"Assign" or **"Assignment"** means to assign or novate the rights, duties or obligations set forth in this Agreement or any Customer Contract, including without limitation, licenses with respect to the Software, may be assigned, sublicensed, encumbered, mortgaged, assumed. or otherwise by the Customer, in whole or in part, whether directly or by operation of law, including by way of sale of assets, merger or consolidation, or a transaction that results in the equity owners of the Party before the transaction owning less than a majority of the outstanding equity of that Party following the transaction.

"Business Day" means a day which is not a Saturday, Sunday or a public holiday in Perth, Western Australia.

"Commencement Date" means the date on which this Agreement is signed by all Parties.

"Control" means the ownership of or exercise of voting control or direction over shares, securities or other voting instruments of such entity carrying fifty percent (50%) or more of the unrestricted voting rights attached to all outstanding shares, securities or other voting instruments of such entity, or ownership or exercise of other rights or powers entitling the holder thereof to direct (or to cause the direction of) or to manage the affairs and business of such entity. **"Controls"**, **"controlled"**, and **"controlling"** each have a similar meaning.

"Customer" means the entity that completes the Registration Form.

"Customer Contract" means each agreement for a Product, Project and/or Service agreed between the Parties and appended to this Agreement at Appendix A.

"Documentation" means the user and other technical manuals provided to the Customer with the Products, Projects and / or Services.

"Fees" means the:

- (a) Licence Fee;
- (b) Out Of Scope Fee;
- (c) Third Party Fees;
- (d) out of pocket expenses; and
- (e) any other reasonable additional fees.

"Intellectual Property" means all Intellectual Property Rights (including future rights) in the following:

- (a) the Inventions;
- (b) the Works;

(c) the Technical Information,

whether or not in existence at the commencement of the Agreement and includes all Improvements thereto.

"Intellectual Property Rights" Intellectual Property Rights means:

- (a) the various rights and property conferred under statute, common law and equity in and in relation to patents, inventions, designs, copyright, trademarks, trade names, business names, corporate names, logos and get up, circuit layouts, know-how, trade secrets and confidential information and the right to have trade secrets and confidential information kept confidential and all other intellectual property rights as defined by Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation, as amended,

and includes:

- (b) all applications for registration, extension, renewal or otherwise in respect of the rights and property referred to in paragraph (a) of this definition; and
- (c) all rights of action in respect of the rights or property referred to in paragraph (a) of this definition,

but excludes Moral Rights and similar non-Assignable personal rights of any person.

"Inventions" has the meaning given in clause 11.3(a)(i).

"Licence Fee" means the fee payable by the Customer to ActivePort for licensing Software.

"Moral Rights" means the right of integrity (that is, the right not to have a work subjected to derogatory treatment), the right of attribution of authorship, and the right not to have authorship of a work falsely attributed, granted to authors under the *Copyright Act 1968* (Cth) or under the law of a country other than Australia.

"Out Of Scope Fee" means those fees associated with work conducted outside of the scope of this Agreement and any Customer Contract between the Parties, charged at the rates contained in the Schedule, as updated from time to time by ActivePort.

"Product" means ActivePort's products as provided from time to time, including but not limited to:

- (a) Software defined wide area network (SD-WAN) software, hardware and intellectual property;
- (b) Network Function Virtualisation (NFV) software, hardware and intellectual property;
- (c) Cloud Compute software, hardware and intellectual property; and
- (d) Management and Orchestration (MANO) software, hardware and intellectual property.

"Project" means ActivePort providing specific Products and / or Services to the Customer for a specific project requested by the Customer.

"Registration Form" means the online registration form requesting details about a potential customer and its business.

"Services" means any service provided by ActivePort to a Customer including, but not limited to:

- (a) Network connections, cloud access connections, point-to-point network services and any other service that connects one source or device to another ;
- (b) Hosted software as a service (SaaS);
- (c) Software license subscriptions;
- (d) Product and service maintenance and / or support;
- (e) Product and service implementation.

"Software" means the Software program(s) identified in a Customer Contract (including all modules and features of the Software program(s) and any modified, Updated, or enhanced versions of such program(s) that ActivePort may provide to the Customer pursuant to a Customer Contract executed by the Parties.

"Source Code" means the human-readable version of a Software program that can be compiled into executable code excluding the source code for any Software (or portion of the Software) not owned by ActivePort.

"Systems Maintenance" means maintenance carried out by ActivePort, where notice has been provided to you by email or posting a notice on the Website prior to the scheduled event occurring.

"Tax" means any tax, levy, impost, charge, rate, duty or withholding which is or by a government authority (Local, State, Federal or otherwise) from time to time, including any stamp, value added, goods and services or transaction tax, duty or charge, excluding taxes on profit or capital gains.

"Technical Information" means any drawings, specifications, designs, methodologies, models, research and development results, test results, and other scientific and technical know-how and information (whether in unrecorded or recorded form and whether consisting of, or comprised in, documents, software, equipment or other materials) prepared, compiled, developed or commissioned in the performance of this Agreement, whether or not in existence at the Commencement Date.

"Term" means, in respect of:

- (a) this Agreement - the date beginning on the Commencement Date and ending when this Agreement is validly terminated; and
- (b) a Customer Contract – the date commencing on the date of that Customer Contract is signed by both Parties and ending on the earlier of, the end date of that Customer Contract and that Customer Contract being validly terminated.

"Third Party" means any party, who is not a party, or an Affiliate of those Parties, to this Agreement or a Customer Contract.

"Third Party Fees" means the amounts charged to ActivePort by the Third Party Supplier for Third Party Products which ActivePort on-charges to the Customer.

"Third Party Product" means a Software program owned by a Third Party ("**Third Party Supplier**") and which is licensed by ActivePort to the Customer in a Customer Contract.

"Update" means a subsequent release, correction or revision of the Software which ActivePort makes generally available to its customers.

"Usage Report" means a report of the Customer's usage of the Software, including details of the current license restriction (for example, the number of instances, locations, interfaces or features), in a form provided by ActivePort.

"Websites" means the ActivePort website located at www.activeport.com.au, the website www.globaledge.network and any other website belonging to ActivePort or any of its Affiliates.

"Works" means any and all materials (whether or not in electronic or other form) including, without limitation, literary works, dramatic works, musical works, artistic works, cinematographic films, sound recordings, television or sound broadcasts, computer software, and a compilation of any of the aforementioned, prepared, compiled, developed or commissioned in the performance of this Agreement, whether or not in existence at the commencement of the Term. For clarity, Works includes any New Copyright Works.

1.2. Interpretation.

In this Agreement, unless the contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Agreement;
- (b) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (c) a reference to a clause, Party, annexure, exhibit or schedule is a reference to a clause of, and a Party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any clause, annexure, exhibit and schedule;
- (d) a reference to a document (including this Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (e) a reference to a party to any document includes that party's successors and permitted assigns;
- (f) a reference to time is to Western Standard Time as observed in Perth, Western Australia;
- (g) in this Agreement a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations,

replacements or re-enactments of any of them, from time to time;

- (h) a provision of this Agreement may not be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this Agreement or the preparation or proposal of that provision;
- (i) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (j) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (k) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day, it is taken to have occurred or been done on the next day; and
- (l) a reference to '\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

2. **Inconsistency.** In the event of any express conflict between any terms of a Customer Contract and this MCA, the terms of the Customer Contract will govern to the extent of the inconsistency.

3. **Term.** Unless terminated earlier, the term of

- (a) this MCA will begin on the Commencement Date and continue until terminated in accordance with this Agreement; and
- (b) each Customer Contract will be set forth in the applicable Customer Contract.

4. **Independent Contractor.** In all matters relating to this Agreement or any Customer Contract, ActivePort acts as an independent contractor. Neither Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party.

5. **Supply.**

5.1. **ActivePort Responsibilities.** ActivePort will:

- (a) supply the Products, Project and / or Services contracted for by the Customer under each Customer Contract;
- (b) decide the route and technical means to provide Products, Project and / or Services.

5.2. **Customer Responsibilities.** The Customer:

- (a) must provide all reasonable assistance to ActivePort to allow ActivePort to connect and supply Products, Project and / or Services to the Customer safely and efficiently.
- (b) agrees that, if the Customer uses ActivePort's online systems and provides incorrect information which is actioned by a Third-Party Supplier, that the

Customer will be liable for payment to ActivePort for the any Fees associated with rectifying the Product, Project and / or Service provisioned based on the incorrect information.

- (c) acknowledges that, any general statements, maps or other indicators of Service availability are only a guide and the Customer must not rely upon such statements, maps or other indicators as a commitment by ActivePort to provide the Products, Project and / or Services to a particular physical location.
- (d) acknowledges the Products, Project and / or Services are provided on an 'as is' basis.

5.3. **Supply Delays.**

- (a) ActivePort is not and will not be responsible for any delays associated with provision of a Product, Project and / or Service, nor any inability by ActivePort to provide the Product, Project and / or Service to the Customer.
- (b) Where delay occurs in providing a Product, Project and / or Service, this does not constitute a breach of a Customer Contract.
- (c) ActivePort may, without liability, terminate provisioning of a Products, Project and / or Services at any time prior to delivery, if ActivePort reasonably determine that it is not technically or operatively feasible or commercially viable to supply the Products, Project and / or Services.

5.4. **Disclaimer.** Any connection, reception and transmission speeds indicated refer to the maximum theoretical speeds achievable under ideal conditions, and the Customer acknowledges that the actual achieved speeds may be substantially different from the theoretical speeds. The Customer acknowledges and agrees that the maximum theoretical speed may be reduced by factors including, but not limited to:

- (a) the Customer's location and distance from the telephone exchange or network point of interconnect;
- (b) the Customer's distance from a wireless access point;
- (c) the length, configuration and condition of the Customer's copper or fibre line;
- (d) the number and type of other services being used by other customers inside and outside the ActivePort network;
- (e) electrical interference from outside sources;
- (f) radio frequency interference;
- (g) the configuration of the wiring within the Customer's premises;
- (h) the software configurations and applications on the Customer's computer; or
- (i) the Customer's equipment and software.

5.5. Performance. Whilst the Customer is receiving Products, Project and / or Services in accordance with a Customer Contract, ActivePort will use its best endeavours to ensure that the Products, Project and / or Services, when used as permitted by ActivePort and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation. ActivePort does not guarantee the Customer's use of the Products, Projects and / or Services will be error-free or uninterrupted. ActivePort will not be held responsible for any performance related issues, errors or interruptions directly, or indirectly, connected with the use of the Product, Project and/or Services, where that use was not in compliance with the permitted usage.

6. Usage.

6.1. Customer Responsibilities and Acknowledgements.

The Customer:

- (a) must:
 - (i) only use the Products, Projects and / or Services for lawful and authorised purposes;
 - (ii) provide true, current, accurate and complete information as prompted by the application process and must immediately update ActivePort of any changes in that information;
 - (iii) ensure that the Customer's use of Products, Projects and / or Services does not expose any minor to material that is unsuitable for minors;
 - (iv) comply with rules, regulations and acceptable usage policies that are in force for each system accessed;
 - (v) comply with Australian law regarding the transmission of technical data exported from Australia through ActivePort
- (b) is responsible for:
 - (i) all acts or omissions that occur under the Customer's account or password, including the content of transmissions through the Products, Projects and / or Services and maintaining the confidentiality of the Customer's password;
 - (ii) for backup of all information or content associated with Products, Projects and / or Services;
- (c) acknowledges:
 - (i) that it is the Customer's sole responsibility to comply with any rules imposed by any Third Party whose content or service the Customer accesses using the Products, Projects and / or Services;
 - (ii) that ActivePort may take all reasonably necessary steps to ensure the efficient

operation of the Products, Projects and / or Services;

- (d) will not:
 - (i) publish, distribute or disseminate defamatory or otherwise unlawful material through the use of Products, Projects and / or Services;
 - (ii) use Products, Projects and / or Services to threaten, harass, stalk, abuse, or otherwise violate the legal rights (including rights of privacy) of others;
 - (iii) use Products, Projects and / or Services to infringe on any Third Party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy.

6.2. Effects of non-compliance.

- (a) The Customer indemnifies ActivePort for any liability ActivePort incur as a result of the Customer's breach of this clause 6.
- (b) Where the Customer:
 - (i) fails to observe any of the limitations in this Agreement or any Customer Contract,
 - (ii) in ActivePort's reasonable opinion, acts recklessly or irresponsibly or the Customer's actions endanger ActivePort's network or systems,

this may result in civil or criminal liability, and ActivePort may immediately, without notice, suspend or terminate the applicable Customer Contract or this Agreement and take any other action ActivePort considers reasonably necessary, including, but not limited to seeking injunctive relief.

7. Warranties.

7.1. Mutual Warranties.

Each Party warrants that:

- (a) it has authority to enter and to perform its obligations under this Agreement and each Customer Contract;
- (b) it has the ability to perform its obligations under this Agreement and each Customer Contract;
- (c) it is not insolvent and no receiver has been appointed over all or any part of its assets;
- (d) it is not subject of a winding up and no proceeding or actions have been brought or threatened to wind up; and
- (e) the signing and delivery of this Agreement and each Customer Contract has been properly authorised by all necessary corporate actions of the Party and this Agreement and each Customer Contract constitute a legal, valid and binding obligation enforceable against their respective terms and conditions.

7.2. Customer Warranties. The Customer warrants to ActivePort that it will not, without the prior written consent of ActivePort:

- (a) modify, adapt, alter, translate, or create derivative works from the Software;
- (b) make any modification (including a to the Source Code) or use the Software to develop any other product or derivative work;
- (c) merge the Software with other Software;
- (d) sublicense, lease, rent, loan, or otherwise transfer the Products, Projects and / or Services to any Third Party;
- (e) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code;
- (f) otherwise use or copy the Products, Projects and / or Services or the Source Code except as expressly allowed under this MCA or any Customer Contract;
- (g) publish the results of any benchmark tests run on the Products, Projects and / or Services or any component of the Products, Projects and / or Services;
- (h) use the Products, Projects and / or Services to develop a product that is competitive with the Products, Projects and / or Services; or
- (i) enable or use functionality in the Products, Projects and / or Services that is not licensed to the Customer under this MCA or any Customer Contract.

7.3. ActivePort Warranties. ActivePort warrants to the Customer that:

- (a) any Products, Projects and / or Services provided to the Customer under a Customer Contract will be performed with due care in a professional and workman-like manner and will conform in all material aspects to the applicable Customer Contract;
- (b) it has and shall continue to have the necessary rights from Third Party Suppliers to grant licenses to the Customer to use the Third Party Products under the relevant Customer Contract and for the Term of that Customer Contract.

8. Fees.

8.1. Calculation of Fees. ActivePort will calculate the Fees payable by the Customer by reference to data recorded, logged or received by ActivePort's systems for the previous month.

8.2. Customer Acknowledgement. The Customer acknowledges that in calculating Fees ActivePort need only look at that data as logged or received by ActivePort or our Suppliers. Supplier charges will vary without notice and the Customer agrees that the amounts charged by Third Party Suppliers for any Products, Projects and / or Services delivered to the Customer will be charged based on the amount charged by Third Party Suppliers to

ActivePort plus a markup to that cost defined by ActivePort at ActivePort's sole discretion.

8.3. Out Of Scope Fees. For any and all work which:

- (a) the Customer requests ActivePort to undertake; or
- (b) ActivePort is required to undertake in order to meet a Customer's request,

which is out of the scope of the Customer Contracts ActivePort may charge the Customer Out Of Scope Fees in accordance with the Schedule.

9. Invoicing and Payments.

9.1. Invoicing period. ActivePort will issue an invoice within five (5) Business Days of the end of the previous calendar month. This invoice will be for Fees accrued in the previous calendar month.

9.2. Previous Fees. Invoices may include Fees from previous invoicing periods where these have not been remitted.

9.3. Reissue. ActivePort may reissue any invoice if any error is discovered.

9.4. Payment. The Customer:

- (a) is responsible for and must pay for all use of the Products, Projects and / or Services, even unauthorised use;
- (b) must pay all Fees paid in accordance with the payment terms of each invoice, if not specified, the payment terms will be thirty (30) days from the date of the invoice;
- (c) acknowledges that all payment of Fees are non-refundable, except in the event that ActivePort fails to deliver under any of the Products, Projects and/or Services under a Customer Contract..

9.5. Late Payment. Any portion of Fees not paid when due will accrue interest at 1.5% per month or the maximum rate permitted by applicable law; whichever is less, from the due date until paid. ActivePort may:

- (a) suspend performance of the Products, Projects and / or Services; and/or
- (b) disable the Products, Projects and / or Services if any portion of an invoice under the relevant Customer Contract is not paid when due and is not the subject of a genuine dispute with the Customer.

ActivePort will not be obliged to resume performance of the Products, Projects and / or Services until all outstanding invoiced amounts are paid in full.

9.6. Customer authorisation. Where the Customer provides a credit card for payment of reoccurring fees associated with the Products, Projects and / or Services, the Customer authorises ActivePort to debit this card for the Fees.

9.7. Overpayment. If the Customer has overpaid as a result of a billing error, the Customer's account will be credited with the overpayment or, if the Customer has stopped acquiring the Products, Projects and / or Services from ActivePort a refund the overpayment will be issued

within thirty (30) days of receipt of the notice of termination.

9.8. **Billing Disputes.** Where the Customer disputes a bill sent by ActivePort, the Customer must:

- (a) provide a written notice within ten (10) Business Days of the issue date of the invoice in dispute that specifies:
 - (i) the line items in dispute; and
 - (ii) reasons for disputing each of the Fees;
- (b) pay the undisputed portion of the invoice to ActivePort pursuant to the terms of the invoice.

ActivePort will assess the validity of these claims and provide a written response within five (5) Business Days. Where a billing dispute is found to be in ActivePort's favour, the Customer will be required to pay the outstanding amounts by the later of:

- (c) the invoice due date; or
- (d) where the invoice due date has passed, within five (5) Business Days of ActivePort providing written notice to the Customer of the outcome of the billing dispute.

9.9. **Other Fees.** The Customer acknowledges that ActivePort may invoice the Customer for any other fees, in relation to ActivePort obtaining payment of the Fees, incurred by ActivePort, including, but not limited to, dishonour fees and any other charges, expenses or losses resulting from ActivePort attempting to debit the credit card or direct debit account will be borne solely by the Customer.

9.10. **Taxes.**

- (a) The Fees are exclusive of all applicable Taxes and the Customer will pay any applicable Tax in addition to the Fees.
- (b) ActivePort may invoice the Customer for the amount of any applicable Taxes and the Customer shall pay that amount to ActivePort.
- (c) If withholding tax is payable in relation to any supply under a Customer Contract, the Customer shall increase the amount of any payment to ActivePort so that the amount actually received by ActivePort is no less than the Fee.

10. **Confidentiality.** Subject to clause 10.1, each Party shall:

- (a) only use Confidential Information for the purposes of the relevant Customer Contract;
- (b) only disclose Confidential Information to a Third Party with the prior written consent of the other Party; and
- (c) ensure that any Third Party to whom Confidential Information is disclosed is under similar obligations of confidentiality.

10.1. The provisions of clause 10 shall not apply to any Confidential Information that:

- (a) is in or comes into the public domain other than by breach of this clause 10;

- (b) is or has been independently generated by the recipient Party; or

- (c) is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory body or stock exchange.

10.2. Except as otherwise set forth in this MCA, each Party agrees that all Software, Source-Code, Inventions, Know-How, business, technical and financial information it obtains (as "**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any ActivePort Technology and any performance information relating to the Products, Projects and / or Services shall be deemed Confidential Information of ActivePort without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document:

- (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information;
- (b) is or has become public knowledge through no fault of the Receiving Party;
- (c) is rightfully obtained by the Receiving Party from a Third Party without breach of any confidentiality obligation;
- (d) is independently developed by employees of the Receiving Party who had no access to such information; or
- (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party).

The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

11. **Intellectual Property Rights.**

11.1. **Use of Intellectual Property Rights.** The Customer must ensure it does not:

- (a) use the Intellectual Property Rights for any purpose other than using the Products, Projects and/ or Services;
- (b) disclose the Intellectual Property Rights during the Term or after it ends, other than in the proper

performance of using the Products, Projects and/ or Services for ActivePort to those that:

- (i) have a need to know (and only to the extent that each has a need to know); and
 - (ii) have been approved in writing by the person or persons nominated by ActivePort from time to time; and
- (c) use the Intellectual Property Rights after the conclusion of the Term (howsoever occurring).

11.2. Ownership of Intellectual Property. The Customer acknowledges and agrees that to the extent allowed by law:

- (a) all Intellectual Property created, or developed during the Term is owned by ActivePort and all right title and interest in the Intellectual Property shall immediately upon creation vest exclusively in ActivePort; and
- (b) all right, title and interest in any modification or derivative work of the Products, Projects and / or Services or any part of it including all Intellectual Property Rights, shall be owned by and exclusively vested in ActivePort.

11.3. Discoveries.

- (a) The Customer represents and warrants that during the delivery of any Products, Projects and/ or Services, it will immediately communicate in writing to ActivePort any and all:
 - (i) processes, inventions, improvements, innovations, modifications, designs, discoveries, and trade secrets however embodied, which they may make either alone or in conjunction with others during the course of, in connection with or arising out of the Products, Projects and / or Services and in any way connected with any of the matters in which ActivePort has been or is now or hereafter interested during the Term (**Inventions**); and
 - (ii) new literary works, dramatic works, musical works, artistic works, cinematographic films, sound recordings, television or sound broadcasts, computer software, and a compilation of any of the aforementioned (**New Copyright Works**),

whether or not the Inventions and New Copyright Works are capable of being protected by copyright, letters patent, registered design or other protection (**Protection**), and the Inventions and New Copyright Works will thereafter be the sole and exclusive property of ActivePort.

- (b) If, within one year after the end of the Term of the applicable Customer Contract, the Customer either alone or jointly with others originates, invents, designs or conceives any Invention or New Copyright Works in relation to any product or process upon which the Customer worked or came

to the Customer's attention during the last two years of the Customer's engagement by ActivePort, such Invention and/or New Copyright Works (as the case may be) and the Customer's interest therein shall automatically vest exclusively in ActivePort.

11.4. Warranties in Relation to the Intellectual Property.

The Customer warrants to ActivePort that in relation to the Intellectual Property referred to in the preceding clauses 11.2 and 11.3, the Customer:

- (a) has not granted any licences or other rights to any person in relation to the Intellectual Property;
- (b) has not entered into any agreement or arrangement involving the sale, mortgage or pledge of the Intellectual Property;
- (c) will use their best endeavours to assist ActivePort to obtain the grant of any registrable Intellectual Property Rights pursuant all applications made by ActivePort in respect of any of the Intellectual Property (and any Improvements) in any jurisdiction.

11.5. Co-operation in obtaining Protection for Inventions & New Copyright Works.

- (a) If and whenever required to do so whether during the Term, or after termination of this Agreement, and at the expense of the Customer or its nominee, the Customer must:
 - (i) immediately deliver to ActivePort full particulars concerning the Invention and New Copyright Works and execute all instruments and do all things necessary for vesting the letters patent or other Protection when obtained, and all right and title to and interest in the same, in ActivePort or its nominee absolutely and as sole beneficial owner or in such other person as the board of directors of ActivePort requires; and
 - (ii) assist ActivePort to apply for letters patent or other Protection in Australia or in any other part of the world for all Inventions.
- (b) The Customer irrevocably appoints, ActivePort to be their attorney in its name and on its behalf to execute any such instrument or thing and generally to use its name for the purpose of giving to ActivePort or its nominee the full benefit of the provisions of this clause 11.5.

11.6. Information. Without limiting the generality of clause 11.5, the Customer represents and warrants that they will immediately notify ActivePort of any:

- (a) matter which may come to their notice during the Term which may be of interest or of any importance or use to ActivePort or its Affiliates; and
- (b) proposals or suggestions occurring to them during the Term which may be of service for the furtherance of the business of ActivePort or its Affiliate, whether or not those proposals or

suggestions occurred as a result of work performed by the Customer or otherwise.

11.7. **Further acts - IP ownership rights.** During and after the Term, the Customer must:

- (a) comply with any request by ActivePort to execute any document or take any step necessary to transfer ownership of the rights referred to in clauses 11.2 and 11.3 to ActivePort including the execution of an irrevocable Assignment to ActivePort of all Intellectual Property;
- (b) procure from each person involved in receiving or implementing the Products, Projects and / or Services irrevocably Assigns to ActivePort of all Intellectual Property;
- (c) deliver into the physical possession and control of ActivePort all material forms and embodiments (including those stored in electronic or similar media) of the rights referred to in clauses 11.2 and 11.3;
- (d) execute any documents and do all things reasonably requested by ActivePort to obtain, enforce or defend any right referred to in clauses 11.2 and 11.3; and
- (e) not use or disclose any Intellectual Property except as required to carry out the Products, Projects and / or Services.

11.8. **White Labelling.** The Customer is authorized to use the Product, Project and / or Service without displaying some, or all, of the ActivePort's copyright and branding and/or including its own branding. If the relevant Customer Contract specifies "Full White Labelling", the Customer may white label the Product, Project and / or Service and is not required to retain any ActivePort's copyright or branding in the Product, Project and / or Service. If the Customer Contract specifies "Co-Branded White Labelling", the Customer may, through use of the tools provided by ActivePort for such purpose, white label the Product, Project and / or Service and must state in its documentation and marketing materials that the bundled Product, Project and / or Service is "powered by ActivePort".

11.9. **Moral Rights.** In relation to any Moral Rights that may arise in respect of any subject matter created by the Customer, the Customer:

- (a) warrants to ActivePort that they have obtained the irrevocable and unconditional consents in writing which allow ActivePort to deal with any Works in any manner ActivePort sees fit and without restriction, including consents in relation to Moral Rights; and
- (b) irrevocably and unconditionally consents and must ensure that the Key Person (and any Third Party) irrevocably and unconditionally consents to ActivePort dealing with any Works in any manner ActivePort sees fit and without restriction, and

waive any Moral Rights the Customer may have in any Works.

12. **Service Suspension.** Without limiting the generality of any other clause in this Agreement, ActivePort may suspend Product, Project and / or Service if:

- (a) the nominated payment method is refused or dishonoured, or the amount specified on any due date specified in the bill is not paid; or
- (b) the Customer's usage breaches conditions of this Agreement.

The suspension may continue until the Customer rectifies all breaches of this Agreement and all Customer Contracts to the absolute satisfaction of ActivePort. The period of suspension is at ActivePort's sole election (acting reasonably). For the avoidance of doubt, if the Customer is no longer in breach of this Agreement and all Customer Contracts to the absolute satisfaction of ActivePort, then the suspension must be ended.

13. **Termination.**

13.1. **ActivePort Termination for cause.** Without limiting any other clause of this Agreement, ActivePort may terminate this MCA or a Customer Contract after providing five (5) Business Days written notice where:

- (a) the Customer has provided ActivePort with false or misleading information or has not provided ActivePort with any information reasonably requested for the purposes of this Agreement;
- (b) the Customer's Products, Projects and / or Services have been subjected to Service Suspension cumulatively for five (5) Business Days within a twelve (12) month period;
- (c) the Customer has failed to pay the amount specified by any due date;
- (d) ActivePort discovers or reasonably believes that Customer has breached or is likely to be in breach of its warranties and the Customer fails to provide evidence to ActivePort's sole and reasonable satisfaction that the Customer is not and is not likely to be in breach of its warranties within ten (10) Business Days after receiving written notice from ActivePort;
- (e) the Customer unlawfully uses a Product, Project and / or Service; or
- (f) if the Customer breaches any material provision of this Agreement or a Customer Contract and does not cure such breach within twenty (20) Business Days after receiving written notice of such breach.

13.2. **Termination without cause.** Either Party may terminate:

- (a) this MCA by providing at least one hundred and eighty (180) days written notice; or
- (b) a Customer Contract by providing the other Party with at least ninety (90) days written notice.

13.3. Effects of Termination. On Termination or Expiration of:

- (a) this MCA, all Customer Contracts shall also be terminated; and / or
- (b) a Customer Contract:
 - (i) all remaining Customer Contracts between ActivePort and the Customer shall continue unaffected;
 - (ii) all amounts under that Customer Contract invoiced prior to termination become immediately due and payable, regardless of the contracted time for payment;
 - (iii) the Customer will be liable to pay the Early Termination Fee (as defined in clause 13.4), the Parties acknowledge and agree that these payments are payment for obligations performed and are not penalties.

13.4. Early Termination Fee.

- (a) The Customer will be liable to pay ActivePort a fee where the Customer elects to terminate a Customer Contract prior to end of the relevant Term ("**Early Termination Fee**"). Where an Early Termination Fee is specified as "prorated on the remaining contract value" then fee can be calculated as per the following formula:

Early Termination Fee = (relevant Customer Contract Term – completed months of relevant Customer Contract Term) x monthly value of relevant Customer Contract.

- (b) The Customer acknowledges that the Early Termination Fee represents a genuine pre-estimate of the loss ActivePort will suffer and is not a penalty.

13.5. Survival. Clauses 1, 10, 11, 13.3, 17.5, 21, 23 and 25 will survive and maintain full force and effect expiration or termination of this MCA or the relevant Customer Contract for any reason.

14. Maintenance. ActivePort's goal is to provide a fault free Products, Projects and / or Services although ActivePort does not guarantee this. ActivePort will endeavour to conduct all scheduled Systems Maintenance outside of business hours, however ActivePort may be required to suspend supply of Products, Projects and / or Services during normal working hours in order to carry out emergency repairs.

15. ActivePort Equipment. The following applies to any and all equipment provided by ActivePort to the Customer in order to enable the provision of Products, Projects and / or Services under Customer Contracts ("**ActivePort Equipment**").

15.1. Risk and Title.

- (a) Title in the ActivePort Equipment is not transferred to the Customer and at all times is retained by ActivePort.
- (b) Risk in the ActivePort Equipment shall pass to the Customer on delivery of the ActivePort Equipment to the Customer.

15.2. Customer Responsibilities.

- (a) The Customer is responsible for any damage to, or destruction or theft of the ActivePort Equipment, except to the extent it is caused by ActivePort.
- (b) The Customer must keep ActivePort's Equipment in good repair and condition, excluding fair wear and tear and shall not sell, Assign or permit any charge, lien, mortgage or encumbrance to be created in relation to it.

Unless otherwise agreed, the Customer must:

- (c) allow ActivePort or it's representative to service, modify, maintain, repair or replace ActivePort's Equipment; and
- (d) do all things reasonably required by ActivePort to make clear the identity of the owner of ActivePort's Equipment.

16. Disclaimers.

- (a) To the extent permitted by law, the express warranties in this Agreement are in lieu of all other warranties, express, implied, or statutory, regarding the Products, Projects and / or Services and any materials developed during the performance of the Products, Projects and / or Services, including any warranties of merchantability, fitness for a particular purpose, title, and non-infringement of Third Party rights.
- (b) To the extent that Third Party Products are provided to the Customer under a Customer Contract, the warranties and indemnities provided to the Customer under a Customer Contract will be limited to those that ActivePort is able to obtain from the Third Party Supplier.
- (c) The Customer acknowledges that it has relied on no warranties other than the express warranties in this Agreement.

17. Claims & Liability.

17.1. Third Party Claims. ActivePort will defend the Customer against a successful Third-Party claim that any Product, Project and/or Service which ActivePort supplies infringes an Intellectual Property Right of any Third-Party, provided that the Customer provides ActivePort with:

- (a) written notice as soon as is practicable and in any event within thirty (30) days after the Customer becomes aware of the claim;
- (b) sole control of the defence and all related settlement negotiations (other than negotiations that may impose an obligation or liability on Customer); and
- (c) all reasonable assistance, information and authority necessary to perform ActivePort's obligations under this clause.

17.2. No Liability – Third Party Claims. ActivePort shall have no liability for any Third Party claim, where such claim is based on the Customer's:

- (a) use of a superseded or altered version of the Software;
- (b) using the Software for a purpose other than the purposes contemplated within the Documentation;
- (c) any other reason where the Customer, acting reasonably, should have contemplated that the Customer's usage may reasonably result in a Third Party claim;

17.3. **Rectification.** In the event the Software is held or is believed by ActivePort to infringe, ActivePort will have the option, at its expense, to:

- (a) modify the Software to be non-infringing; or
- (b) obtain for the Customer a licence to continue using the Software.

In the event that neither of these options is commercially reasonable, either Party may terminate the effected Customer Contract to the extent that it relates to the infringing portion of the Software.

17.4. **No liability.** ActivePort shall have no liability for any claim of infringement based on use of a superseded or altered version of Software or use not contemplated within the Documentation if the infringement would have been avoided by the use of a current unaltered version of the Software which ActivePort offers to the Customer as contemplated in the Documentation.

17.5. **Limitation of Liability.**

- (d) In no event will either Party be liable for any consequential, indirect, exemplary, special, or incidental damages (including additional costs arising from delay or increased inefficiency, loss of contracts or loss of use), or any lost data, lost profits, lost revenue, loss of anticipated saving, loss of production, business interruption, or lost opportunity, arising from or relating to this MCA or any Customer Contract, regardless of whether the loss was within the contemplation of the Parties at the time of entering into the Customer Contract or not.
- (e) Each Party acknowledges that the Fees reflect the allocation of risk between the Parties and that the other Party would not enter into this MCA or the Customer Contract without these limitations on that Party's liability.
- (f) These limitations shall apply even if any other remedy fails of its essential purpose.
- (g) In no event will the Customer or any of its Affiliates raise any claim relating to or under this MCA or any Customer Contract more than two (2) years after the discovery of the circumstances giving rise to such claim.

17.6. **Entire liability.** This clause 17 states ActivePort's entire liability and the Customer's exclusive remedy for any claims.

18. **Public statements.**

18.1. **Consent required.** Neither Party may issue press releases or make public statements or announcements regarding the other Party, this MCA, any Customer Contract or any Products, Projects and / or Services without the other Party's prior written consent.

18.2. **Customer consent.** Notwithstanding the foregoing, the Customer consents to being included in any listing of ActivePort's current customers, as ActivePort may deem appropriate from time to time, on ActivePort's Websites, presentations and marketing materials.

18.3. **ActivePort requests.** Further, during the Term of this MCA or any Customer Contract, ActivePort may reasonably request the Customer's active participation and cooperation in ongoing promotional and marketing activity with respect to the ActivePort Products, Projects and / or Services including potentially assistance or approval of press releases regarding a:

- (a) Customer story;
- (b) Customer or Product, Project and / or Service case studies;
- (c) Customer video and audio materials;
- (d) Customer prospect references and potentially reference site calls and analyst references.

ActivePort shall prepare all necessary promotional and marketing material and shall submit releases to the Customer for approval and input prior to any release. Where the Customer's resources or site access is required, ActivePort shall request such access with as much notice as possible and ensure that ActivePort employees comply with any reasonable policies, procedures and insurance requirements.

19. **Compliance with Laws.** The Customer will comply with all applicable laws and regulations in its use of the Products, Projects and / or Services. The Customer will defend, indemnify, and hold harmless ActivePort from and against any violation of such laws or regulations by the Customer or any of its agents, officers, directors, or employees.

20. **Force Majeure.** Neither Party shall be liable for any delays in performance of any of the obligations hereunder due to causes beyond its reasonable control including, without limitation, fire, strike, war, acts or terrorism, riots, acts of any civil or military authority, acts of God, computer viruses, internet failures, judicial action, unavailability or shortages of labour, materials or equipment, failure or delays in delivery of vendors and suppliers or delays in transportation.

21. **Records and Inspections.**

21.1. **Maintaining Records.** Each Party must maintain complete and accurate records during the Term and must maintain those records for at least twelve (12) months after the expiration or termination of each Customer Contract. These records should include usage statistics which are used in the Usage Report.

21.2. **Inspection.**

- (a) The Customer permits ActivePort or its representatives (including an independent Third Party) to review the Customer's relevant records and inspect the Customer's systems including remote monitoring of the Customer's use to ensure compliance with each Customer Contract.
- (b) ActivePort must give the Customer at least five (5) Business Days advance written notice of any such inspection and will conduct the inspection during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations.

21.3. Results of Inspection. If ActivePort's inspection identifies that the Customer's usage of a Product, Project and / or Service exceeds the relevant restriction in the applicable Customer Contract, then the Customer:

- (a) must immediately pay to ActivePort:
 - (i) the additional Fees (at ActivePort's then current list price) to reflect the Customer's actual use of the Product, Project and / or Service;
 - (ii) the costs incurred by ActivePort associated with undertaking the inspection (including the Fees associated with any professional advisers instructed by ActivePort to assist with the inspection).
- (b) will, where applicable, be moved by ActivePort to a new license which is appropriate for the Customer's actual use of the relevant Product, Project and / or Service, such change will become effective for the next billing period.

22. Dispute Resolution.

22.1. Notice of Dispute. Where a dispute arises in connection with this Agreement or a Customer Contract (except as it relates to billing, a confidentiality violation or an Intellectual Property Rights matter), a Party to the dispute must give to the other Party a dispute notice specifying the dispute and requiring its resolution under this clause 22 ("**Notice of Dispute**").

22.2. Appointment of representatives. Within five (5) Business Days after a Notice of Dispute is received (or deemed to be received in accordance with clause 22 of this Agreement), each Party must nominate in writing to the other Party a representative who is authorised to settle the dispute on its behalf.

22.3. Negotiation. Within the ten (10) Business Days of the appointment of representatives in accordance with clause 22.2, or if the Parties agree such longer period, that longer period, each Party's representative must use their best endeavours to resolve the dispute by negotiation in good faith ("**Negotiation Period**").

22.4. Failure to resolve dispute. If the dispute the subject of the Notice of Dispute is not resolved after the conclusion of the Negotiation Period ("**Notice Period**"), the dispute is, by reason of this clause 22, must be submitted to mediation.

22.5. Mediation.

- (a) Within five (5) Business Days of the dispute being referred to mediation, either:
 - (i) the Parties both agree on the mediator; or
 - (ii) have a mediator appointed by the chair of the Law Society Panel of Mediators & Arbitrators, where the Parties do not agree on a mediator.
- (b) The Australian Centre for International Commercial Arbitration ("**ACICA**") Arbitration Rules and Expedited Arbitration Rules ("**Rules**") apply to the mediation to the extent that such Rules do not conflict with this clause 22.
- (c) Each Party must use their best endeavours to resolve the dispute via mediation until:
 - (i) the dispute is resolved; or
 - (ii) the mediator determines that the dispute is unlikely to be resolved through mediation.
- (d) Where the mediator makes a determination under clause 22.5(c)(ii), the dispute must be submitted to arbitration.

22.6. Arbitration.

- (a) Within five (5) Business Days of the dispute being referred to arbitration, either:
 - (i) the Parties both agree on the arbitrator; or
 - (ii) have an arbitrator appointed by the chair of the Law Society Panel of Mediators & Arbitrators, where the Parties do not agree on an arbitrator.
- (b) The Rules apply to the arbitration to the extent that such Rules do not conflict with this clause 22.
- (c) Each Party must use their best endeavours to resolve the dispute via arbitration until:
 - (i) the dispute is resolved; or
 - (ii) the arbitrator determines that the dispute is unlikely to be resolved through arbitration.
- (d) Where the arbitrator makes a determination under clause 22.6(c)(ii), a Party may then, but not earlier, commence proceedings in any court of competent jurisdiction.

22.7. Parties' rights not affected. Nothing in this clause 22 will deny either Party the right to seek urgent interlocutory relief (including an injunction) from an appropriate court in relation to any dispute arising under this Agreement or a Customer Contract.

22.8. Performance of obligations. Prior to the resolution of a dispute in accordance with this clause 22, the Parties must continue to perform their respective obligations under this Agreement, notwithstanding that those obligations are the subject matter of the dispute.

23. Anti-Bribery & Corruption, Sanction and Anti-Money Laundering.

23.1. Anti-Bribery & Corruption. In connection with performance of this Agreement, the Parties each represent and warrant to the other Party that they comply with, will comply with, and will not cause the

other Party to violate, all applicable laws related to anti-bribery or anti-corruption (“**Anti-Corruption Laws**”), including, but not limited to, the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1 et seq.), and the UK Bribery Act of 2010.

23.2. Sanction and Anti-Money Laundering. The Customer represents and warrants that:

- (a) in connection with performance of this Agreement, the Customer and its Affiliates, shareholders, directors, officers, or employees comply with, will comply with, and will not cause ActivePort to violate applicable laws related to the import and export of goods, technology and services, economic or financial sanctions, trade embargoes, or other restrictions on trade (“**Sanctions & Trade Controls**”), including, but not limited to, sanctions laws and regulations of the United States (as administered and enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”) and U.S. Department of State), the U.S. Export Administration Regulations (31 C.F.R. Parts 730-774), the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130), U.S. antiboycott regulations (as administered and enforced by the U.S. Department of Commerce’s Office of Antiboycott Compliance and the U.S. Department of the Treasury’s Internal Revenue Service), and sanctions laws and regulations of the United Kingdom (as administered and enforced by His Majesty’s Treasury), provided that the representations and warranties contained in this clause 23.2(a) are given only to the extent that they would not result in a violation of or conflict with Council Regulation (EC) No. 2271/96, as amended (or any law or regulation implementing such Regulation in any member state of the European Union or any equivalent law or regulation in the United Kingdom), the German Foreign Trade Act or any similar, applicable anti-boycott or blocking law or regulation;
- (b) in connection with performance of this Agreement, the Customer and its Affiliates, shareholders, directors, officers, or employees comply with, will comply with, and will not cause ActivePort to violate applicable laws related to money laundering, terrorist financing, or related financial recordkeeping and reporting requirements (“**AML Laws**”), including, but not limited to, the Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.), Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 et seq.), USA PATRIOT Act, EU Money Laundering Directives, UK Prevention of Terrorism Act 2005, UK Serious Organised Crime and Police Act 2005, UK Money Laundering Regulations 2003, UK Proceeds of Crime Act 2002, and UK Anti-Terrorism, Crime and Security Act 2001;

- (c) neither the Customer nor any of its Affiliates, shareholders, directors, officers, or employees:
 - (i) is blocked, debarred, designated, excluded, sanctioned, or denied import or export privileges under applicable Sanctions & Trade Controls and / or AML Laws;
 - (ii) located in, resident in or organized under the laws of a country or territory which is a subject of country-wide or territory-wide Sanctions and Trade Controls (at the date of the this Agreement, Crimea, Cuba, Iran, Syria or North Korea); or
 - (iii) owned (with a 20% or greater interest) or controlled by any person identified in clause 23.2(a) (collectively, “**Restricted Persons**”); and
- (d) in connection with performance of this Agreement, the Customer is not engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with Restricted Persons in violation of all applicable laws including, but not limited to, Anti-Corruption Laws and AML Laws or provided that, if a person is considered a Restricted Person solely based on its inclusion in a relevant list, but its inclusion on that list is limited to a specific purpose or purposes, that person would be considered a Restricted Person only with respect to that specific purpose or purposes and not any other purpose or purposes.

23.3. Notice. If, at any time, the Customer becomes aware that any of the representations set out in clause 23.2 are no longer accurate, the Customer will notify ActivePort immediately in writing.

23.4. Termination. In the event that:

- (a) in connection with performance of this Agreement, the Customer violates, or causes ActivePort to violate, applicable Anti-Bribery Laws, or Sanctions & Trade Controls, and / or AML Laws;
- (b) ActivePort believes in good faith that the Customer has acted in a way that may subject ActivePort to liability under applicable Anti-Bribery Laws, or Sanctions & Trade Controls, and / or AML Laws; or
- (c) the Customer or any of its direct or indirect shareholders becomes a Restricted Person,

ActivePort will have the unilateral right, exercisable immediately upon written notice, to terminate this Agreement. Upon such termination, ActivePort will be entitled to receive payment of all Fees accrued and remaining unpaid at the date of termination together with any and all reasonable additional costs incurred due to such early termination calculated using the Early Termination Fee calculation contained in clause 13.4(a).

24. Notices.

24.1. Service a Notice. A notice, demand, consent, approval or communication under this Agreement (“**Notice**”) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, courier, facsimile or email or other electronic means (“**Electronic Communication**”) to the recipient’s address for Notices as set out in the Customer’s completed Registration Form, as varied by any Notice given by the recipient to the sender.

24.2. **Address of Customer.** The initial address of the Customer shall as set out in Customer’s completed Registration Form.

24.3. **Electronic Communications.** Notices may be delivered using a form of Electronic Communication or if a Party (the **Notifying Party**) gives a Notice to the other Party stating that Electronic Communications is no longer an accepted form of communication for Notices addressed to the Notifying Party.

24.4. **Effective on receipt.** A Notice given in accordance with clause 24.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second (2nd) Business Day after the date of posting (or on the eighth (8th) Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by courier, on the date of delivery (as stated in the consignment tracking advice obtained from the courier company);
- (d) if sent by Electronic Communication, at the time of transmission unless, within 24 hours of transmission or, if the unsuccessful transmission is as a consequence of any act or omission of the sender or defect or deficiency in the sender’s transmitting equipment, any time after transmission, the sender receives advice that the transmission has been unsuccessful,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm (addressee’s time) on a Business Day, the Notice is taken to be received at 9.00am (addressee’s time) on the next Business Day.

25. **Miscellaneous.**

25.1. **Variation.** A variation of any term of this Agreement or a Customer Contract will be of no force or effect unless it is by way of written agreement and signed by each of the Parties.

25.2. **Costs and expenses.** Each Party must pay its own costs of negotiating, preparing, executing and performing this Agreement and each Customer Contract.

25.3. **Severability.** If any provision of this Agreement or a Customer Contract is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision, shall be and

continue to be valid and forceful in accordance with their terms.

25.4. **Governing Law.** This Agreement and each Customer Contract shall be governed by and construed in accordance with the law from time to time in the State of Western Australia and the Parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts which hear appeals therefrom.

25.5. **Further assurances.** Each Party shall sign and execute and do all deeds, acts, documents and things as may reasonably be required by any other Party to this Agreement or Customer Contract to effectively carry out and give effect to the terms and intentions of this Agreement or Customer Contract.

25.6. **Waivers.** Without limiting any other provision of this Agreement, the Parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement or a Customer Contract by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement or a Customer Contract;
- (b) a waiver given by a Party under this Agreement or a Customer Contract is only effective and binding on that Party if it is given or confirmed in writing by that Party; and
- (c) no waiver of a breach of a term of this Agreement or a Customer Contract operates as a waiver of another breach of that term or of a breach of any other term of this Agreement or a Customer Contract.

25.7. **No reliance.** Neither Party has relied on any statement by the other Party which has not been expressly included in this Agreement or any Customer Contract.

25.8. **Entire Agreement.** This MCA in conjunction with each Customer Contract will be the complete agreement between the Parties regarding the specific subject matter of the particular request by the Customer and replace any prior oral or written communications between the Parties related to that specific subject matter.

25.9. **Assignment.**

- (a) The Customer may not, without the prior written consent of ActivePort, Assign rights, duties or obligations set forth in this Agreement or any Customer Contract and any attempt to do so without the express prior written consent of ActivePort (which consent shall be in its sole discretion) shall be deemed a material breach of the Agreement or Customer Contract(s) (as appropriate) which is incapable of being remedied and shall automatically terminate the Software

license(s) and all other rights granted to the Customer thereunder.

- (b) ActivePort may, without the prior consent of the Customer, Assign rights, duties or obligations set forth in this Agreement or any Customer Contract to any of its Affiliates.
- (c) Subject to the foregoing, this Agreement and each Customer Contract will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

25.10. **Counterparts.** This Agreement and any Customer Contract may be executed in any number of counterparts (including by way of electronic signature using auditable software such as DocuSign) each of which shall be deemed for all purposes to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

25.11. **Relationship of Parties**

- (a) The Parties are not and are not to be taken to be in a partnership, joint venture, employment or fiduciary relationship.
- (b) Nothing in this Agreement or any Customer Contract gives one Party authority to bind any other Party in any way.
- (c) Each Party must act in accordance with good faith and fair dealing at all times in carrying out its obligations under this Agreement and each Customer Contract.

25.12. **Conflicting Provisions.** If there is any conflict between:

- (a) the main body of this Agreement and any Schedule/s or annexure/s comprising it, then the provisions of the main body of this Agreement prevail; and
- (b) this Agreement and a Customer Contract, then the then the provisions of the Customer Contract will prevail.

25.13. **Contra Proferentum Rule.** This MCA and any Customer Contracts may not be construed adversely to a Party because that Party prepared it.

25.14. **Non-solicitation.** During the Term of this Agreement and for a period of twelve (12) months thereafter, no Party to this Agreement shall (without the prior written consent of the other Party) solicit, endeavour to entice or offer to employ or engage (either directly or indirectly) any officer, employee or contractor of the other Party who was involved in the provision, management or receipt of Products, Projects and / or Services provided under, or relationship management in relation to, this Agreement. This shall not prevent any Party from considering and accepting an application made by any such officer, employee or contractor into a recruitment advertisement published generally and not directed at officers, employees or contractors of the other Party.

25.15. **Languages and Localisation.** Reference to any Software, Documentation or Product, Project and / or Service refers to the non-localised English language version of the applicable item. ActivePort-supported language offerings and localisation offerings (by country) must be purchased as separate or additional individual offerings. Further details of the commitments for ActivePort-supported language and localisation offerings are available from ActivePort on request.



SCHEDULE – OUT OF SCOPE FEES

All Out of Scope Fees will be invoiced to the Customer pursuant to the terms of the Agreement and will be charged at the following hourly rates.

Day (Perth)	Work Hours (Perth time)	Hourly rate (US Dollars)
Monday – Friday	7am-7pm	\$300
	7pm-7am	\$900
Saturday and Sunday	All day	\$900
Public holiday	All day	\$1,500
Standby - any day	All day	75% of the above rates